ADVANCE SOCIAL SCIENCE ARCHIVE JOURNAL
Available Online: https://assajournal.com
Vol. 04 No. 02. October-December 2025.Page#.277-293
Print ISSN: 3006-2497 Online ISSN: 3006-2500
Platform & Workflow by: Open Journal Systems
https://doi.org/10.5281/zenodo.17284884

Reforming the Death Penalty Constitutional, Human Rights, and Policy Dimensions

Rana Muhammad Shahid Naseem
Lecturer in Law
University Gillani Law College
Bahauddin Zakariya University, Multan-Pakistan
progressivemsn@gmail.com
Amina Sethi
LL.M scholar
University of Punjab Lahore
aminasethim057@gmail.com
Muhammad Ahsan Iqbal Hashmi
(Corresponding Author)
Assistant Professor of Law
Bahauddin Zakariya University Multan (Vehari Campus)
ahsanhashmi@bzu.edu.pk

Abstract

The death penalty has always been one of the most debatable topics within the context of the current law, politics, and human rights. Although over two-thirds of the states in the world have legally or in practice abolished it, some retentionist jurisdictions still defend capital punishment on deterrence, retribution and public safety grounds. This point of departure represents complicated crossings of constitutional power, global human rights duties and domestic policy agendas.

This paper offers a critical analysis of the death penalty based on the three interconnected aspects of the death penalty, which include the constitutional, human rights and policy aspects. It starts by examining constitutional controversies, like in the tension between the right to life and state sovereignty, judicial interpretation in a variety of legal systems, and the use of developing constitutional principles, such as proportionality and dignity. It then discusses the human rights issues that a death penalty presents, considering the international and regional instruments, the jurisprudence of human rights courts and the arguments on whether the death penalty violates the jus cogens norms of international law. Another policy issue discussed in the paper would be the dilemma of deterrence, false conviction, cost, and the feasibility of other alternatives like life imprisonment and restorative justice.

By comparatively analyzing the reforms in both the abolitionist and retentionist states, the study recognizes the world trends and lessons that the jurisdictions struggling with the capital punishment should learn. Finally, it contends that reform must be meaningful and must therefore entail balancing the constitutional protection, conforming to international human rights norms and embracing practical policy innovations. The paper has concluded that the way forward does not only lie in a legal reform but also in a reconciliation of justice, human dignity and the developing moral consciousness of societies.

Keywords: *Death Penalty Reform, Constitutional Law, Human Rights, Criminal Justice Policy, Capital Punishment Debate*

Introduction

Death penalty has been a key feature in the criminal justice systems and it is the harshest type of punishment that states can impose. On historical grounds of deterrence, retribution and the maintenance of order, it has also been said to be against the basic right to life and also incompatible with the growing standards of human dignity. The current state of the capital punishment in the world today can be characterized by the extremes: on the one hand, over two-thirds of the states have done away with the process or at least put a moratorium on it; on the other hand, some powerful countries, such as the United States, China, Pakistan, and Saudi Arabia, have retained and practiced it. This gap highlights the persistence of the paradox of death penalty as a legal, moral, and political problem. History of the Death Penalty Controversies.

Background on Death Penalty Debates

Capital punishment debates usually center on the contested values of justice, deterrence and human rights. According to abolitionists, the inability to reverse the death penalty increases the chances of an innocent person being convicted and it subsequently compromises the sanctity of human life. Retentionists in their turn argue that some of the crimes are so vicious that the death penalty should be executed, and the death sentence is necessary in order to prevent the serious crimes. Empirical research however doubts its deterrent value and the availability of viable alternatives like the life imprisonment without parole calls into question its need. These conflicting stories are the frame through which the modern legal and policy arguments regarding the legitimacy of capital punishment are pursued (Sarat et al., n.d.).

Constitutional Controversies

The death penalty constitutionally puts serious doubts on the equilibrium between the right of an individual and the right of a state. Whereas some constitutions specifically allow capital punishment as a privilege under certain conditions, other constitutions prohibit capital punishment in other implicit ways by instituting a right to life and dignity as an inviolable right. In this aspect judicial interpretation is decisive. An example of this is the Indian Supreme Court which imposes the death penalty only in the rarely rare cases when compared to the U.S. Supreme Court which affirmed its constitutionality under the Eighth Amendment but only under certain circumstances like aggravated murder. Conversely, the European Court of Human rights has virtually banned it in Europe by laying stress on the principle of human dignity. These

constitutional divergences highlight how domestic legal systems reconcile, or fail to reconcile, the tension between punitive authority and fundamental rights (Steiker & Steiker, 2024).

Human Rights Challenges

The case against the death penalty has been continuously developed by the international human rights law as it is incompatible with the right to life and the non-use of cruel, inhuman, or degrading treatment. The United Nations Human Rights Committee has increasingly applied the term narrowly in the sense that it is authorized by article 6 of the International Covenant on Civil and Political Rights (ICCPR) to be used only in the most serious offenses, although the use of the death penalty has also been authorized in situations involving intentional killing. Resolutions of the United Nations General Assembly since 2007 have severally demanded a global moratorium and support has been increasing at each session. Regional human rights courts, including the Inter-American Court of Human Rights have taken a further step to declare that capital punishment breaches human dignity as such. Such developments indicate that there is a definite normative path to abolition, although it may be impossible to reach full agreement (Bhardwaj, 2021).

Policy Dilemmas

Outside the issues of constitutional rights, and human rights, there are policy dilemmas in the death sentence. Retention is rather costly in terms of protracted trial, appeals and increased procedural protections. It is also dangerous to lower the confidence of the people to the justice system in cases where there are wrongful convictions. High-profile cases of exoneration in the United States and the allegation of forced confessions in places such as Pakistan and Iran have brought to the fore the unreliability of the criminal justice system in recent years and cast doubt on the morality and trustworthiness of executions. Meanwhile, governments are under pressure by parts of the population who seek retribution through capital punishment due to violent crimes, especially in the societies where people feel insecure. This opposition of pragmatics, rights-based and populism makes it difficult to make policy on this matter (Sarat, 2024).

Research Question and Thesis Statement

Against this background, this paper asks: *How can constitutional, human rights, and policy frameworks be reconciled to guide the reform of the death penalty in contemporary legal systems?* The thesis advanced here is that meaningful reform requires a three-dimensional approach: (i) recalibrating constitutional principles to safeguard the right to life and ensure rigorous procedural protections, (ii) aligning domestic practices with evolving international human rights standards, and (iii) adopting pragmatic policy alternatives that address crime without resorting to executions. By situating the death penalty at the intersection of constitutional law, human rights law, and policy, this paper demonstrates that reform is not only a legal necessity but also a moral and political imperative.

1. Constitutional Dimensions of the Death Penalty

The constitutionality of the death penalty was a constant motif in comparative constitutional jurisprudence, and it expressed significant strains between the value of the right to life and the privileges of state sovereignty. In contrast to the rest of the laws, the provisions of the constitution are meant to reflect some core values in the society. In this regard therefore the

justification or otherwise of the death penalty in constitutional systems is a gauge of how morally advanced legal systems are. Constitutional debates in various jurisdictions have revolved around four key questions, which include the right to life and state sovereignty, constitutional courts interpreting the constitution, procedural protections and due process and development of constitutional principles including proportionality and human dignity. Right to Life (c) vs. State Sovereignty.

Right to Life vs. State Sovereignty

The fundamental aspect of constitutional controversies is the conflict between individual rights and sovereign power of the state. In the majority of modern constitutions, the right to life is assured, with most having exceptions of punishment, as provided by law. To take an example, Article 9 of the Constitution of Pakistan affirms right to life and liberty subject to the qualification of being deprived of life in accordance with the law. In the same way, the right to life is not explicitly enumerated in the U.S. constitution but it allows the death penalty as a due process provision of the Fifth and Fourteenth Amendments. These requirements practically provide states with the right to have capital punishment legislation, but place such legislation under constitutional review.

Critics say that such exceptions are a derailment of the universality of right to life because the state can arbitrarily take life in the state of particular conditions. The proponents, however, argue that sovereignty contains the ability to create crimes and sentence them including death. The jurisprudential conflict, therefore, revolves around the issue of whether sovereignty must be absolute or must be subjected to the changing values of the constitution like human dignity and proportionality (Quinn et al., 2022).

Judicial Interpretation in Constitutional Courts

The courts have been very instrumental in the determination of constitutional legitimacy of the death penalty. In the United States, the death penalty has been spared, albeit with conditions, to follow an interpretation by the Supreme Court of the Eighth Amendment that bans cruel and unusual punishment. In Furman v. In 1972, the Court struck down statutes that then existed because it found them arbitrary and discriminatory. But only four years afterwards in Gregg v. The Court restored the death penalty in 1976 (Georgia) under modified procedures and considered that in itself there was nothing unconstitutional as long as capital punishment was carried out with proper safeguards. Later decisions have tightened its application even further-such as barring the execution of the juveniles (Roper v.). Simmons, 2005) and intellectually disabled persons (Atkins v.) Virginia, 2002) --yet the practice is constitutionally still allowed.

This is however not the case in State v., South African Constitutional Court. Makwanyane (1995), which had asserted that death penalty was unconstitutional based its ruling on the post-apartheid constitution which recognizes the right to life and the right to dignity. Likewise, the Indian Supreme Court has supported the constitutionality of capital punishment, but interpreted the doctrine of the rarest of rare to substantially limit its application. Meanwhile, the European Court of Human Rights (ECtHR), in the interpretation of the European Convention on Human Rights, Article 2, has drifted towards a virtual abolitionist position, reaching the point of Protocols 6 and 13, which abolish the death penalty, even during wartime. The cases represent the variety

of constitutional reactions, such as deference to legislative sovereignty to strong defense of human dignity (Steiker & Steiker, 2022).

Procedural Safeguards and Due Process

The other constitutional aspect of death penalty relates to sufficiency of process protection. Courts have stressed that greater standards of fairness should be found in the application of the death penalty even in those jurisdictions where its application is legally sanctioned. An individualized sentencing, appellate scrutiny, and protection against arbitrary or discriminatory execution have been the recurring themes in the U.S. Supreme Court, and in other contexts, individuals have been urged to grant such a method. On the same note, the Supreme Court of Pakistan has interfered in issues where due process was not followed especially in matters relating to confessions being made under duress or lack of proper legal representation.

In spite of these precautions, critics believe that procedural guarantees do not go far enough to avoid wrongful convictions. Miscarriages of justice are especially concerning when it comes to the death penalty because once the sentence is executed, it is forever and thus the constitutional implication of the death penalty is whether any legal system can be used to ensure that the adjudication is always correct. The due process principle, then, imposes a virtually impossible burden on states with capital punishment on board, and it begs the question whether its constitutional validity could in practice be maintained (Fleetwood & Leban, 2023).

Evolving Constitutional Principles: Proportionality and Dignity

One of the current tendencies in constitutional jurisprudence is the concept of proportionality and human dignity as the means of valuing capital punishment. Proportionality demands that the punishments must be proportional to the seriousness of the offense whereas the concept of dignity highlights the intrinsic value of all human beings. Such principles have been used to either limit or abolish the death penalty in a number of jurisdictions.

Indeed, as an example, the South African Constitutional Court, in Makwanyane, noted that even the most atrocious offences do not warrant deprivation of human dignity. Likewise, the so-called test of the rarest of rare by the Indian judiciary is an indication that it strives to achieve proportionality as well as justice in society. The ECtHR has been at the forefront of the abolitionist trend in Europe and the Court has realized that the death penalty destroys the dignity of the impoverished.

These shifting principles reveal that constitutional law is dynamic and is subject to changing moral, social and political conditions. They posit that the constitutional admissibility of the death penalty is becoming more and more dependent not only on the explicit terms but also on the approaches to the interpretation that give dignity and proportionality over state sovereignty (Ahmad & bin Mohd Jafree, 2023).

The constitutional aspects of the death penalty demonstrate institutional and deep-seated conflicts between sovereignty and human rights, legal tradition and changing morality, written guarantee and judicial interpretation. Although the death penalty may be formally allowed in a constitution, the pattern of constitutional jurisprudence within the community of nations is one of continually reducing its validity. Courts have put tougher restrictions, invoked dignity and proportionality and in certain instances even declared the punishment itself unconstitutional.

This development indicates that the constitutional rationale of capital punishment is becoming more and more weak and the question is whether the continuation of capital punishment can be combined with contemporary constitutionalism.

2. Human Rights and International Law Perspectives

The validity of death penalty has been increasingly questioned under the umbrella of the international human rights law. Although traditionally viewed as an issue of domestic criminal policy, capital punishment currently comes to the center of discussions of universal human rights, international duty of states in treaties, and the influence of international and regional courts on establishing norms. The discussion addresses three key issues, which are whether the death penalty can be reconciled with international human rights treaties, whether it is moving in the direction of being banned under customary international law, and whether eventually it can be understood as taking the form of a breach of jus cogens norms.

The ICCPR and Treaty-Based Restrictions

The most authoritative international instrument on the issue of the death penalty is the International Covenant on Civil and Political Rights (ICCPR) that was adopted in 1966. Article 6 acknowledges the natural right to life but gives states that have not yet abolished capital punishment the right to execute it in the most atrocious crimes. Notably, the clause imposes substantive and procedural restraint, whereby the death penalty cannot be used in cases that do not relate to intentional killing, it cannot apply retroactively and must be handed out based on a final judgment conviction which must be made by a competent court.

The treaty body that oversees the observance of the ICCPR, the Human Rights Committee (HRC), has slowly construed Article 6 to place increasingly restrictive boundaries on capital punishment. In its General Comment No. 36 (2018), the Committee emphasized that the term most serious crimes should be interpreted as being limited to intentional killing, and that executions on drug-related crimes or unintentional terrorism are not in line with the Covenant. This reading exerts a lot of pressure on retentionist states like Pakistan, Indonesia and Iran where capital punishment is applied to non-lethal offenses. Besides, the Committee has underlined the importance of strict fair trial guarantees by Article 14 remarking that even minor breaches of due process makes an execution arbitrary according to international law (Foster, 2021).

UN General Assembly Moratorium Resolutions

A resolution to have the death penalty abolished in favor of its ultimate eradication has been several times passed by the General Assembly of the United Nations (UNGA) since 2007. The latest, Resolution 77/222 (2022), which was adopted with a very wide majority, is indicative of the increased agreement of the international community against capital punishment. The resolutions are not legally binding, but they have political implications, and they assist in the development of customary international law since they reflect the opinion of juris of most states. Retentionist states frequently vote against such resolutions, however, claiming that the death penalty is a criminal justice policy issue that they have retained in their sovereign prerogative. Such a conflict of sovereignty and human rights universality is a prime example of the main paradox of international law, as the normative wave is shifting towards abolition but the enforcement is conditional based on the political will of a country (Bae, 2024a).

Regional Human Rights Courts and Jurisprudence

The regional human rights courts have played a very crucial role in the abolitionist process. The European Court of Human Rights (ECtHR) has been on the forefront in the interpretation of the Article 2 of the European Convention on Human Rights in connection to the emerging standards. Protocol No. 6 (1983) banned the death penalty during peacetime; and protocol No. 13 (2002) banned it altogether during wartime. The membership of the Council of Europe today is based on the condition of abolition, which is an effective motivator in the sense of compliance.

The same can be said of the Inter-American Court of Human Rights (IACtHR), which has placed the American Convention on Human Rights with a narrow understanding and ruled that states should take the gradual steps toward abolition. In Hilaire, Constantine and Benjamin v. Trinidad and Tobago, (2002), the Court stated that the death sentence is compulsory and it does not comply with the Convention and the right to life cannot be taken automatically. In comparison, the African Charter on Human and Peoples Rights states nothing against the death penalty, but the African Commission has suggested that states implement moratoriums and enforce the provisions against a fair trial.

These developments in the region underscore the increased acknowledgment of capital punishment as an infringement on human rights though the rate of the change may differ among the continents. They also demonstrate that regional courts are a kind of laboratory of progressive interpretation and affect bigger world discussions (Yearwood & Newton, 2022).

Customary International Law and Jus Cogens Debate

The most important issue in international law is the question of whether the death penalty prohibition is crystallizing into a rule of customary international law, and whether it could even become a jus cogens, or peremptory norm, of which no derogation is possible. To have customary law there must be customary state practice and opinio juris. This tendency of abolition, more than two-thirds of UN member states have eliminated capital punishment based on law or practice, is indicative of the creation of such a norm. This argument is reinforced by the repeat use of UNGA moratorium resolutions.

Claims of universal practice are disadvantaged, however, by the continued existence of the death penalty in such populous countries as China, India, Pakistan, and the United States. Furthermore, the view of the mandatory abolition under international law has been expressly denied by numerous retentionist states resulting in the defeat of the opinio juris test. Consequently, a good norm of abolitionism has become strong, but it has not yet evolved to become a universal norm. This argument that death penalty is against jus cogens norms is even more disputable. Supporters believe that capital punishment is inherently cruel, inhuman or degrading treatment, and all these are banned under jus cogens. This has been disputed by other people asserting that the text of the ICCPR that itself allows the use of the death penalty in some circumstances makes it impossible to classify it as a peremptory prohibition. At this stage, the argument is still aspirational, as opposed to ad dogmatic (Schabas, 2022).

Tensions Between Sovereignty and Human Rights Universality

The conflict between the national sovereignty and universal standards is the characteristic feature of the human rights discussion of the death penalty. When retentionist states attempt

to defend the death penalty, they tend to state that it is an issue of culture, religion or society and therefore lies within the domestic margin of appreciation. In a comparison, abolitionist movements posit that the right to life and the ban on inhuman punishment are non-derogable rights which are beyond cultural relativism. This tension can be used to describe the wider dilemma of international law of respecting diversity versus, applying universal human rights provisions.

The human rights and international law perspectives on the death penalty reveal a dynamic but contested landscape. Treaty law, particularly the ICCPR, imposes significant restrictions on the use of capital punishment, while regional human rights courts have advanced abolitionist jurisprudence. UNGA moratorium resolutions further consolidate global consensus, though resistance from powerful retentionist states slows the crystallization of a universal customary norm. The jus cogens argument remains aspirational but reflects the direction in which international law is evolving. Ultimately, the human rights perspective situates the death penalty not as a matter of domestic criminal justice but as a fundamental question of universal human dignity.

3. Policy Considerations and Reform Models

Although a constitutional and human rights system offer the legal and ethical basis on which the death penalty is judged, policy discourses typically dictate whether death sentence will be retained or abolished. The question of whether or not to continue or change regimes of capital punishment is one that has to be weighed by governments and legislatures, and must be addressed through empirical evidence and ethical issues, along with practical implications. The major policy issues are the deterrence and retributive rationalizations, the danger of erroneous convictions, costs of keeping death sentence mechanisms in place both economically and administratively and the feasibility of other options like life imprisonment and restorative justice.

Deterrence vs. Retribution

The alleged deterrent effect is one of the longest-standing defense of the death penalty. Advocates indicate that heinous crimes like murder, terrorism and drug trafficking are deterred by the threat of execution. Nevertheless, decades of empirical studies have not found any definitive facts which capital punishment is more effective in preventing crime than the long-term imprisonment. There is little evidence that states that retain the death penalty have lower rates of homicide, according to studies in the United States where there is much data available. In fact, the deterrence argument is refuted by the experience of some abolitionist jurisdictions like Canada and most of Europe who have recorded a decrease in crime in the wake of the abolition of the practice (Zeng et al., 2024).

By a contrast, retribution is not based on calculating utilitarians but on the moral reasoning of just deserts. According to proponents, some of these crimes are so abhorrent that a death sentence is the only way to indicate the seriousness of the crime and to provide retribution to the victims and society. However, critics argue that vengeance is dangerous while trying to equate justice with vengeance because of the rehabilitative intentions of criminal law. Moreover, the death penalty is irreparable, which is why retribution is unique and there can be no correction of miscarries of justice when an execution is executed (Kendall, 2023).

Wrongful Convictions and Miscarriages of Justice

The co-existence of the concept of wrongful conviction is among the most resourceful policy arguments against the death penalty. The development of forensic science and particularly DNA testing has exposed several scenarios where people who were convicted of death were found to be innocent. In the US, agencies like the Innocence Project have recorded more than 190 instances of freedom of death row inmates since 1973 which highlight how the criminal justice processes are flawed. Coerced confessions, the lack of a proper lawyer, racial discrimination, and prosecution misconduct also lead to wrongful convictions, especially in a capital case when prosecutors are under pressure to get a conviction.

The investigative procedures, use of confessions and the accessibility of skilled defense counsel are the weaknesses that make wrongful convictions a major concern in Pakistan. These issues are common in other retentionist jurisdictions, and suggest radical doubt that the death penalty can be conducted fairly and reliably in any jurisdiction. Since executions are irreversible, this chance of making a mistake is a potent abolition argument or, at the very least, an extreme cautiousness with the death penalty application (Meterko et al., 2022).

Economic and Administrative Costs

Another policy factor that has been less discussed but is of great importance is the economic cost of sustaining the systems of the death penalty. Capital punishment is actually more costly than prison like life incarceration as it is generally perceived. To a large extent, this can be attributed to the long legal processes involved to satisfy due process requirements in capital cases such as protracted trials, compulsory appeals, and post-conviction audits.

In the United States, it has always been documented that cases involving death penalty are more costly compared to those that do not involve capital punishment. As an example, a 2016 report determined that on average a death penalty trial in California incurred a trial cost more than 1 million dollars greater than a life imprisonment case. The administration cost is also transferred to the administration of the prisons with death row facilities also being costly to maintain.

These costs pose critical concerns of priorities in developing nations such as Pakistan where justice systems are already stretched due to already limited resources. Investments in capital punishment systems can also be seen as a way of overlooking criminal justice reforms, rehabilitation and crime prevention efforts (Peters, 2022).

Alternatives: Life Imprisonment and Restorative Justice

With the dwindling legitimacy rate of capital punishment, other alternatives like life imprisonment without parole (LWOP) has taken center stage. LWOP has been regularly introduced as a trade-off, meeting requirements of harshness of punishment but removing the chances of wrongful execution. However, critics say that LWOP is also a human rights problem in itself by subjecting people to life imprisonment with no chance of rehabilitation or reintegration.

Restorative justice models provide a higher transformation option, which emphasizes on reconciliation between the offenders, the victims and the communities. These methods are aimed at healing damage, but not cause damage, which is closer to human rights and rehabilitative principles. Though restorative justice has not been commonly used in situations

involving serious offenses such as murder, certain jurisdictions have tried victim-offender discussions, compensation programs and community restorative processes. Although these models can never substitute the punitive sanctions fully, they demonstrate alternative ways in which focus will be abandoned on retribution and be shifted to restoration In abolitionist Transitions to life imprisonment and restorative justice in abolitionist jurisdictions have not typically resulted in violent crime as an outcome, an indication that other responses to serious crimes are both viable and valid. These models have proven successful, which proves that societies do not need to use executions to maintain public safety (Hoyle & Batchelor, 2021).

The ineffectiveness of the major justifications of keeping the death penalty is reflected by policy considerations. Empirical research refutes the deterrence argument, retribution is prone to degenerate into vengeance, wrongful conviction contributes to systemic inefficiency and economic costs turn capital punishment into an ineffective policy option. Life imprisonment and restorative justice, as alternatives, do not only resolve these gaps, but also are more consistent with constitutional and human rights principles. Combining all of the factors related to the policy, a strong argument is created that the death penalty is not merely a morally and legally questionable tool of criminal justice but also an utterly impractical one in contemporary societies.

4. Comparative Analysis of Reforms

The global trajectory of death penalty reforms demonstrates a widening divide between abolitionist and retentionist jurisdictions. While more than two-thirds of states worldwide have abolished capital punishment in law or practice, others maintain it as a central feature of their criminal justice systems (Dudai, 2024a). This comparative analysis examines the rationale behind abolitionist reforms, the persistence of retentionist regimes, and the lessons that can be drawn from global case studies, including Pakistan, the United States, the European Union, Japan, and Saudi Arabia.

Abolitionist Jurisdictions

The abolitionist trend gained momentum in the latter half of the twentieth century, influenced by constitutional jurisprudence, human rights treaties, and shifting public opinion. Within Europe, the European Convention on Human Rights (ECHR) and its Protocols 6 and 13 effectively mandated abolition among member states, reflecting a consensus that the death penalty violates the right to life and human dignity (Ahmad, 2021). Similarly, Canada abolished capital punishment in 1976, guided by concerns over wrongful convictions and recognition that deterrence was unproven (ARIFI, n.d.). South Africa's Constitutional Court also declared the death penalty unconstitutional in *State v. Makwanyane* (1995), emphasizing human dignity and proportionality as guiding constitutional principles (Mathebe, 2021). These reforms demonstrate the interplay between legal norms and societal values, reinforcing the role of courts and international commitments in advancing abolitionist agendas.

Retentionist Jurisdictions

Retentionist states justify the death penalty through arguments rooted in deterrence, retribution, and cultural legitimacy. The United States remains one of the most prominent retentionist democracies, with its Supreme Court upholding capital punishment under the Eighth

Amendment, though subject to limitations concerning juveniles, mentally impaired persons, and arbitrary application (Christoph, 2023). Japan also retains the death penalty, justified by public opinion polls that consistently demonstrate strong support, despite international criticism (Guinea et al., 2022). In Pakistan, although the death penalty remains constitutional and is widely applied, particularly under anti-terrorism laws and the Qisas and Diyat provisions of Islamic criminal law, moratoriums and reforms occasionally emerge under international pressure (Hoyle, 2023a). Saudi Arabia, meanwhile, represents a paradigmatic retentionist state where capital punishment is entrenched in the interpretation of Sharia law, applied for a broad range of offenses including drug trafficking and apostasy (Hood, 2021a).

Case Studies

- **Pakistan:** Pakistan has one of the largest death row populations globally, with over 4,000 inmates. While judicial safeguards exist, concerns about wrongful convictions, torture, and ineffective legal representation persist (Dyer, 2023). Moratoriums have been intermittently introduced, but lifted after terrorist incidents, underscoring the political sensitivity of reform.
- **United States:** Despite being a constitutional democracy, the United States applies capital punishment inconsistently across states. Some states, such as Virginia and Colorado, have recently abolished it, while others like Texas remain active (Dudai, 2024b). This federal diversity illustrates the tension between state sovereignty and evolving national and international standards.
- **European Union:** The EU has become a global leader in advocating abolition, conditioning membership on adherence to anti-death penalty principles. This demonstrates how supranational institutions can leverage integration to entrench human rights norms (Hoyle, 2023b).
- **Japan:** Japan's use of secretive executions and reliance on public support demonstrates how cultural and political legitimacy can sustain the death penalty, even in an advanced democracy (Hoyle, 2023c).
- **Saudi Arabia:** Saudi Arabia's continued use of the death penalty reflects the influence of religious law and the prioritization of deterrence and moral order over international human rights pressure (Flores & Portocarrero, 2024).

Lessons from Global Trends

The comparative experience underscores several important lessons. First, abolition is often driven by constitutional jurisprudence and human rights commitments rather than public opinion (Hood, 2021b). Second, supranational legal regimes, such as the EU and the Inter-American Court of Human Rights, can exert powerful influence by making abolition a condition of integration (Hood, 2021c). Third, retentionist jurisdictions demonstrate that cultural, religious, and political considerations remain potent barriers to reform, particularly where capital punishment is perceived as integral to moral or legal order (Albert et al., 2021). Finally, hybrid approaches, such as Pakistan's moratoriums or the United States' state-by-state diversity, suggest that reform is often incremental and contingent upon political shifts, judicial leadership, or significant miscarriages of justice (Bae, 2024b).

The comparative analysis reveals a global convergence toward abolition but also highlights the persistence of retentionist models rooted in constitutional traditions, religious interpretations, and popular support. While no single reform pathway applies universally, the experiences of different jurisdictions suggest that effective reform requires a combination of legal, political, and societal transformation. For abolitionist movements, aligning domestic law with international human rights standards remains central, while retentionist states illustrate the enduring resilience of local values and sovereignty claims in shaping penal policy.

5. Recommendations for Reform

The relative and theoretical discussions on death penalty state that reform should be functioning at the legal, policy, and human rights levels concurrently. A delicate agenda of reform must reconcile states sovereignty and constitutional security, handle practical issues like wrongful convictions and expenses, and harmonize domestic practice with developing international human rights principles. The experience of Pakistan, the United States, Japan and Saudi Arabia reflects how legal, political and cultural environments influence the avenues of reform, and also underscores common global forces that are limiting or eliminating capital punishment.

Legal Reforms

On the legal side, the most direct way of reform is constitutional amendments or judicial reinterpretation of basic rights. Article 9 of the Constitution in Pakistan provides the right to life, but the state still has the capital punishment in place when it comes to over 25 offenses. By relying on the protection of human dignity in Article 14, which courts might use proportionality and dignity based arguments, courts might limit its use and, over time, prepare to abolish it (Sher & Azeem, 2025). The Supreme Court has been historically supportive of the death penalty in the United States, but has restricted the use of the death penalty in the case of juveniles and the intellectually disabled (Jouet, 2021). This demonstrates the role of constitutional courts as catalysts for reform by recognizing evolving standards of decency.

Laws in Japan have not undergone much reformation, and the death penalty has remained a part of the Penal Code. But researchers believe that the judiciary may understand what due process guarantees mean in a broader way to establish a higher evidentiary burden (Franck, 2021). Likewise, in Saudi Arabia, where capital punishment is closely linked to the interpretation of the Sharia law, it can be reformed by means of changing the jurisprudential arguments (ijtihad) especially by limiting the death sentence to the gravest crimes, such as intentional murder (Mukharrom & Abdi, 2023). In every jurisdiction, the reinforcement of procedural protection, in the form of a requirement to have access to competent legal counsel, an independent appellate review, and an increase in the evidentiary burden is the core of preventing arbitrariness and wrongful convictions.

Policy Reforms

Systemic problems concerning the administration of capital punishment need to be dealt with on a policy-level. The death penalty is usually perpetuated by the public opinion as witnessed in Japan and some of the parts of United States and therefore education and awareness campaigns are crucial in redefining the societal views. The policymakers in Pakistan are challenged on how to balance the popular approval of executions and international pressure to limit the scope of

these executions. Reform agenda: Awareness campaigns about the wrongful convictions and miscarriages of justice, especially in cases involving terrorism, may help create the momentum of reform (Butt, 2021).

Economic and administrative factors are also good reasons to change policies. Research in the United States has continuously determined that capital cases are much more expensive than a life imprisonment without parole, in part because of lengthy appeals and special processes (Taylor et al., 2021). Japan and Pakistan are having comparable cost pressures and death row imprisonment and extended litigation is consuming judicial resources. Further, the exercise of clemency powers traditionally placed on the executive side should be done in a more transparent manner and with reference to such criteria as rehabilitation, remorse, and mitigating circumstances. A shift in clemency form a political weapon to a mechanism would make it more accountable and at the same time keep mercy a part of justice.

Human Rights Alignment

Internationally, the reforms are supposed to bring domestic practices into line with the human rights commitments of the International Covenant on Civil and Political Rights (ICCPR) which both Pakistan and the United States have ratified, but with reservations. Article 6 of the ICCPR also prohibits the death penalty on the most serious crimes and this prohibition is further established through subsequent resolutions of the United Nations General Assembly that demand a global moratorium (Orao, 2021). For retentionist states, a phased approach may be politically feasible: instituting moratoriums, narrowing the scope to intentional homicide, and gradually moving toward abolition.

The European Court of Human Rights and the Inter-American Court of Human Rights have established significant precedents by stating that the death penalty is irreconcilable with the instruments of the regional human rights and thus putting the member states on the way to abolition. Although Japan and Saudi Arabia do not share such mechanisms, participation in UN mechanisms and peer-review in the Universal Periodic Review has already put pressure on limiting capital punishment (Bagheri, 2025). Aligning domestic practices with global norms not only protects individual rights but also enhances international legitimacy.

Towards a Reform Model

The reform model must be pragmatic with a mixture of constitutional reinterpretation and gradual legislative actions coupled with active policy actions. In the case of Pakistan, this might imply a progressive limiting of the scope of the death penalty as well as increasing judicial review of death sentences. The abolition movements at state level in the United States, like the one in Illinois, New Jersey and Virginia, exemplify how local efforts can build a groundswell at the national level. In Japan, greater openness in practices of execution and enhanced discussion with the wider population can open the doors to ultimate limitation, whereas in Saudi Arabia, reinterpretation which is based on the jurisprudence of Islam can lead to gradual reform.

In the end, a comprehensive approach to reform that honors local situations but adopts international human rights practices offers the most viable approach to reform. The constitutional courts and the legislative bodies, policymakers, and the civil society would have to

work together to solve the arbitrariness, costs, and legitimacy issues, progressing toward the justice systems where the capital punishment would not be required anymore.

The reform of the death penalty should be a multi-dimensional task: constitutional and legal changes to restrict or eliminate the area of its application, policy changes aimed at the reduction of costs and arbitrariness, and changes based on human rights standards to increase international legitimacy. Though difficulties still exist in the retentionist jurisdictions, there are international indications that abolition is no longer just a legal requirement but a practical and moral necessity of the contemporary criminal justice systems.

Conclusion

The death penalty is considered one of the most debatable institutions in legal and political discourse of the modern era as it represents a fundamental opposition between state sovereignty, constitutional interpretation, the affirmation of human rights, and the issue of societal policy. Although its legitimacy in the past was based on retribution and deterrence, the current legal and moral systems tend to reveal the practice as having no consistency with the concept of human dignity, proportionality and justice. This paper has discussed the constitutional, human rights, and policy aspects of capital punishment and has shown, in conclusion that the need to effect reform is a legal and moral imperative.

Constitutional views substantiate the degree of how the courts can incorporate legitimacy of the death penalty. Countries like South Africa and Canada, through the application of dignity based logic have found themselves on the abolition battle lines whereas others like the United States and Pakistan struggle with the opposing demands of sovereignty and standards that are shifting towards decency. The comparative evidence indicates that the constitutional law is not fixed but receptive to the changing social and international norms and as a matter of fact, the courts have the authority, as well as the duty, to restrict or abolish capital punishment.

Regarding human rights, there is a growing trend in the international community towards the abolition of the death penalty, with international documents and regional courts describing the death penalty as incompatible with the right to life and freedom of inhuman or degrading treatment. Where retentionist states are resisting the abolition, they are more and more pushed to conform to minimal guaranties, confine capital punishment to the gravest offenses, and implement moratoriums. All this leaves an impression of the rising level of the human rights law as a universal standard against which local practices are measured.

There are also policy reasons that promote the reform. There is evidence subverting the deterrent effect of capital punishment and also its high costs, both monetary and human. The tenacity of false convictions and structural injustices explain the perils of an irreversible penalty in inaccurate legal systems. Other options like life imprisonment without the option of parole and restorative forms of justice prove that economies can still seek accountability and community safety without having to use the death penalty.

The comparative study of reforms highlights the point that the ways to abolition are neither straight nor even. Incremental reforms are used by some states by moratoriums, whereas some states take the wholesale constitutional or legislative abolition. The variety of strategies, though, speaks of an even wider world trend that is undoubtedly drifting toward the death penalty. The

isolation of retentionist states increases, diplomatically and normatively, as the abolitionist movement continues to increase.

Finally, the difficulty of the reform of the death penalty is in the reconciliation of the sovereignty of the country with the international rights and duties, the opinion of people with the constitutional values, and the tradition with the justice. The tide of global reform is leading to the point where it is getting more obvious that death penalty is an obsolete phenomenon that does not fit the contemporary understanding of human rights and the rule of law. Although political, cultural and legal hurdles still exist in some jurisdictions, the trend of global justice indicates that abolition is not only a dream but a reality as well.

References

Ahmad, N. (2021). Protecting the Rights of Minorities under International Law and Implications of COVID-19: An Overview of the Indian Context. Laws 10: 17. *The Crisis of Religious Freedom in the Age of COVID-19 Pandemic*, *127*.

Ahmad, N., & bin Mohd Jafree, M. W. (2023). The Term Jihad in Islamic Jurisprudence with Reference to Modern International Law: A Critical Examination. *JMCL*, *50*, 55.

Albert, A., Bain, T., Brico, E., Dinkins, B. M., Houston, K., McMillan, J., & Quarles, V. (2021). *Ending the family death penalty and building a world we deserve*.

ARIFI, Z. (n.d.). *Death penalty under international law*.

Bae, S. (2024a). The death penalty as an international human rights concern: Developments and challenges. In *The Elgar Companion to Capital Punishment and Society* (pp. 74–87). Edward Elgar Publishing.

Bae, S. (2024b). The death penalty as an international human rights concern: Developments and challenges. In *The Elgar Companion to Capital Punishment and Society* (pp. 74–87). Edward Elgar Publishing.

Bagheri, R. (2025). BEYOND PUNISHMENT: A PUBLIC HEALTH REFRAMING OF THE DEATH PENALTY. *4th International Conference on Science, Social Sciences, and Humanities (ICOSSH2025)*, 168.

Bhardwaj, C. (2021). Ioane Teitiota v New Zealand (advance unedited version), CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020. *Environmental Law Review*, *23*(3), 263–271.

Butt, M. Z. (2021). Critiquing the Abolitionist Argument: A Case for Retaining Death Penalty in Pakistan. *JL & Soc. Pol'y*, 51.

Christoph, J. B. (2023). *Capital Punishment and British Politics: The British Movement to Abolish the Death Penalty 1945-47*. Routledge.

Dudai, R. (2024a). Dead or alive? Reassessing the health of the death penalty and the prospects of global abolition. *Theoretical Criminology*, *28*(2), 139–156.

Dudai, R. (2024b). Dead or alive? Reassessing the health of the death penalty and the prospects of global abolition. *Theoretical Criminology*, *28*(2), 139–156.

Dyer, O. (2023). *Global number of executions hit five year high in 2022, says Amnesty International*. British Medical Journal Publishing Group.

Fleetwood, J., & Leban, L. (2023). Women's involvement in the drug trade: Revisiting the emancipation thesis in global perspective. *Deviant Behavior*, *44*(2), 238–258.
Flores, V. A. A., & Portocarrero, E. (2024). Integrating Resilience in Construction Risk Management: A Case Study on Peruvian Road Infrastructure. *E3S Web of Conferences*, *497*, 02019.
Foster, C. (2021). Universal Declaration of Human Rights, part 1: Articles 1, 2, 3, 5, and 6. In *Routledge Handbook of Global Health Rights* (pp. 11–22). Routledge.
Franck, H. G. (2021). The barbaric punishment: Abolishing the death penalty. In *The Barbaric Punishment*. Brill Nijhoff.
Guinea, P. N., Papua, W., High, V., Australia, B., Japan, K., Malaysia, M. I., & Low, V. (2022). *Regional Atrocity Risk Assessment*.
Hood, R. (2021a). The enigma of de facto abolition of capital punishment. *Libro Homenaje al Profesor Luis Arroyo Zapatero: Un Derecho Penal Humanista*, 909–921.
Hood, R. (2021b). The enigma of de facto abolition of capital punishment. *Libro Homenaje al Profesor Luis Arroyo Zapatero: Un Derecho Penal Humanista*, 909–921.
Hood, R. (2021c). The enigma of de facto abolition of capital punishment. *Libro Homenaje al Profesor Luis Arroyo Zapatero: Un Derecho Penal Humanista*, 909–921.
Hoyle, C. (2023a). Efforts towards abolition of the death penalty: Challenges and prospects. *Death Penalty Research Unit, Research Papers*, *1*.
Hoyle, C. (2023b). Efforts towards abolition of the death penalty: Challenges and prospects. *Death Penalty Research Unit, Research Papers*, *1*.
Hoyle, C. (2023c). Efforts towards abolition of the death penalty: Challenges and prospects. *Death Penalty Research Unit, Research Papers*, *1*.
Hoyle, C., & Batchelor, D. (2021). Investigating Attitudes to the Death Penalty in Indonesia. *The Death Penalty Project and LBH Masyarakat (The Death Penalty Project and LBH Masyarakat, 2020)*.
Jouet, M. (2021). A Lost Chapter in Death Penalty History: Furman v Georgia, Albert Camus, and the Normative Challenge to Capital Punishment. *Am. J. Crim. L.*, *49*, 119.
Kendall, S. (2023). Preparing for espionage, foreign interference and sabotage: Preventive justice or unjust pre-crimes? *Monash UL Rev.*, *49*, 1.
Mathebe, L. (2021). The Constitutional Court of South Africa: Thoughts on its 25-year-long legacy of judicial activism. *Journal of Asian and African Studies*, *56*(1), 18–33.
Meterko, V., Henderson, J., & Gadtaula, P. (2022). Just Data: Advancing the Innocence Movement: An Introduction to the 2022 Innocence Project Scholarship Issue. *Wrongful Conv. L. Rev.*, *3*, 163.
Mukharrom, T., & Abdi, S. (2023). Harmonizing Islam and human rights through the reconstruction of classical Islamic tradition. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, *7*(1), 40–57.
Orao, B. (2021). Protecting the right to life during assemblies: Legal and jurisprudential developments in the African human rights system. *African Human Rights Law Journal*, *21*(2), 728–750.

Peters, M. (2022). *Miscalibrated: A Search for Better Outcomes in Legal Punishment, Pretrial Systems, and Beyond*.
Quinn, C. R., Johnson, S., Jones, K., Parekh, R., Munshi, A., & Boyd, D. T. (2022). Social work and the next frontier of racial justice: Using COVID-19 as a vehicle for healing. *Social Work in Public Health*, *37*(8), 703–718.
Sarat, A. (2024). *Death Penalty in Decline?: The Fight Against Capital Punishment in the Decades Since Furman V. Georgia*. Temple University Press.
Sarat, A., Denney, M., Graber-Mitchell, N., Ko, G., Mroczka, R., & Pelosi, L. (n.d.). *The Fate of Lethal Injection*.
Schabas, W. A. (2022). *Relationships between international criminal law and other branches of international law* (Vol. 51). Brill.
Sher, F., & Azeem, H. M. (2025). Dilemma of Death Penalty in Pakistan. *Wah Academia Journal of Social Sciences*, *4*(1), 839–849.
Steiker, C. S., & Steiker, J. M. (2022). The Court and Capital Punishment on Different Paths: Abolition in Waiting. *Wash. & Lee J. Civ. Rts. & Soc. Just.*, *29*, 1.
Steiker, C. S., & Steiker, J. M. (2024). Capital punishment and the constitution. In *The Elgar Companion to Capital Punishment and Society* (pp. 63–73). Edward Elgar Publishing.
Taylor, L. C., Moore, K., Wright, Y., Brooks, R., & Glenn, J. W. (2021). Understanding trends in jail population in Durham North Carolina 2014 to 2019. *North Carolina Central University and the Data Collaborative for Justice at John Jay College. Https://Datacollaborativeforjustice. Org/Work/Jail/Understanding-Trends-in-Jailpopulation-in-Durham-North-Carolina-2014-to-2019*.
Yearwood, R. J., & Newton, S. K. (2022). The Retention of the Mandatory Death Penalty in Trinidad and Tobago: An Ongoing Human Rights Concern. *Human Rights in the Global South (HRGS)*, *1*(1), 12–32.
Zeng, H., Ren, L., Chen, X., Zhou, Q., Zhang, T., & Cheng, X. (2024). Punishment or deterrence? Environmental justice construction and corporate equity financing—Evidence from environmental courts. *Journal of Corporate Finance*, *86*, 102583.