

THE DEATH PENALTY AS DETERRENT PUNISHMENT: A REVIEW OF EFFECTIVENESS OF DEATH PENALTY IN BANGLADESH

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Abstract

Punishment is a crucial tool for crime prevention and deterrence. Among other punishments, the death penalty is the harshest punishment in Bangladesh. In the past, many have believed that the death penalty effectively deters crime. However, there remains debate over whether the death sentence actually works to prevent crime. Bangladesh encompasses a broad spectrum of offenses, including both serious crimes and nonviolent offenses, that are subject to the death penalty, and the country aims to expand the list of offenses punishable by this sentence. However, the effectiveness of the death penalty in deterring crimes is questionable. The most important resources for a State are its human resources. The death penalty, however, annihilates the right to life and dashes all of humanity's hopes and aspirations. Protecting their lives is crucial because of this. The study aims to examine and assess the current regulations of the death sentence in preventing crime. Subsequently, the study attempts to demonstrate how effectively the death penalty closes gaps in the justice system and deters crime. To conclude the study, it has been undertaken in doctrinal legal research with analytical approaches. The first part of this study looks at the offenses from numerous actions that might result in the death penalty. Second, statistics indicate that even when the death sentence is still in place, crime does not greatly decline. Finally, it recommends substitute punishments that can be carried out rather than the death penalty.

Keywords: *Effectiveness of Punishment; Death Penalty; Crime Deterrent; Bangladesh.*

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1. Introduction

Since the beginning of time, it has been clear that punishments correspond to offenses, and the frequency of offenses is rising daily. Therefore, various forms of punishment have developed in their approaches to combat and repress the offenses. The death sentence is one of them in that situation as a deterrent tactic. Despite the fact, Bangladesh, a common law country, accepts the death penalty as the ultimate or last punishment in a court (Sec. 53 of the Penal Code, 1860). Currently, there is considerable debate on the death penalty's efficacy. This is due to evidence from numerous nations showing that even when the death penalty is enforceable, the frequency of crimes is not decreased. In addition, many courts arbitrarily impose this kind of penalty in a variety of situations. As a result, it affected a great number of innocent people. The death sentence hasn't been very effective so far at deterring crime and fostering social harmony. It has become a big problem in the modern world. It cannot discourage crime since it is frequently given arbitrarily; instead, it encourages retribution and ultimately leads to a rise in crime.

The perpetrator should get a proportionate punishment for their actions. Although retribution is not a reducible consequential loss, nor is it a means of ensuring the safety in society or moral

perfection of offenders.¹ The death penalty is the most heinous, violent, and offensive punishment. It is frequently directed against individuals in society who are most likely to be poor, members of racial and ethnic minorities, and those who suffer from mental diseases. Additionally, this form of punishment has been used to numerous innocent persons. Sometimes it used to scare the political adversaries.² An innocent person can be killed in any nation with a corrupt judicial system and biased trials. Once more, this is significant since it is the final choice to execute a person. A mistake is irreversible once it's been committed. It is impossible to stop the execution of an innocent person; instead, the victim's family suffers. It is possible for an innocent person to be released from prison after committing a crime. In light of the aforementioned factors, the analysis rejects the death penalty.

There have been very few formal examinations of Bangladesh's death sentence policy. Malik³ attempted to determine the extent to which the appellate court in Bangladesh considers the plea of delay in execution as an alleviating factor in death penalty cases. Rahman⁴ investigated the sentencing of murder cases in both the trial and upper courts. He discovered that the higher court's sentencing rulings in these cases were very inconsistent. BILIA⁵ conducted research on death penalty cases based on the perspectives of former trial court judges. The study found that police and prosecution lawyers are doing a significant disservice and bear responsibility for many unjustified convictions and acquittals. Rahman⁶ carried out research and discovered that the majority of prisoners on execution row were disadvantaged, marginalised, and not necessarily the most serious offenders. The majority were not well educated, and as a result, they were economically vulnerable. In Bangladesh, men and women would wait a lengthy time under sentence of death before being executed. Rahman and Wadud⁷ conducted research on this topic and determined that, on general, death sentences in Bangladesh have been undermined by arbitrariness and procedural defects.

This study highlights the effectiveness of death penalty to prevent crimes. Furthermore, it also aims to show that there are other, better ways to deter crime than the death penalty. This study tries to show how efficient the death sentence is at deterring crime, as well as the difficulties, weaknesses, and downsides associated with it. It also offers recommendations for selecting an alternative, executable punishment in place of the death penalty.

2. Method

This study employs a doctrinal legal research design to examine the effectiveness of the death penalty in Bangladesh as a deterrent to crime. The doctrinal method is appropriate because the research focuses on analyzing statutory provisions, judicial decisions, and international

¹ Gregg D. Caruso, "Free Will, Legal Punishment, and Retributivism," in *Rejecting Retributivism: Free Will, Punishment, and Criminal Justice*, Gregg D. Caruso (Cambridge University Press, 2021), 1–34, <https://doi.org/10.1017/9781108689304>. Gregg D. Caruso, "The Epistemic Argument against Retributivism," in *Rejecting Retributivism: Free Will, Punishment, and Criminal Justice*, G. D. Caruso (Cambridge University Press, 2021), 109–27, <https://www.cambridge.org/core/product/identifier/9781108689304/type/book>.

² Odhikar, "BANGLADESH: Imposition of the Death Penalty and Its Impact" (Dhaka, 2022): 1, https://www.ohchr.org/sites/default/files/2022-05/odhikar_replies-dp.pdf.

³ Shahdeen Malik, "Death Reference Cases: Waiting to Be Executed – Delay as a Matter of Life or Death," *Bangladesh Journal of Law* 4, no. 1–2 (2000): 47–82.

⁴ Muhammad Mahbubur Rahman, *Criminal Sentencing in Bangladesh: From Colonial Legacies to Modernity*. (Leiden: Brill Nijhoff, 2017).

⁵ Bangladesh Institute of Law and International Affairs, *The Death Penalty Regime in Bangladesh: Exploring Perspectives of Former Judges* (Bangladesh Institute of Law and International Affairs (BILIA), 2019).

⁶ Muhammad Mahbubur Rahman, *Living Under Sentence of Death: A Study on the Profiles, Experiences and Perspectives of Death Row Prisoners in Bangladesh* (Dhaka : Department of Law, University of Dhaka , 2020).

⁷ Muhammad Mahbubur; Wadud, Psymhe Rahman, "The Death Penalty in Bangladesh: A Review," *Australian Journal of Asian Law* 24, no. 1 (2023): 117–26.

human rights instruments that regulate and influence the use of capital punishment. The analysis relies primarily on the normative framework of criminal law and penology, particularly the principles of deterrence, retribution, and proportionality.

The study adopts a qualitative, analytical, and normative approach. The normative approach is used to interpret and critique the existing legal framework on the death penalty in Bangladesh in light of international human rights standards. The analytical approach enables the evaluation of whether the continued application of the death penalty fulfills its stated objectives of deterrence and justice or contradicts fundamental rights guaranteed by the Constitution of Bangladesh and international conventions.

The collected legal materials are subjected to content analysis and legal interpretation techniques. The analysis proceeds in three stages: Descriptive analysis, identifying and summarizing the statutory and judicial frameworks governing the death penalty in Bangladesh. Critical analysis, evaluating whether the implementation of these laws aligns with the objectives of deterrence theory and international human rights obligations. Comparative analysis, contrasting Bangladesh's approach with selected jurisdictions (such as India, South Korea, and the United States) to identify common patterns, inconsistencies, and potential models for reform

3. Results and Discussion

3.1. International Approaches to the Death Penalty

The study on this topic is a challenging task. When asked whether or not they support the death penalty or how successful it is, the public's reaction is evasive. Numerous studies back the death penalty, yet they cannot shed light on its effectiveness. Studies opposed to the death penalty likewise fell short of offering any convincing alternatives. However, the study has noted and shown how the death sentence is discussed in a number of journal papers, international charters, treaties, and earlier publications. As a result, the following brief summary of these observations is provided:

The American Society of Criminology (ASC) announced its official position on the death sentence, which was approved in 1989 and states that "it condemns this form of punishment." This official viewpoint, though, was later abandoned. The right to life is protected by the Universal Declaration of Human Rights (UDHR), which also states that no one shall be subjected to torture or other forms of inhuman punishment.⁸ Therefore, States should gradually limit the crimes for which the death penalty may be applied. The United Nations General Assembly (UNGA) stated in its resolution that the use of the death sentence will gradually reduce the number of offenses with a view to eliminating the penalty (The UN General Assembly Resolution 32/61 of 1977). In 1984, the United Nation (UN) adopted "Safeguards guaranteeing protection of the rights of those facing the death penalty." The Geneva Convention prohibits "the carrying out of execution without previous judgment pronounced by a regularly constituted court" (Article 3 of The Geneva Convention, 1949).

The UNGA adopted a resolution calling on its members to abolish the death penalty.⁹ The Economic and Social Council (ECOSOC) has presented many resolutions that call for safeguards to be put in place when the death penalty is used in nations that still practice it. The protection includes important restrictions on the selection and application of the death penalty.¹⁰ Although the International Covenant on Civil and Political Rights (ICCPR) does not eradicate the imposition of the death penalty, but it contains assurances the right to life, and holds significant safeguards

⁸ "The Universal Declaration of Human Rights (UDHR)," Pub. L. No. General Assembly resolution 217 A/1948 (1948): art. 3, 5.

⁹ "UN General Assembly Resolution 62/149 about the Moratorium on the Use of Death Penalty " (2007).

¹⁰ ECOSOC, "The Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty," Pub. L. No. ECOSOC 1984/50 (1984).

to be maintained by signatory nation who keep the death penalty.¹¹ ICCPR permits the application of the death penalty under certain circumstances, particularly for the “most serious crimes.”¹²

The Office of the High Commissioner for Human Rights (OHCHR), with its complete duty to advance and defend all human rights, is an opponent of the death penalty.¹³ The American Convention on Human Rights (ACHR) promotes the abolition of the death penalty in American states and safeguards the right to life (Article 4 of The American Convention on Human Rights 1969). Some Organization of American States (OAS) members still impose the death penalty, but only under certain conditions. The European Union Charter of Fundamental Rights states that “no one shall be condemned to the death penalty or executed.”¹⁴ The African Union restricts its members' use of the death sentence to a certain extent. As a result, Article 4 of the African Charter on Human and People's Rights protects the right to life. With rare exceptions, the International Court of Justice opposes the death sentence. The death penalty is always opposed by Amnesty International because it is the “ultimate cruel, inhuman, and degrading punishment.”¹⁵ According to Human Rights Watch, the death sentence and a person's inalienable rights cannot coexist.

The UN Human Rights Committee interprets the Article 6 of the ICCPR and has made clear that though the ICCPR does not explicitly postulate the elimination of the death penalty, it was desirable and “the committee would consider any move towards abolition as progress in the enjoyment of right to life.”¹⁶ The US Supreme Court has invalidated an application of the death penalty for juvenile offenders and intellectually disabled persons for being cruel and inhuman punishment.¹⁷ The Russian legislator has also altered his mind about the death penalty, sometimes removing it and sometimes restoring it. In the 20th century, attempts were made to eliminate the death sentence, but it was unsuccessful. Currently, both the Russian Federation's Constitution and its Criminal Code recognize the death sentence. However, the Russian Federation's Constitutional Court has blocked its application.¹⁸

The Supreme Court of Bangladesh declared mandatory death sentence unconstitutional only for a particular kind of homicide in 2015.¹⁹ But this decision is not applicable to all crimes. The application of the death penalty and the circumstances under which it can be used as a deterrent punishment have thus been discussed extensively in numerous articles, books, journals, treaties, charters, and conventions, similar to those stated above. However, it should be noted that there are no proven alternatives and that it is ineffective as a preventive measure.

¹¹ “International Covenant on Civil and Political Rights (ICCPR),” Pub. L. No. General Assembly resolution 2200A (XXI) (1966): art. 6(1).

¹² International Covenant on Civil and Political Rights (ICCPR), art. 6(2).

¹³ OHCHR, “Death Penalty,” March 20, 2022, <https://www.ohchr.org/en/topic/death-penalty>.

¹⁴ “The European Union Charter of Fundamental Rights” (2000), <https://www.amnesty.org/en/what-we-do/death-penalty/>.

¹⁵ Amnesty International, “What-We-Do/Death-Penalty,” June 10, 2023, <https://www.amnesty.org/en/what-we-do/death-penalty/>.

¹⁶ UN Human Rights Committee (HRC), “CCPR General Comment No. 6: Article 6 (Right to Life)” (1982), <https://www.refworld.org/docid/45388400a.html>.

¹⁷ Alexa Mata and Michael S. Vaughn, “Capital Punishment, Intellectual Disability, and the Courts in the United States,” in *The Palgrave Encyclopedia of Disability*, ed. Gabriel Bennett and Emma Goodall (Cham: Springer Nature Switzerland, 2025), 1–6, https://doi.org/10.1007/978-3-031-40858-8_151-1. Kronick, Katie, “Intellectual Disability, Mitigation and Punishment,” *Boston College Law Review* 65 (2024): 1561–623, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4566026. Steiker, Carol S. and Steiker, Jordan S., “Capital Clemency in the Age of Constitutional Regulation: Reversing the Unwarranted Decline,” *Texas Law Review* 102, no. 7 (2024): 1449–72, <https://texaslawreview.org/capital-clemency-in-the-age-of-constitutional-regulation-reversing-the-unwarranted-decline/>. Freeman, Vanessa Y., Forrest, Robert P., and Molden, Raymond K., “Determination of Intellectual Disability for Capital Punishment,” *Journal of the American Academy of Psychiatry and the Law* 49, no. 3 (2021): 428–30, <https://doi.org/DOI:https://doi.org/10.29158/JAAPL.210078-21>.

¹⁸ Aleksey Rarog, “Death Penalty Revisited,” *Russian Journal of Criminology* 16, no. 6 (December 2022): 661–68, [https://doi.org/10.17150/2500-4255.2022.16\(6\).661-668](https://doi.org/10.17150/2500-4255.2022.16(6).661-668).

¹⁹ BLAST vs Bangladesh, 1SCOB AD 1 (2015).

3.2. Overview of Death Penalty as Deterrent Approach

The death sentence is a deterrent punishment provided in many countries as an exemplary punishment for committing the worst possible offence. The use of death as a sentence for a crime is known as the death penalty. A crime that bears the death sentence is thus referred to as a capital crime. Since ancient times, people have been subject to the death penalty. Anthropologists believe that prehistoric cave dwellers near Valladolid painted an execution scene. Human sacrifices could have influenced the death penalty. As early as 1750 B.C., the Code of Hammurabi's *lex talionis* mentions capital punishment. Sabbath infringement, magic, adultery, blasphemy, homosexuality, insect, bestiality, and rape were all capital offences in the Bible. Plato also extensively discussed the death penalty in his laws.²⁰

The manner in which criminals were put to death throughout the Middle Ages was particularly cruel. Grotius, Hobbes, and John Locke were well-known philosophers who favoured the death sentence trials by fire, water, and other means, as well as the death sentence used in the 1600s. Executions have dramatically dropped in most countries during the last several decades. The topic of the death penalty is delicate and divisive. About one-third of the nations in the world have passed laws allowing the death sentence. The United States, Iran, Japan, and the People's Republic of China are among the nations that have implemented the death sentence. All members of the Council of Europe, including Australia, Canada, Mexico, and others, have abolished the death penalty. At the end of 2022, 112 countries had eradicated the death penalty in law.²¹

Even though executions are still permitted, it has been at least ten years since any have occurred. Most nations have a death penalty for murderers as well as other serious crimes like rape and terrorism. Similar circumstances exist in other nations, especially those with authoritarian or totalitarian governments, where people exploit them to commit less serious crimes like stealing, drug trafficking, or political dissent. Although murder and other crimes that bear the death sentence are typically the cause of executions, many additional crimes qualify. Bank robberies in Saudi Arabia, kidnapping, and human trafficking (slavery) in China, as well as general robberies in America if at least one person is killed, are all punishable by death.

Other crimes include trafficking or having a specific number of illegal drugs in Indonesia, Saudi Arabia, Singapore, Malaysia, Taiwan, or other nations; rape in China and Saudi Arabia; corruption and bribery in China; and rape in Saudi Arabia. In Afghanistan, Iran, and Saudi Arabia, adultery has reportedly occurred.²² Homosexuality in Iran, Saudi Arabia, Yemen, Sudan, and Mauritania; forced prostitution in Iraq and Saudi Arabia up to 2003; Afghanistan, Iran, Yemen, Mauritania, Pakistan, and Saudi Arabia; and Islamic apostasy in Afghanistan, Iran, Yemen, Sudan, and Saudi Arabia. In a time of war, the following offences are liable to capital punishment: Treason (attempting to overthrow a government), espionage, and desertion of sabotage.²³

The question of the death penalty's moral legitimacy and practicality has long been debated in criminal law philosophy. However, supporters and opponents of the death penalty have yet to achieve a consensus.²⁴ Some people believe the death penalty is beneficial, while others believe it is harmful. There are a lot of people on both sides of the debate who have strong feelings about the subject. People who believe in retribution support the death penalty and argues that the death penalty is advantageous because it prevents people from engaging in criminal behaviour that could result in their death. Some people choose rehabilitation since the death sentence does not improve overall happiness in society and can make criminals fear living. The abolition of the death

²⁰ Anasfasios Iadikos, "Plato's Views on Capital Punishment," *Phronimon* 6, no. 2 (2005): 49–61, https://repository.up.ac.za/bitstream/handle/2263/14154/Ladikos_Plato%27s%282005%29.pdf?sequence=.

²¹ Amnesty International, "What-We-Do/Death-Penalty."

²² Roger Hood, "Capital Punishment," in *Encyclopedia Britannica*, 2022, <https://www.britannica.com/topic/capital-punishment>.

²³ Britannica, "Capital Punishment," in *Britannica*, May 5, 2023, <https://www.britannica.com/topic/capital-punishment>.

²⁴ Rarog, "Death Penalty Revisited."

penalty demonstrates respect for human rights, which may help to sustain social stability.²⁵ The other contends that there is a chance of executing an innocent man; a third contends that the death penalty is murder. Most individuals are aware of the dangers that crime poses to their lives, yet many still struggle with how to deal with it.

Governments and tyrants have executed people throughout history by several means, including hanging, beheading, and crucifixion. Governments no longer use certain forms of execution, such as crucifixion and flaying, because people believe they are too brutal. Since it was determined to be illegal in the US (i.e., that it violated the US Constitution's restriction on "cruel and unusual punishments"), the gas chamber is no longer in use there. By amending the European Convention on Human Rights, the Council of Europe has eliminated all executions. Amnesty International opposes all types of torture as well as any other cruel, inhumane, or degrading treatment, including the death sentence, in conformity with the Universal Declaration of Human Rights.²⁶

However, there are several ways or forms in which the death sentence is carried out globally. Today's execution methods include: **Electric chair:** A powerful electrical source attached to the prisoner's head and leg kills them. **Lethal injection:** A cocktail of poisons is injected into the prisoner's system, poisoning them. Controversial chemicals are used in some nations. **Firing squad:** Some people shoot prisoners using guns. Soldiers are regularly put on firing squads during times of conflict. It could be hard to tell who fired the fatal shot since one or more of those who were shooting might have been using phoney ammunition that does not kill. A popular military execution technique is the firing squad. Occasionally, spies, deserters, and traitors are put to death.

Hanging: A rope is put around the prisoner's neck to hang him or her. They are then dropped from a tremendous height after that. When a person's neck is broken, it may be fatal. They might suffocate to death if the drop is too little or the knot isn't properly constructed. The prisoner's head may be cut if the descent is too lengthy or they are too heavy. Hanging is used as a punishment in Bangladesh, Japan, India, and other former British colonies. **Hand or garrote strangulation:** The garrote served as Spain's primary means of execution for hundreds of years. The club, or garrote in Spanish, was first used to kill the culprit. Later, the neck was wrapped in a rope loop. The prisoner was strangled to death with a rope that was tightened using a wooden rod that was put into the loop and spun.

Stoning: The prisoner gets stabbed with stones till they kill them. Stoning is still carried out in a number of Middle Eastern countries. When the victim's head is cut with a sharp object, such as a sword, axe, or guillotine, the condition is known as decapitation. In many other places, including Central Europe, this was the norm for execution. **Decapitation:** It's also known as beheading. Some Middle Eastern countries still practice decapitation, but Saudi Arabia is the only one that does so actively.²⁷

3.3. Constitutional Obligations Regarding the Death Penalty

The Constitution of Bangladesh, in its preamble, guarantees fundamental human rights, justice and equality for all of its inhabitants. The establishment of a welfare state that would guarantee fundamental human rights and freedoms as well as respect for the value and dignity of every person had been the liberation heroes' life's work (Preamble of the Constitution of Bangladesh, 1972). The Constitution guarantees protection against severe, cruel, or humiliating punishment. It also affirms that action detrimental to the life and body shall not be taken (Article 31, 35(5) of the Constitution of Bangladesh, 1972).

²⁵ Kezhen Qiao et al., "Retributivism and Death Penalty," *Lecture Notes in Education Psychology and Public Media* 6, no. 1 (May 2023): 966–74, <https://doi.org/10.54254/2753-7048/6/20220928>.

²⁶ Encyclopedia, "Death Penalty," in *Encyclopedia*, April 12, 2023, <https://www.encyclopedia.com/law/encyclopedias-almanacs-transcripts-and-maps/death-penalty>.

²⁷ Wikipedia, "Methods of Capital Punishment," in Wikipedia, January 10, 2023, https://en.m.wikipedia.org/wiki/List_of_methods_of_capital_punishment.

As a result, it is time to reconsider the death penalty as a form of punishment. The global trend is to correct offenders rather than punishing them severely, cruelly, or degradingly. Therefore, Bangladesh, a democratic nation cannot lag behind.

3.4. Legal Framework of Death Penalty in Bangladesh

In Bangladesh, murderers and others guilty of significant crimes have been executed using the death sentence from ancient times. We have no idea when we will start working out. Despite the fact that courts often impose death sentences in several offences. Only a few offenders are hung each year in Bangladesh. The government has been known to free prisoners by bringing up political issues. The death sentence is presently applied to a wide variety of offences.²⁸ Among them, The Penal Code 1860²⁹ contains punitive measures for the following offenses: - Declaring war on Bangladesh, sec. 121; reduction of mutiny, sec. 131; fabricating or providing false testimony to secure a conviction for a death offense, sec. 194; murder: sec. 302; life sentence for murder, sec. 303; preventing child or mad person suicide, sec. 305; lifetime convict offender attempted murder that resulted in injury, sec-307; murder and dacoity, sec-396 (The Penal Code, 1860).

Furthermore, Bangladesh has additional legal provisions governing the death penalty regarding food safety and economic crimes under The Special Powers Act 1974, such as: sabotage, sec-15; hoarding or dealing in the black-market, sec. 25; counterfeiting any currency-note or government stamp, sec-25A; smuggling, sec-25B; adulteration of or sale of adulterated food, drink, drugs or cosmetics, sec-25C; attempt of any of these offences, sec-25D (The Special Powers Act, 1974). A variety of crimes involving weapons and explosives are also punishable by the death sentence under the Arms Act 1878, unauthorized use of a firearm with the intention to the commission of murder, sec-20A (The Arms Act, 1878). Also, chapter two of the Anti-Terrorism Act, 2009 deals with several offences punishable with death penalty (Sec. 6(2)(a) of The Anti-Terrorism Act, 2009).

Several laws that were enacted to stop violence against women and children made the death penalty a possible punishment. Consequently, the law known as the women and children repression prevention Act was passed in 2000, as amended in 2020, sec-4(1), 4(2 ka), 8, 9(1), 9(2), 9(4ka), 11, 12 deal with death penalty for the following crimes: murder or attempted murder involving burning, poison or the use of acid, sec-4(1); drugs affect one's face, breast, eyes, ears, vision, or reproductive organs, sec-4(2) (ka); kidnapping for ransom, sec-8; rape, sec- 9(1); death caused by sexual attack on women or children, sec- 9(2); committing dowry murder, sec-11; maiming of children for begging purposes, sec-12; attempted for murder or hurt after rape, sec-9(4ka) (The Women and Children Repression Prevention Act). The Acid Crime Control Act, 2002 makes the following offenses capital offenses: acid-related death, sec-4; using acid to harm a person in a manner that completely or partly damages their hearing, vision, face, breasts, or reproductive organs, sec-5(ka) (The Acid Crime Control Act, 2002).

3.5. Effectiveness of Death Penalty in Bangladesh

3.5.1. Number of Crimes is not Decreasing

Bangladesh has maintained the death penalty and has continued executing those sentenced to death. The number of crimes is not declining, according to a variety of evidence, study, data, and observations, even while the death penalty is still in place. The number of offenses is rising rather than falling. As a result, the usefulness of the death penalty as a deterrent is heavily contested in Bangladesh. Statistics show that even while a significant number of criminals are found guilty and given the death penalty for a variety of offenses, the number of

²⁸ Mohammad Saiful Islam, "AN OVERVIEW OF DEATHPENALTY POLICY IN BANGLADESH: A CALL FOR REFORM IN THE CONTEXT OF INTERNATIONAL PROSCRIPTIONS," *RUSSIAN LAW JOURNA* 12, no. 1 (2024): 622–42.

²⁹ Bangladesh's primary criminal code is the Penal Code of 1860. It is based on the penal code of the British Indian Empire, which was enforced in the Bengal Presidency by the Governor General-in-Council in 1860.

people committing crimes that carry the death penalty is rising. Statistics demonstrate that the death sentence has little effect on crime prevention.

Table 1.
Bangladesh Murder/Homicide Rate - Historical Data

Year	Per 100k population
2010	2.70
2011	2.66
2012	2.72
2013	2.88
2014	2.92
2015	2.58
2016	2.27
2017	2.22
2018	2.37

Bangladesh Murder/Homicide Rate - Historical Data³⁰

Table 2.
Death penalty conviction and execution from 2010-2020

Year	Conviction	Executed
2010-2020	2,286	32

Source: Statistics on Death Penalty documented by Odhikar

Bangladesh executed 448 individual from 1976 and 2017.³¹ In the year 2017, Amnesty International noted six executions that took place in 2017.³² Nevertheless, at least 229 people received the death penalty in 2018 after being found guilty.³³ According to the report of the human rights organization Odhikar, the trial courts from January 2021 to March 2022 sentenced 411 persons to death in total. In addition, the aforementioned report listed seven executions that took place at the time.³⁴ The data above makes it evident that even though Bangladesh has a high death penalty rate, the rates of crimes subject to the death penalty have not decreased but rather are rising. So, these statistics make a straightforward question on the effectiveness of the death penalty as a preventive measure.

3.5.2. Innocent People Punished by Death Penalty

The death sentence often results in the execution of innocent people through the wrongful convictions based on either procedural mistake or factual innocence. As a result, this is another argument against the death penalty.³⁵ In this regard, there is a well-known case in Bangladesh known as *Rofiqul Islam Molla vs. State*.³⁶ According to Section 302 of the Penal Code of 1860,

³⁰ "Bangladesh Murder/Homicide Rate 2000-2024," accessed December 13, 2024, <https://www.macrotrends.net/global-metrics/countries/BGD/bangladesh/murder-homicide-rate>.

³¹ Carolyn & Lehrfreund, Saul Hoyle, "Contradictions in Judicial Support for Capital Punishment in India and Bangladesh: Utilitarian Rationales," *Asian Journal of Criminology* 15, no. 2 (2020): 143, <https://doi.org/10.1007/s11417-019-09304-0>.

³² Amnesty International, "Amnesty International Global Report: Death Sentences and Executions 2017" (London, UK, 2018), <https://www.amnesty.org/en/documents/act50/7955/2018/en/>.

³³ Hoyle, "Contradictions in Judicial Support for Capital Punishment in India and Bangladesh: Utilitarian Rationales," 143.

³⁴ Odhikar, "BANGLADESH: Imposition of the Death Penalty and Its Impact," 2.

³⁵ Theresa Debrah, "Challenging Wrongful Convictions and the Death Penalty in Three State-Level Cases" (BSU Honors Program Theses and Projects, Bridgewater State University, 2022), https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1528&context=honors_proj.

³⁶ *Rofiqul Islam Molla V. State*, 57 DLR, P.581 (2005).

the Gopalganj Additional Session Judge executed Rofiquil Islam in this case. The facts of the case do not indicate that the accused employed any heavy, sharp cutting, fatal, or cold-blooded weapons or even acted cruelly when committing murder, despite the fact that the murder was not planned out and cold-blooded. In a different occurrence, a person was detained in 2003 on suspicion of murder, and the trial court sentenced him to death in 2006. After spending 15 years in a condemned cell on death row, the Supreme Court's Appellate Division ruled him to have been exonerated in 2021.³⁷ The subordinate court sentences innocent persons to death after false convictions.

One study on the criminal appeal of the High Court Division (HCD) explores that in 2011, the HCD approved the acquittal of 58.53% of cases in which the trial court sentenced, including the death penalty. In a similar vein, the HCD granted acquittal in 52.63% of cases in 2012, including those involving the death penalty, whereas just 26.31% of cases involving decisions and decrees of the subordinate judiciary were upheld.³⁸

3.5.3. Disproportionately Use of the Death Penalty

The study explores how racial inequalities influence the execution of the death penalty in the USA. The statistics reveal that the application and enforcement of the capital punishment occur disproportionately to the number of racial citizens compared to their representation in the population.³⁹ Likewise, in Bangladesh, the death penalty is frequently and disproportionately applied on marginalized and vulnerable members of society based on their racial and ethnic identity, economic circumstances, social standard, and level of educational achievement.⁴⁰ According to an empirical study on the socioeconomic circumstances of death row inmates in Bangladesh, 53% of those with death sentences were unemployed or working for poor wages. The survey also reveals that 72% of those who received the death penalty were poor and needy financially. The study also reveals that a significant proportion of convicted criminals who received the death penalty had low educational accomplishment; 15% of death row inmates had no formal education at all, and 87% had only completed secondary school.⁴¹

3.5.4. Support for Alternative to the Death

In the USA, Lake Research Partners (LRP) conducted a survey in 2010 that revealed a large majority of voters (61%) would choose a punishment other than the death sentence for murder. Some countries are moving away from the death sentence and toward indefinite incarceration. However, in the case of long-term incarceration, the state must adhere to international human rights standards and respect the human dignity of inmates.⁴² Scholars contended that the death penalty is immoral and can be substituted by life imprisonment without early release.⁴³

³⁷ Odhikar, "BANGLADESH: Imposition of the Death Penalty and Its Impact," 1.

³⁸ Mohammad Saidul Islam, "Random Wrongful Conviction and Exoneration, Rare Compensation: A Need For A Compensation Statute in Bangladesh," *Indonesian Journal of Criminal Law Studies* 4, no. 2 (2019): 137, <https://doi.org/10.15294/ijcls.v4i2.20863>.

³⁹ Crousillat, Luca Azzariti, "The Badges and Incidents of Capital Punishment," *Texas Law Review* 103, no. 2 (2025): 459–502, <https://texaslawreview.org/the-badges-and-incidents-of-capital-punishment/>.

⁴⁰ Odhikar, "BANGLADESH: Imposition of the Death Penalty and Its Impact," 3.

⁴¹ Rahman, *Living Under Sentence of Death: A Study on the Profiles, Experiences and Perspectives of Death Row Prisoners in Bangladesh*.

⁴² You-Jeong Jeong and Osamu Niikura, "Life Imprisonment in South Korea: Life Imprisonment Law and Practice in the Shadow of the Death Penalty," in *Life Imprisonment in Asia*, ed. Dirk Van Zyl Smit, Catherine Appleton, and Giao Vucong (Singapore: Springer Nature Singapore, 2023), 279–301, https://doi.org/10.1007/978-981-19-4664-6_12.

⁴³ Qiao et al., "Retributivism and Death Penalty."

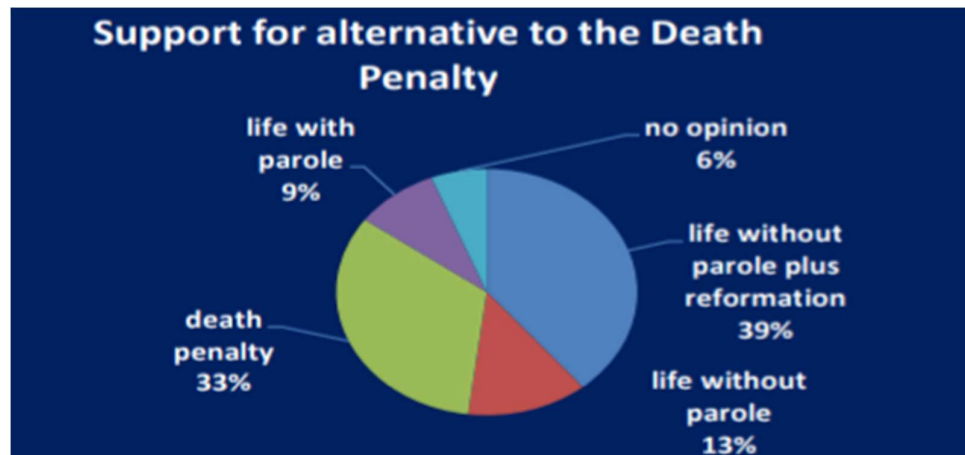


Figure 1. Public opinion about the death penalty
Source: Death Penalty Information Center (DPIC), 2010.⁴⁴

In contrast, in Bangladesh, public insight regarding the death penalty has been revealed in different ways. It is obvious that whenever a violent crime or other tragedy affects people emotionally, the public—and in particular, protectionists—exhibit a desire to impose the harshest penalty for the culprit. In this regard, the general public indiscriminately requested of the government to confirm the sentencing of the accused with the death penalty. Additionally, it is clear that although the public is ignorant of the penalties for certain offenses, they fervently support the death penalty. The eventual desire for the harshest punishment by the people is the ultimate consequence of the absence of the rule of law, fair and impartial trial, and less public confidence in the court. According to the evidence, Bangladeshi policymakers changed the law to broaden the types of crimes that might result in the death penalty in response to popular pressure.⁴⁵

3.6. Findings of the Study

3.6.1. Death Penalty cannot Reduce Crime

The use of the death penalty creates revenge because whenever a person is executed, his or her family and supporters cannot take it easily. Eventually, they become revengeful and try to take their revenge. "A punishment can be an effective deterrent only if it is consistently and promptly employed. Capital punishment cannot be administered to meet these conditions."⁴⁶ Thus, the death penalty cannot deter people from occurring severe crimes. It cannot reduce the crimes, in many countries, through much evidence and studies as well as statistics; it has been observed that though the offenders are executed, the crimes are not reduced accordingly in those countries. According to FBI data, the 14 states in the United States that do not have the death penalty had homicide rates that were lower than the national average in 2008.⁴⁷

⁴⁴ Death Penalty Information Center, "THE DEATH PENALTY IN 2010: YEAR END REPORT" (Washington, D.C., 2010): 1, <https://dpic-cdn.org/production/legacy/2010YearEnd-Final.pdf>.

⁴⁵ The Women and Children Repression Prevention Act that was passed in 2000. The latest amendment was made in 2020 in sections 9(1) and 9(4ka) to include the death penalty, <http://bdlaws.minlaw.gov.bd/act-835.html>.

⁴⁶ American Civil Liberties Union, "The Case Against the Death Penalty," *The American Civil Liberties Union*, December 11, 2012, <https://www.aclu.org/documents/case-against-death-penalty>.

⁴⁷ Amnesty International, "Death Penalty Fact" (USA, May 2012), <https://www.amnestyusa.org/pdfs/DeathPenaltyFactsMay2012.pdf>.

3.6.2. Inhuman and Given Arbitrarily

Bangladesh has a wide range of provisions governing the implementation of the death penalty. It ranges from serious crimes like murder, rape, and dacoity to less heinous crimes like black market commerce. Corruption, a lack of accountability, and political intervention undermine the rule of law and good government. The subordinate judiciary, in particular, lacks full independence in resolving conflicts involving political interests or government choices. The evidence demonstrates that when a court verdict is issued, the government alters the law to impose the death penalty on a specific individual in response to a public rally.

In many cases, it is given arbitrarily by the court where the court has some interest in it or, the accused is poor or illiterate, or the opponent is powerful, like the government or politician. It is a cruel, inhuman, and degrading punishment because of the mood of its execution in heinous ways.

3.6.3. Falsely and Politically Motivated Conviction

Many innocent people were falsely convicted of the death penalty and executed in Bangladesh, which has been observed in many cases. So, the death penalty may risk the life of an innocent person. It involves the enormous costs of a state because the state has to spend vast amounts of money to execute the death penalty in different ways. It creates suffering for the convict's family. It is because, in many cases, it has been seen that the person who is being executed is the only earning person in his family. So, the execution of this person brings much suffering to his family.

Bangladesh has witnessed terrible violations of human rights over the last decade and a half, with a notable number of death sentences carried out due to political persecution. The authoritarian and fascist regimes used the death penalty as a powerful tool to subdue political opponents. The majority of death sentences imposed by the international crimes tribunal were condemned by national and international human rights activists and groups.

3.6.4. Excess of Non-Violent Crimes to Death Penalty

The death penalty does not serve the goal of deterrence any more as the crimes are not reducing and the offenders have become more aggressive. There is no chance of reformation because once the offender is executed; he cannot get any chance to reform himself. It has fewer effects on homicide and murder as these increases daily. It is the rule that offenders must be punished according to the degree of the offences committed by them. The ICCPR evidently restricts the application of the death penalty to the most serious offences. However, many offences in the legal provision are directly not connected with the violent nature,⁴⁸ which is also punishable by the death sentence, for which it loses its effectiveness.

3.6.5. Disregarded International Treaties

An appropriate alternative to the death penalty for crime prevention is a reformatory strategy. As a result, the nation needs to build more prison reformatory facilities. Bangladesh has ratified several international human rights agreements that impose responsibility to maintain the treaty provision. As per the treaty rules, the life of a human being is so valuable that it should never be taken, not even by the government. In accordance with reformatory theory, the convicted individuals should be given the chance to change for the better.

After extensive discussion concerning the effectiveness of the death penalty in deterring crime in Bangladesh, the study articulates the following recommendations based on the research findings. An appropriate alternative to the death penalty for crime prevention is a reformatory strategy. Accordingly, the nation needs to build more prison reformatory facilities. The international human rights treaty enunciates that the life of a human being is so valuable that it

⁴⁸ Mohammad Saiful Islam, "Global Death Penalty Abolition Trend: A Critical Appraisal of Bangladesh in Context," *Pakistan Journal of Criminology* 16 no. 2 (2024): 561–84, <https://doi.org/10.62271/pjc.16.2.561.584>.

should never be taken, not even by the government. Bangladesh has ratified several international human rights agreements that impose responsibility to maintain the treaty provision. The country may decrease the number of crimes that carry the death penalty to take a step toward its eventual abolishment.

It is required to make sure that there is a free, fair, and impartial trial at the lower court to prevent innocent people from being wrongfully convicted and put to death. Moreover, in accordance with the Supreme Court decision, the mandatory death sentence should be eliminated by adopting alternative punishment. The UN resolution on the moratorium on the death penalty may be formally adopted for complete abolishment of the death penalty. The regional and international human rights agreements and treaties that protect the right to life must be upheld. As a preventive measure, the death penalty must be explicitly abolished in this regard because it has no effect on reducing crime.

4. Conclusion

The death sentence not only takes someone's life, but it has detrimental effects for the hangman, his family, the jailor, and the general population. As a result, the general public frequently has conflicting emotions, which is detrimental to the wellbeing of society. The victim's wife and children endure great agony as a result of the death penalty. Even if only one person is responsible for the murder, many innocent people suffer as a result of that person's actions. The family of the perpetrator is traumatized by the state's execution of the death penalty. Family members that are bitter and angry are more likely to commit crimes and have a harder time integrating into society. Therefore, the death penalty cannot be a good idea if a government sincerely wants to deter crime and help offenders change their ways. To enable offenders to reintegrate into society and live a free but substandard life, new types of punishment regimes are being implemented throughout the nation.

Actually, the death sentence does not actually deter crime in Bangladesh. Therefore, emphasis should be placed on alternative punishment combined with effective offender rehabilitation. The country would decrease the number of crimes that carry the death penalty to take a step toward its eventual abolishment. The state should ensure that there is a free, fair, and impartial trial at the lower court to prevent innocent people from being wrongfully convicted and put to death. In Accordance with the Supreme Court decision, the mandatory death sentence should be eliminated by adopting alternative punishment. For the death penalty to be completely abolished, the UN resolution on the moratorium on the death penalty must be formally adopted. Last but not least, uphold the regional and international human rights agreements and treaties that protect the right to life. As a preventive measure, the death penalty must be explicitly abolished in this regard because it has no effect on reducing crime.

Conflicts of Interest Statement

The authors state that there is no conflict of interest in the publication of this article.

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