
CAPITAL PUNISHMENT ON THE RIGHT TO LIFE: AN INTERNATIONAL HUMAN RIGHTS DISCOURSE

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ABSTRACT

Capital punishment remains one of the most controversial topics in the modern criminal justice and the discourse of international human rights. Although number of States continue to hold on to the death penalty as a form of serious punishment to the most serious offences, the growing international human right law is raising more questions as to whether the death penalty can be afforded to the most serious offences and as to whether it is compatible with the basic right to life. The right to life is regarded as the highest and non-derogable human right, and the conceptual basis of the contemporary jurisprudence of human rights. This paper is a critical analysis of the death penalty in the light of the right of life as propounded under the international human-rights instruments and construed by the international and regional human-rights watchdogs.

This paper evaluates how the right to life has developed over the years under important international documents like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and its Second Optional Protocol that is targeted at the end of the death penalty. Even though the international law does not establish the unilateral ban on death penalty, the use of capital punishment is subjected to the very strict requirements, where it can be used in cases of the most heinous offences and in the presence of the most stringent procedural safeguards. The article discusses the ways in which such limitations, in conjunction with evolutional views at the United Nations Human Rights Committee, point to an evident normative change with an abolitionist inclination.

In addition, the paper discusses jurisprudence of international and regional human-right systems such as the European Court of Human Rights and the Inter-American system which have played a major role in the abolitionist movement in the world. These agencies have highlighted the human dignity, disproportion and the irreversibility of the death penalty and have added more and more attributes to it, outlining it as inhumane, cruel, and degrading punishment. The particular focus is made on the psychological trauma of the death-row imprisonment and the possibility of irreversible wrongful convictions, which ultimately harm the principle of the right to life.

The arguments by the retentionist States have also been critically assessed in the paper especially the arguments of deterrence, retributive justice, cultural relativism, and state sovereignty. It shows the absence of definitive empirical research about the deterrent effect of capital punishment and that sovereignty by the state cannot be employed in such a way as to violate fundamental human-rights commitments.

Lastly, the paper follows the international pattern of abolition, which is seen in the rising number of abolitionist States, resolutions adopted by international bodies to impose moratoria on executions, and the growing popularity of abolition as an indicator of human-rights observance. The paper concludes by saying that, even though capital punishment is yet to be done away with universally under the international law, its existence continues to become more and more incompatible with the transforming meaning of the right to life. This paper contends that the international human-rights system is gradually shifting towards the position of acknowledging the abolishment of the death penalty as one of the measures of ensuring that human dignity and universal right-of-life protection.

Keywords: Death Penalty, Right to Life, Human Rights, ICCPR, Capital Punishment, International Law.

1. Introduction

The death penalty, which is also known as capital punishment, is the harshest method of penal punishment, which involves the intentional and irreparable loss of human life by a State. Its further use has created a very heated legal, moral and philosophical controversy especially in the international human rights law. At the core of this discussion lies the fundamental issue of whether or not capital punishment is compatible with the right to life which is universally acknowledged as the most fundamental and sacred right of humanity. As contemporary legal frameworks have become less and less concerned with the legality of executing offenders, the notion of proportionality, human dignity, and fairness have gained more and more critical attention on whether the execution of offenders by the State is legitimate or not.

Right to life takes centre stage in international human rights jurisprudence. This right, which is entrenched in Article 3 of the Universal Declaration of Human Rights and re-affirmed in binding treaties, including the International Covenant on Civil and Political Rights, forms the basis on which the enjoyment of all other human rights is pegged. The right to life is non-derogable, as opposed to many other rights, which means that it cannot be suspended even during the periods of the general crisis. This special status highlights how serious any State

action is that willingly denies an individual life, even when it comes to capital punishment.

Traditionally, it has been generally accepted that capital punishment is a valid form of State sovereignty and criminal justice policy. To a large number of societies, it was a form of retribution and deterrence to grave crimes. Nevertheless, the rise of the international human rights law after the Second World War became a drastic change in this perception. The adoption of international human rights standards came with a restriction of State authority especially in matters that relate to the fundamental human rights. Therefore, the death penalty, which was initially regarded as an internal issue of domestic jurisdiction, is now an international legal concern and regulation.

The death penalty is taken in a complex and dynamic manner by the international human rights law. Although it does not give absolute prohibition, it greatly limits its use since it may be applied only in extraordinary situations and with high procedures protection. These limitations have gradually over time been construed by international organizations as reflecting a larger normative trend towards abolition. The introduction of the Second Optional Protocol to the ICCPR, which strives to end the death penalty, shows the increasing international view that capital punishment does not go hand in hand with the current human rights values.

Other issues that raise the argument of capital punishment entail human dignity, arbitrariness, discrimination and the possibility of irreversible miscarriages of justice. The empirical data always brings out the uneven application of death penalty to the marginalised and vulnerable groups and the ineffectiveness of criminal justice systems. In this regard, irreversibility of capital punishment is a critical threat to the concept of fairness and justice.

It is on this background that this paper will critically analyse capital punishment on the basis of the right to life in the international perspective of human rights. It examines the applicable international legal tools, judicial interpretations, and global tendencies, and interacts with the arguments that are proposed by both abolitionist and retentionist sides. In this way, the paper will seek to add to the current debate on whether death penalty can be justified at a time when human rights and human dignity protection has become a defining factor.

2. The Right to Life as a concept in the International Human Rights Law-

People all over the world acknowledge the right to life as the most basic of human rights, and

as a basis on which the enjoyment of all other rights is based. Other civil, political, economic, social and cultural rights are meaningless in the absence of the protection of life. The right to life is central to the normative framework of the international human rights law, which demonstrates an international determination to the inherent dignity and value of all human beings. The right has changed over time, but initially, it was a limited right that only provided a right against arbitrary killing, but today, it is a broad and dynamic right which has both negative and positive duties on States.

The right to life was first broadly acknowledged on the international level with the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. Article 3 of the UDHR declares that everybody is entitled to life, liberty and security of person. Even though the Declaration is not a legally binding document, it has gained considerable moral authority and has been commonly seen as representative of customary international law. UDHR provided the philosophical and normative basis of the latter binding human rights instruments by stating the sanctity of the human life as a cross-national value.

Article 6 of the international Covenant on civil and political rights (ICCPR) is the most authoritative statement of the right to life in international law. Article 6 (1) acknowledges that all human beings are born with the right to life and that the right must be upheld by law. Notably, it forbids the arbitrary denial of life and this imposes a direct restraint on the power of the State. The fact that the right to life is not a State-conferred right but an inalienable right highlighted by the use of the word inherent makes it clear that the right to life is non-negotiable. *Lubuto v. Zambia*¹ (Communication No. 390/1990) is a landmark 1995 decision of the UN Human Rights Committee that brought the human cost of capital punishment into sharp focus. Bernard Lubuto had been sentenced to death for aggravated robbery under Zambian law, even though the offence did not result in the loss of life. Challenging his sentence, Lubuto argued that his right to a fair trial under Article 14 of the ICCPR had been violated due to excessive delays in hearing his appeal, and that sentencing him to death for a non-homicidal offence amounted to a disproportionate and arbitrary deprivation of life under Article 6 of the ICCPR. The Committee agreed with these concerns. It found that the prolonged delay in deciding Lubuto's appeal violated Article 14(3)(c), which guarantees the right to be tried without undue delay. More significantly, the Committee held that imposing the death penalty for aggravated robbery, where no one had been killed, breached Article 6(2) of the ICCPR. Interpreting the

¹ <https://hrlibrary.umn.edu/undocs/session55/vws390r1.htm>

phrase “most serious crimes” restrictively, the Committee emphasized that capital punishment can only be justified in cases involving intentional killing. As a remedy, the Committee directed Zambia to commute Lubuto’s death sentence. The decision marked an important step in international human rights jurisprudence by reaffirming that the death penalty must remain an exceptional measure, limited to the gravest offences, and that procedural delays in criminal justice can themselves amount to serious human rights violations.

Although the ICCPR does not absolutely forbid the use of the death penalty, it places very strict restrictions regarding the use of the death sentence. Article 6 only allows capital punishment in those States which have not abolished it and only in regard to the most serious crimes, in accordance with the law and in accordance with a final judgment issued by a competent court. The clause is also categorical in banning the execution of the juveniles and pregnant women. These limitations are an expression of a concession between the abolitionist vision and the State practice as it existed in the drafting, and, at the same time, an indication of a tendency toward eventual abolition.

The jurisprudence of the United Nations Human Rights Committee, which has the mandate to oversee the application of the ICCPR has greatly influenced the interpretation of the right to life. The Committee has also taken a liberal and broad approach to Article 6 and has stressed that the right to life must be interpreted in the widest possible sense. It has made it clear that the term most serious crimes should be construed narrowly, and typically restricted to intentional murder. The Committee has also condemned the use of the death penalty as mandatory and emphasised the need to have stringent procedural protections against arbitrary deprivation of life.

One important aspect of the right to life in the international human rights law is the fact that it is not derogable. Article 4 of the ICCPR recognizes the right to life as a right to which no derogation is allowed even in the case of a time of national emergency where national life is at danger. This highlights the paramount value of the right and supports the notion that State acts which lead to the deprivation of life have to be of the utmost legality, necessity and proportionality.

In addition to the negative duties not to engage in illegal killing, the right to life has positive duties on States. The international human right law obliges the States to take necessary steps to safeguard the life, which includes the prevention of foreseeable threats, effective law

enforcement and prompt and impartial investigations of deaths. Such broadening of the right to life can be seen as a translocation of a defensive notion of the right to life into a proactive model of State accountability.

The evolution of the concept of the right to life is also demonstrated by the formation of abolitionist tools. In 1989, the Second Optional Protocol to the ICCPR was adopted requiring the States parties to end the death penalty in their jurisdiction. The Protocol is an important normative step forward, which strengthens the opinion that capital punishment is irreconcilable with the right to life and human dignity. Regional human rights mechanisms, especially in Europe and the Americas, have also enhanced protection of life by instituting mechanisms that either outlaw or restrict the application of capital punishment in a drastic manner.

To sum up, the right to life as an international human rights law concept has been significantly developed. It is not limited to defence against capricious murder but the whole system of State duties to protect life and dignity. This developing perception has far-reaching consequences on the validity of capital punishment, which more and more places the death penalty in the category of exceptions that is in conflict with the basic tenets of international human rights law.

3. Capital Punishment under International Law-

The capital punishment is located in a contradictory and dynamic place in the sphere of international law. Although some of the modalities of penalties are explicitly forbidden, the death penalty has not succeeded in becoming universalized in terms of the corpus of international legal instruments. Instead, the modern international law takes a modest but forward-looking stance that recognizes the sovereign rights of states, but at the same time provides the sharp limitations of capital punishment application. This paradigm is an incremental but discernible change in world opinion, which, although not yet resolved, is swayed more and more toward the abolitionist camp.

Furman v. Georgia (U.S. Supreme Court, 1972)² was a landmark U.S. Supreme Court case where the Court, in a 5-4 decision, effectively invalidated existing death penalty statutes, ruling that arbitrary and inconsistent application of capital punishment constituted "cruel and unusual punishment" in violation of the Eighth and Fourteenth Amendments, leading to the

² <https://supreme.justia.com/cases/federal/us/408/238/>

commutation of hundreds of death sentences and a temporary national moratorium on executions until states rewrote laws to provide clearer sentencing guidelines.

The key tool that regulates the death penalty on the international front is the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR does not explicitly prohibit the death penalty but only in strictly defined situations does it permit the imposition of the death penalty. It only allows capital punishment on the most serious offences, and only when it is the result of the final decision that is made by a competent court after a fair trial. This provocation represents a sensitive tradeoff between abolitionist and retentionist states upon its drafting and entrenches proactive protective measures designed to restrain arbitrary and unfair executions.

International law also cuts out categorical restrictions on the use of capital punishment against certain vulnerable groups. The ICCPR clearly prohibits the execution of persons who were under eighteen at the moment of the crime and banned the execution of pregnant women. These bans are an affirmation of increased susceptibility by certain groups, and they solidify the belief that the death penalty should be used very carefully and sparingly even where it is allowed.

One of the most important changes in the international legal framework is the introduction of the Second Optional Protocol to the ICCPR which aims at abolishing the death penalty. States that are bound by this Protocol take a binding responsibility not to execute any person and make all efforts possible to abolish the capital punishment in their jurisdictions. The Protocol does not have universal ratification, but it is an indication that normatively there is a significant change, and it represents all the international belief that the death penalty is not compatible with the right to life and human dignity.

Besides treaty binding, international jurisprudence has been very useful in shaping the legal context of capital punishment. The United Nations Human Rights Committee has always understood Article 6 of the ICCPR as a push towards the abolition, noting that the retention of the death penalty needs to be perceived as a temporary exception. The Committee has also made it clear that the term most serious crimes should be interpreted in a strict manner that only a few crimes are included, usually only a crime involving intentional murder, thus ruling out the crimes like drug trafficking, economic crimes, or a non-lethal terrorist crime.

Human rights systems in the region also explain how the international law has been evolving

progressively as compared to the death penalty. The European human rights regime has successfully abolished capital punishment by the Protocols No. 6, and No. 13 to the European Convention on Human Rights, which outlaw capital punishment in peacetime and in any case, respectively. Similarly, the Inter-American human rights system does not favour the growth of death penalty and encourages its progressive abolition by enforcing strict restrictions to its use.

The other notable aspect of the modern international law is the increased awareness of death penalty as the inhuman, cruel or degrading punishment. The world has expressed deep concern over the mode of execution, the length of death-row imprisonment and the psychological torture that the conned inmates have to face. These fears also undermine the validity of capital punishment in the existing international norms.

To conclude, the history of the capital punishment under the auspices of the international law is evidenced by the indisputable shift of the conditional acceptance to the progressive abolition. The stringent restrictions contained in international treaties, legal interpretations, and regional mechanisms, even though not universally prohibited yet, are all indicative of a developing legal system that is slowly becoming inclined to view the death penalty as being antithetical to the very principles of human rights, particularly, the right to life and human dignity.

4. Human Dignity, Cruelty, and Irreversibility-

The concept of human dignity takes the key place in the modern international jurisprudence of human rights as it is the source of moral principles according to which the right to life is guaranteed. The principle of dignity acknowledges the inherent value of all human persons regardless of the type of the supposed offense. The death penalty, by allowing the State to intentionally end the life of a human being, therefore, leads to deep philosophical questions about the areas of compatibility with this principle. According to the human-rights view, capital punishment is being viewed with growing disdain as a punishment that dehumanizes a person by turning them into an instrument of revenge, instead of recognizing their natural human-value.

The international human-rights tools always focus on upholding human dignity in criminal justice delivery. The international covenant on civil and political rights and the Declaration of human rights at the universal level emphasize the need to treat all people with respect and humanity. The intentionality and premeditation of the capital punishment make it different as

compared to other sanctions, as far as the capital punishment involves the deliberate killing of life by the State. This intentional denudation is generally viewed as essentially incompatible with the acknowledgement of human dignity, which requires respect toward life even during criminal punishment.

This is also greatly condemned because the death penalty is considered as a type of cruel, inhuman, and degrading punishment. International organizations have not only been concerned with the very act of execution but also with the methods and conditions of death-row incarceration. Several modes of execution like hanging, lethal injection, electrocution, and shooting have received criticism as causing unnecessary pain or suffering thus casting significant doubts as against the international ban on cruel treatment. Where even the approach is said to be humane, the ambiguity, anxiety and physical pain linked with executions still invite the force of human-rights arguments.

In addition to the physical factor, there is the psychological effect of capital punishment, which is a major issue. International human-rights organisations have acknowledged that longer stays in death-row prisons, which are frequently accompanied by isolation, uncertainty, and the ever-present threat of execution, are known to inflict great mental distress. This has often been called the death-row phenomenon and has been termed as being a kind of psychological torture or inhuman treatment. This prolonged period between the sentencing and the execution contributes to the increase of suffering and the lack of human and proportionality in punishment.

Irreversibility comes out as possibly the strongest point against capital punishment in terms of human-rights. The death sentence is unlike other sanctions, which can be revoked after being executed. No matter how sophisticated the judicial systems may be, they are not always right. Cases of wrongful convictions due to forced confessions, faulty investigations, poor legal counsel or internal biases have been reported in different jurisdictions. When this happens, it leaves the execution of the wrong person permanently and therefore the right to life is violated in an irreversible manner.

Moreover, the danger of arbitrariness and discrimination in the use of death penalty aggravates the worries revolving around its validity. Research and reports have shown that capital punishment is disproportionately applied on the marginalised population, such as those who are economically disadvantaged, racial and ethnic minorities, and those who do not have

adequate access to effective legal representation. This imbalanced use also undermines the ethics of upholding death penalty and the idea of equal protection before the law.

Considering these aspects, capital punishment is becoming the subject of growing criticism in the international human-rights law that regards it as being incompatible with human dignity, the ban on cruel and inhuman treatment, and the primary need of justice. The overall effects of the violation of dignity, the mental and physical torture, and the irreversibility of the effects have boosted the abolition movement worldwide, which supports the idea that no punitive system that kills a person can be completely consistent with the principle of human rights.

5. Retentionist Arguments and State Sovereignty-

Although there is increasing global trend towards the abolition of capital punishment, there are still a number of States that have the death penalty as a component of the criminal justice system. The retentionist States tend to defend the further usage of capital punishment with references to the arguments of deterrence, retributive justice, cultural and social values, and the idea of the sovereignty of the State. These arguments represent the longstanding conflict between the domestic criminal justice policies and the changing international human rights norms.

Among the most commonly developed retentionist arguments is the notion that the death penalty works as an effective deterrent to serious crime, especially to murder and terrorism. Retentionist States believe that the threat of death will deter potential criminals and, in the process, enhance the safety of the people. This statement has, however, been disputed. There is no clear or consistent correlation between lower crime rate and the presence of the death penalty which has been demonstrated in many empirical studies. The deterrence rationale has been increasingly challenged by the international human rights bodies, which observed that life imprisonment and other harsh punishments can achieve the same goal without necessarily denying a person his life.

The other major reason that supports capital punishment is the retributive justice theory. In this perception, there are some crimes that are so vile that they should receive the maximum penalty as it represents the moral condemnation of the society and gives some satisfaction to the victims and their families. Although retribution has been a key principle in criminal law, the international human rights law promotes the use of proportionality, rehabilitation, and human

dignity. Opponents claim that retributive reasons tend to create violence of circles and distort the very core of the concept, which is that punishment should not devalue the value of the person.

Retentionist States also invoke cultural relativism by claiming that crime attitudes and punishment are culturally diverse and that international human rights standards must not disregard cultural diversity. Such States argue that capital punishment embodies ingrained values and legal customs in the society. Nevertheless, international human rights law is based on the universalism of some fundamental rights such as the right to life and the ban on cruel, inhuman, or degrading punishment. Although legal systems may be affected by cultural contexts, they cannot be used to justify practices that are in essence against the principle of universal human rights.

The most influential legal argument by retentionist States is state sovereignty. Historically, the criminal law has been considered to be one of the domains that lie under the sole domestic jurisdiction of the States, which are left to decide on the suitable punishment that should be meted out to criminal offences. The retentionist States claim that international law has no right to interfere with their sovereign right to uphold law and order. But the history of the international human rights law has increasingly curtailed the sovereignty of the State by creating binding requirements to respect, defend and fulfil the fundamental rights. States by ratifying international treaties like the ICCPR voluntarily limit their discretion in criminal justice issues.

The international human rights organizations have always been emphatic that sovereignty should not serve as an umbrella to perpetuate the perpetration of the fundamental rights. The right to life as a non-derogative inherent right demands substantive restrictions on the power of the State, including in the sphere of the conventional jurisdiction of domestic law. In addition, the retention of the death penalty is becoming an exception, but not a right, in the international law.

To sum up, retentionist arguments based on deterrence, retribution, cultural values and sovereignty still play a role in the State practice, but they face increasing opposition in the context of the changing international standards of human rights. The gradual reduction of the grounds upon which capital punishment may be applied indicates an international law order

where human dignity and a right to life are more important than the absolute claims to State sovereignty.

6. Capital Punishment and the Future of International Human Rights-

The future of capital punishment has to be viewed in the context of the wider history of the international human rights law that has been proven to be moving towards a greater protection of human dignity and the sanctity of life. Although a total abolition of the death penalty has so far not been achieved, current trends are pointing to an unquestioning normative change toward its ultimate abolition, as the idea of human rights to life is expanded and the academic community is increasingly convinced that the death penalty is inherently incompatible with the key principles of human rights.

The most notable sign of this change is the gradual increase in the number of States abandoning the death penalty in law or practice. Human rights mechanisms on the international and regional level are gradually considering abolition not only as a policy choice, but also as a mandatory element of human rights compliance. Non-binding resolutions of the United Nations General Assembly that recommend a moratorium on the use of the death penalty are a good illustration of the pressure mounting on retentionist States around the world and the idea that abolition is a progressive and desirable normative standard is well supported.

Jurisprudence that is coming out of international and regional human rights organizations will also most probably become a key factor in the future of capital punishment. Over time, the United Nations Human Rights Committee has continued to reduce the scope of the death penalty that should be permitted by the Article 6 of the ICCPR, with a stress on the fact that it is supposed to be viewed as an exceptional and temporary measure. Similarly, regional regimes including the European and Inter-American human rights regimes have taken a bold step towards the abolition of the death penalty and have set powerful precedents which could potentially guide and ultimately formalize into a customary norm of international law against capital punishment.

The other important issue that will shape the future of capital punishment is the increased awareness of systemic injustices in criminal justice systems across the globe. The progress in forensic technology, such as the spread of DNA evidence, has revealed several injustices in conviction, a fact that highlights the vulnerability of legal procedures. These truths have made

the issue of irreversibility of capital punishment more scathing and have added weight to the abolition argument. The ethical and legal reasoning behind the maintenance of the death penalty is growing less viable as the realization of miscarriages of justice grows.

An increasing focus on restorative and rehabilitative methods of justice also influences the direction of the international human rights law. The modern human rights debate is more in favour of rehabilitation, reintegration and victim-focused justice rather than retribution. Life imprisonment and other forms of punishment are considered to be able to accomplish the legitimate penological goals without violating the right to life, therefore, they can be aligned with a broader conceptualisation of justice that aims to cure the sources of crime but still respecting human dignity.

However, obstacles are not eliminated. Other States are still using national security, popular opinion, and prerogatives of sovereignty to defend the existence of capital punishment. Such arguments can still find a way into domestic policy in a time of terrorism and transnational crime, but the international human rights law is becoming more and more opposed to the idea that basic rights can be undermined in the name of security or social order.

Overall, it can be concluded that the future of capital punishment in the international human rights law is increasingly leaning towards abolition. Despite the fact that the universal prohibition has not been yet reached, the intersection of international norms, judicial interpretations, and the development of societal values suggests that in the long run, capital punishment can be regarded as being incompatible with the right to life and human dignity. It is the further development of international human rights law, therefore, which promises a future in which justice is thus served without the inadvertent resort to the irreversible deprivation of life.

7. Conclusion-

The debate currently surrounding capital punishment is a major conflict between the traditional understanding of state power on the criminal justice and the new principles that are rooted in the international human rights law. Although there is still no global ban on the death penalty, the obvious trend of the international in the instruments of law is towards eradication. The right to life being inalienable and non-derogatory has been understood by the international human-right authorities to assume a broader meaning thus subjecting serious limitations to the

circumstances within which capital penalty can be authorized.

As one notices, international treaties, judicial interpretations and regional human-rights mechanisms indicate an increasing agreement that death penalty is incompatible with the doctrine of human-dignity, proportionality and the prohibition of cruel, inhuman, or degrading treatment. Fears of arbitrariness, unfair imposition and suffering of a psychological kind and, worst of all, the inability to redeem executions only diminish the acceptability of the death penalty in the human-rights paradigm. Retentionist arguments are also undermined by empirical research on the topic that espouse counterarguments to deterrence.

With the evolving nature of international human-rights law, the repealing of capital punishment is more and more presented as a mandatory requirement as opposed to a policy option. Although other states continue to use arguments based on sovereignty, and public-security, they are increasingly being bound by the obligation of a binding human-rights. The existing trend of international law is therefore strongly indicative of the fact that capital punishment is precisely in irreconcilable opposition with the right to life, which in turn substantiates the urgency to exercise capital punishment across the board in the quest of a more humane and fair international legal system.