

International Instruments, Conventions and Status of Death Penalty in Various Countries

Srishti

LLM (Master of Laws), University School of Law, Rayat Bahra University, Kharar.

Abstract

This research paper explores the global landscape of the death penalty, examining the legal instruments, international conventions, and regional frameworks that shape its application. It analyzes the role of major international treaties such as the International Covenant on Civil and Political Rights (ICCPR), the Second Optional Protocol aiming at the abolition of the death penalty, and regional conventions like the European Convention on Human Rights. The paper also categorizes countries based on their legal stance—abolitionist, retentionist, or de facto abolitionist—and investigates the socio-political, legal, and human rights factors influencing their positions. Case studies from various continents offer insight into current trends, including a global movement towards abolition, persistent use in some authoritarian regimes, and shifting public opinion. The paper critically evaluates the effectiveness of international instruments in influencing national policies and highlights the ongoing debate surrounding capital punishment's legality, morality, and deterrence value.

Keywords: Death penalty, capital punishment, international conventions, ICCPR, human rights, abolitionist countries, international law, death penalty status, legal instruments, Second Optional Protocol.

1.1 HISTORICAL BACKGROUND OF THE DEATH PENALTY IN THE WORLD

Execution of a convicted criminal in accordance with a death sentence pronounced by a competent authority is the definition of capital (Death) punishment. 'Capitalis', from the Latin for "of the head". Capital punishment referred to the practise of executing a criminal by severing his head from his body.¹ Many countries criminal justice systems have used the death penalty for decades.

Capital punishment (the death penalty) has been used to punish criminals for a wide range of crimes since the dawn of civilisation. Capital punishment is thought to have originated from violent revenge by members of a tribe or group against individuals who had committed enmity towards the other members of the group. As time went on and individuals and communities gave over control to a central authority, the ability to punish wrongdoers became an element of the "sovereign's divine authority" to rule. As the State took on the role of redressing private revenge, the awarding of the death penalty became a public function.² The death penalty is considered to be the highest form of punishment in nations where it is used. However, there is much debate over its use on a global scale. In the 16th century B.C., Egypt imposes the first recorded death penalty. In this case, the offender was responsible for serving his own punishment. About 25 crimes, including bribery of government officials, theft, and beer fraud, were punishable by death in

¹ Randall Coyne and Lyn Emtzerth, "*Capital Punishment – The Judicial Process*", Carolina Academic Press, p.1, (1994).

² K.D. Gaur, "*Commentary on the Indian Penal Code*", Universal Law Publishing Co. Pvt. Ltd., (2006).

the Babylonian Code of Hammurabi (c. 1750 B.C.).³ The Draconian Code of Athens, enacted in the 7th century B.C., mandated the death penalty for all crimes.

Several offences, such as publishing "insulting songs" and disrupting the calm of the city at night, were punishable by death under the Roman law of the Twelve Tablets, which was enacted in the fifth century B.C. Certain crimes are punishable by death only when committed by slaves against freemen, or vice versa.

The Greek philosopher Socrates was executed by drinking poison for the crimes of heresy (the act of holding a belief contrary to what is acceptable, in official religion) and corrupting of the young under the Draconian legal system (named after the Athenian law giver Draco) in ancient Greece. In the year 29 A.D., Jesus Christ was crucified on a hillside outside of Jerusalem.⁴

The death penalty was applied in England less frequently than in the rest of Europe during the Middle Ages. It was not enforced at all for the majority of the eleventh century. When it came to maintaining law and order, neither King Canute (1016 - 1035) nor William the Conqueror (1066 - 1087) trusted the executioner. The lack of leniency towards criminals was not a result of this, though. It was a very dangerous time. In many cases, inmates perished from torture since it was so widespread.

Though the death sentence was reinstated under later English kings, for centuries British law was very lenient to its continental counterparts. Despite the fact that many European governments still carried out executions for relatively minor offences during the late Middle Ages, England reserved the death sentence largely for very major crimes like murder, treason, rape, arson, and robbery.

The British Parliament adopted a Bill of Rights in 1689, which prohibits harsh and unusual punishments among other things. On this day in 1692, a woman in Massachusetts was hung for her role in the first of what would become known as the Salem Witch Trials. Two male and six female "witches" from Salem were put to death on the ninth month of the year. There have been a total of nineteen people crushed to death for refusing to stand trial and nineteen people executed for practising witchcraft.

Russia stopped using capital punishment for common crimes such as murder in 1754, but it is still in place for those who commit serious political offences. In Western Europe, the anti-death-penalty movement spearheaded by Cesare Beccaria, Jeremy Bentham, Voltaire, and others gained traction between 1780 and 1790.

Cesare Beccaria, published his classic book – *Essays on Crime and Punishment* in Italy in 1784.⁵ Many European thinkers were profoundly influenced by it. It was translated into English and had a significant impact in the English-speaking world. Thus, both Tuscany and Austria did away with capital punishment. Nonetheless, the number of crimes in England that carried the death penalty grew throughout time; by the early nineteenth century, more than 200 crimes were considered to be murders. Gypsies face the possibility of execution for overstaying their visas. If a local were caught stealing a fish from a pond, they would face the death penalty. In the same way that a person could be punished for illegally killing a deer or chopping down a growing tree, passing even one false bank note could send a counterfeiter to the scaffold. A total of 46 persons were executed by hanging for forgery. There were 222 crimes in 1820 that warranted the death penalty.

The British Parliament passed the Abolition of the Death Penalty Act in 1969, keeping the death sentence in place only for treason, piracy, and certain military offences; by the end of 1832, the death penalty had

³ Micheal Kronenwetter, "*Capital Punishment: Contemporary World Issues*," (ed. 2nd), California, pp.107- 120, (2001).

⁴ *Ibid*, p. 108.

⁵ Cessare Beccaria, "*Crime and Punishment*", Italy, (1764).

been eliminated from more than 100 of the lists.

Somewhere about 20,000 people who opposed the Nazi occupiers in France in 1943 and 1944 were executed by guillotine. As a result of Nicolas Pelletier's execution, however, capital punishment in France was finally done away with.⁶

1.2 VARIOUS METHODS OF EXECUTION IN THE WORLD

The use of firearms (the "Firing Squad"), the guillotine, a gas chamber, an electric chair, or a lethal injection is just some of the more common modern methods of execution. Executions by shooting and hanging continue to be the most common types of capital punishment today. 86 countries utilise lethal injection, while 78 use hanging.⁷

1.2.1 SHOOTING

There are two standard ways to carry out an execution by gunfire. The first kind uses a lone executioner, while the second is carried out by a firing squad. One person stands next to the victim, within gunshot range, and shoots them in the head with a handgun. This is a quick and painless way to put an end to the accused's life.

It is common practise for at least four armed executioners to stand at a safe distance from the target and fire their weapons in a firing squad. As opposed to a single executioner, a firing squad lacks any human qualities. The executioners hide behind a curtain and fire through a hole in the wall, so the victim never sees them. The victim is typically sitting, propped up against a wall, or restrained against their will while standing by a pole or board. In the United States, the firing squad is the method of choice in three states: Idaho, Oklahoma, and Utah.⁸

1.2.2 HANGING

Execution by hanging has been around for a very long time. In Biblical times, it was common in the Middle East. 78 countries are now using it. The earliest European hangings were not executions but rather public displays. Criminals' bodies were hung from tree limbs after they were executed. Hanging was likely initially employed as a means of execution by Europe's Germanic peoples. In most cases, victims were hung from a short rope and slowly strangled to death. Over time, methods were refined to ensure a swift and painless death by dropping the victim at the end of a rope. Only four U.S. states currently use this method: Delaware, Montana, New Hampshire, and Washington. Hanging is the most popular form of execution in countries across Asia, Africa, and the Middle East.

1.2.3 GAS CHAMBER

In the 20th century, gas chambers became a common method of execution. In what has become known as a "death chamber," the accused is restrained in a chair. A white cloth bag containing pellets of cyanide and sulphuric acid is thrown near the chair at the predetermined moment. To kill someone with cyanide, a chemical reaction must take place, releasing the gas, which then rises up around the chair and fills the room and the victim's lungs. The cyanide enters the respiratory system, which carries oxygen from the blood to the cells, and causes the brain to lose consciousness. Soon, the victim's other critical organs are also affected, and he or she dies. This method is currently used in seven states in the United States.⁹

The condemned person is placed in a locked chamber containing sodium cyanide and the gas is then

⁶ *Supra* 86, p. 131.

⁷ U.S. Bureau of Justice Statistics, "Capital Punishment", (Dec. 1997).

⁸ *Ibid.*

⁹ *Supra* 90, Execution by Lethal Gas: Arizona, California, Maryland, Mississippi, Missouri, North Carolina and Wyoming.

discharged. Synthetic hydrogen cyanide is produced through a chemical process. Inmates are often told to take deep breaths as a form of punishment. While some inmates may try to breathe via their noses, the majority prefer to avoid doing so.

1.2.4 ELECTROCUTION

The United States first employed the use of electrocution in 1980. In 11 states, electrocution is now the second most used execution method in the United States and Western Countries.¹⁰ Copper electrodes are attached to the victim's head and legs while strapped to a wooden chair. High-voltage electric current burns the victim's internal organs, causing cardiac arrest.

The victim gets shaved before being bound in a chair with chest, crotch, leg, and arm straps. A 500-to-2000-volt jolt is applied and held for 30 seconds. The detainees' hearts are examined by medics. If so, another shock is given.

1.2.5 LETHAL INJECTION

It was first adopted in the States of Kansas in the United States in 1977, and by the State of Texas later in the same year. Lethal injection has become the most common method of execution in the United States today and thirty-five States and U.S.¹¹ This technique is commonly used by the military. Execution via lethal injection entails administering lethal drugs, such as sodium thiopental, pancuronium bromide, and potassium chloride, straight into the veins of the accused.

Both the chemical vial and the needle are connected to the tube via a bendable section. The condemned person's vein is pricked with a needle that is introduced through a hole in the wall of the execution chamber. At the designated moment, the tube is opened and the chemicals are permitted to enter the victim's blood stream. The victim has two needles put into his or her arm veins. After the inmate has been sedated with a harmless saline solution, Sodium Thiopental is injected. After the heart has stopped beating, pancuronium bromid is given to cease breathing, and potassium chloride is delivered to inhibit the body's natural response to pain. The entire procedure takes between 9 and 14 minutes, and the client dies peacefully while asleep, without any physical trauma. Lethal injection has replaced alternative methods of execution in a number of countries, including the Philippines, Guatemala, and China.

If you look at the current climate around the world about the death penalty, you will see that opinions are split. On the one hand, the death penalty has been all but abolished in Western Europe, and Russia has granted pardons to all 700 of its condemned prisoners, and on July 24, 1997, the Ex-Soviet State of Georgia granted pardons to all condemned prisoners, and the United Nations Commission on Human Rights has called for a moratorium on all executions. There are now a record number of countries (120) that have abolished capital punishment in one form or another.¹²

Nonetheless, some countries have resorted to severe measures. The first broadcast execution occurred in Guatemala on February 10, 1998, when Manuel Martinez Coronado was executed by lethal injection. In May of 2000, the body of a man who had been executed by beheading for murder in Saudi Arabia was publicly crucified in an effort to set an example. Eighty-nine people were executed in China in a single day on April 11th, 2001 as part of the country's "strike-hard" campaign against crime. Except for a brief

¹⁰ *Supra* 90, Execution by Electrocution: Alabama, Arkansas, Florida, Georgia, Kentucky, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, Virginia.

¹¹ *Supra* 90, Execution by lethal injection takes place in the States of Arizona, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming and U.S. Military.

¹² Times of India, "Death Penalty Debate – Alive and Kicking", Chirdeep S. Begga, pp. 1,8,14; (2nd July 2004).

period in 1972, the United States represents an intriguing deviation from the global trend, when the U.S. Supreme Court ruled in **Furman v. Georgia**,¹³ the death penalty unconstitutional, but a 1976 ruling by the Supreme Court in **Gregg v. Georgia**,¹⁴ overturned the earlier position giving the States freedom to bring back capital punishment. This has led to 38 states reinstituting the death penalty and to the United States becoming the world's leading executioner of juvenile offenders, foreign nationals, and condemned inmates.

The issue of the death penalty is divisive among the global society. While the governments of many countries express strong opposition to it, citizens of many others defend and engage in it. While several nations have abolished or severely limited their use of the death sentence, others have begun to use it routinely.¹⁵

In the Abolition of the Death Penalty in International Law, William Schabas chronicles the modern history of capital punishment in the international sphere.¹⁶ Schabas argues primarily two things: first, that restrictions on the death penalty have tightened considerably since World War II, and second, that the day will come when abolition of the death penalty is established as a universal norm, both by convention and by custom, and is recognised as an imperative rule of jus cogens.¹⁷

The problems surrounding the debate over the death sentence were straightforward up until roughly the start of World War One. The abolitionists were on one side. They were the liberals and progressives, the ones concerned with humanity. The current Enlightenment philosophical movement was deeply intertwined with the formation of western society's ideals in the eighteenth and nineteenth centuries. Their arguments followed very clear lines: capital punishment is inhumane, it is not effective enough to justify its use, and it has negative repercussions.¹⁸

Conservatives, old-timers, and illiterates opposed abolitionists because they were unconcerned with capital punishment or even thought it was necessary to keep society in check. Thus, the conservatives won the day; yet, abolitionists appear to have better captured the spirit of the day, and death penalties, including the number of capital offences, death sentences, and actual executions, gradually declined during the eighteenth and nineteenth centuries.¹⁹ The problem of the death penalty for 'political offences' was like wise very evident. The line between criminal behavior and political offence was well - defined, with some grey areas being debated but widely accepted. Therefore, abolitionists focused on common offences and turned a blind eye to political executions, which were actually quite rare in the 1800s and 1900s, with the exception of the outbreak of the French revolution.²⁰ Although the above description accurately depicts the Western world during the First World War, similar ideas, social movements, and patterns of social action are still prevalent today. However, new developments after World War One have radically altered western civilization and presented fresh challenges to those who are worried about the death penalty.

After WWI, several countries, beginning with Russia, experienced a severe internal political struggle. A new style of political activity was embraced by both communist and fascist parties, one that used current

¹³ *Supra* 30.

¹⁴ *Gregg v. Georgia*, 423 US 153 (1976).

¹⁵ *Supra* 85, p. 830-833.

¹⁶ William A. Schabas, *"The Abolition of Death Penalty in International Law"*, Grotius Publications, Cambridge, p. XXXII, (1993).

¹⁷ *Ibid*, p. 483 – 488.

¹⁸ Peter P. Lejins, *"The Death Penalty Abroad"*, The Annals of the American Academy of Political and Social Science, Vol. 284, Sage Publications, p. 137, (1952).

¹⁹ *Ibid*, p. 137 – 146.

²⁰ *Ibid*.

sociological science to manipulate the masses to achieve and maintain power. Extreme ruthlessness in suppressing foes, annihilating those who pose an immediate threat, and gradually but systematically wiping out all bearers of opposing ideologies characterise this type of societal control. The gradual examination of the carriers of opposing ideologies ran counter to deeply root and, in addition, had a halo of progressiveness and liberalism. This is a development that is very important for our times, as it shows that the outright execution of political criminals and active political opponents can be easily rationalised. The outcome was the twentieth century's "social innovation," the concentration camp. Although there has been a great deal of variation in this regard throughout human history, the number of crimes punishable by death in the penal codes of western countries has been steadily decreasing during the past two or three centuries. In the nineteenth century, well over a hundred crimes were typically punished by death; by the twentieth century, that number had dropped to three, two, or even one in some countries. When the death penalty is available under the law, the number of sentences handed down has likewise gone down, as have the number of actual executions.

The global trend toward capital (death) punishment would show conflicting opinions. The issue of the death penalty is divisive among the global society. While the governments of many countries express strong opposition to it, citizens of many others defend and engage in it. While several nations have abolished or severely limited their use of the death sentence, others have begun to use it routinely.²¹

1.3 PRESENT STATUS OF DEATH PENALTY

The fall of western totalitarian regimes appears to have ushered in a revival of pre – World War I attitudes about capital punishment in Western Europe.²² Fascist administrations' ideas and methods for combating crime and political opponents were phased out along with other totalitarian regimes. What has actually transpired around the world with the death penalty cannot be explained away as an expected and temporary tightening of punishment in the wake of the bloodshed frequent in times of conflict. It's important not to overlook the fact that between the wars, the death penalty was actually used more frequently in some countries than at any other time in their history. The optimistic assumption made by some abolitionists that nothing has truly happened and that we can quietly return to hammering at the remaining strongholds of the death sentence is an over simplification and cannot be substantiated after reading the above study. Now very little can be anticipated about the future of the death penalty at this moment because the tendencies are so complicated. First, let's try to put into words the general death penalty conditions that appear to exist internationally:

- “At one end of the continuum there are countries which have no legal provision for capital punishment and actually do not have any executions.
- At the other extreme there are the countries which have legal provisions stipulating death penalty for political, military and ordinary criminal offenders and which actually make use of these provisions.
- Somewhere between these two there are those countries which do not seem to have any legal provisions for the death penalty, but which in reality do execute some of the offenders in some way.
- While, there are some countries which, although the death penalty is provided for in the law, have not made use thereof for such a long time that they may be considered as having de facto abolished capital

²¹ *Supra* 86, p. 20-21.

²² L.E. Deets, “*Changes in Capital Punishment Policy since 1939*”, *Journal of Criminal Law and Criminology* Vol. XXXVIII, No. 6, (1948).

punishment.”²³

Only 16 nations had done away with the death sentence when Amnesty International began its campaign against it in 1978. There were no executions in any of the 117 states in the United States in the recent decade, and the number of de jure abolitionist countries rose to 79 in 2004. However, in 2003, a total of 1,146 executions were carried out in 28 nations, according to data gathered by Amnesty International.²⁴ The death sentence has been abolished only in a few of African countries, including Mozambique and Namibia in 1990, Angola in 1992, South Africa in 1997, and Cote d'Ivoire in 2003. (2000). Botswana, Chad, the Congo (Democratic Republic of), Somalia, Sudan, Uganda, and Zimbabwe all carried out executions that year.²⁵

Some nations have effectively abolished the death penalty by not aggressively employing it. A total of ten countries in West Africa have either completely stopped using capital punishment or have not used it in recent years. South Africa is one of five countries that have done away with the death sentence. A large number of death sentences in Kenya have been mitigated. President Mwanawasa of Zambia has remitted the sentences of sixty people who were to be executed in 2004. President Muluzi of Malawai has declared that he will not approve any death warrants. Nigeria's President Olusegun Obasanjo has also spoken out against the death penalty.²⁶ The death penalty's use as a deterrent to criminal behaviour is on the decline, and this trend appears to be inevitable.

International law has traditionally recognised the death sentence as a fact while implying that its eventual repeal is inevitable. There are strict limitations on the application of the death penalty established by international law, and in some parts of the world, this punishment is all but outlawed. In 1995, after a careful examination of international law, the Constitutional Court of South Africa ruled that the death sentence was unconstitutional under the country's new post-apartheid constitution.²⁷ European Court of Human Rights ruled in the Ocalan case that the death penalty had "no place in a civilised society," and all 45 member states of the Council of Europe have followed suit.²⁸

According to a 2016 report by Amnesty International, only 23 countries actually carried out executions in 2016, down from 25 in 2015.²⁹ The international landscape regarding the death penalty-both in terms of international law and state practice-has evolved in the past decades. As compared to 1967, when the 35th Report of the Law Commission of India was issued. In 1980, when the **Bachan Singh**,³⁰ judgement was delivered, today a majority of the countries in the world have abolished the death penalty in law or practice. Even those who retain it, carry out for fewer executions than was the case some decades ago.

Through an analysis of relevant international law, political commitments, and state practise, this chapter will outline the shift in the international scene over the past decades and the clear trend towards abolition in both international and domestic laws. Bringing attention to international law rules that apply to the Indian state is only part of the purpose of this chapter. In addition, the Indian government has not signed or ratified several of the treaties and documents listed here, or they do not apply to India for various reasons. There are three main international categories for categorising countries' use of the death penalty³¹

²³ *Supra* 101, p. 141-142.

²⁴ Amnesty International, “*The Death Penalty Worldwide: Developments in 2003*”, ACT 50/007/2004.

²⁵ *Supra* 49.

²⁶ Amnesty International Press Release, “*Africa moving towards abolition of the death penalty*”, (10th May 2004).

²⁷ *State v. Makwanyane & Mchunu*, 1995 (3) SA 391.

²⁸ Rupert Skilbeck, “*The Death Penalty in International Law: Tools for Abolition*”.

²⁹ Amnesty International’s Report, “*Death Penalty*”, (2017).

³⁰ *Supra* 8.

³¹ *Supra* 49.

- Abolitionist for all crimes
- Abolitionist for ordinary crimes³²
- Abolitionist de facto³³
- Retentionist

In 2013, the movement to abolish the death penalty encountered several difficult defeats. There was a sharp increase in the number of executions in 2013 compared to 2012, led mostly by rises in Iraq and Iran, but also by four other nations (Indonesia, Kuwait, Nigeria, and Vietnam). In 2013, 22 countries reported having carried out executions, an increase of one from 2012. Similar to 2012, it was unclear whether or not judicial executions had taken place in Egypt or Syria. There were 778 executions reported in the globe in total, an increase of over 15% from 2012. Because the death sentence is considered a state secret in China, Amnesty International is unable to publish credible minimum figures for China, and this has been the case for several years running.³⁴

Globally, there have been advances in the fight to abolish slavery. The United States continued to drop its execution rate in 2013, despite being the only country in the Americas that still used the death penalty. On May 18th, Maryland joined the ranks of US abolitionist states as the 18th. In 2013, there were no reported executions in Europe or central Asia. Opportunities for the elimination of the death penalty have arisen as a result of constitutional and legal review processes in various West African countries. In Grenada, Guatemala, and Saint Lucia, no one is currently awaiting execution for the first time since Amnesty International began keeping track.

The employment of the death penalty as a supposed deterrence against crime is a reason used by nearly all executing countries. However, this argument is losing credibility and support.

Numerous countries that still use capital punishment routinely disregard safeguards established by the international community. In 2013, reports surfaced once again of grossly unfair trials and the execution of people who were under the age of 18 at the time they are said to have committed the crime. In addition, it draws attention to the opacity of many countries' execution procedures. Despite international laws mandating early notice to family members and legal counsel before an execution, several nations continue to disregard these regulations.³⁵

There were 140 countries in the globe that had abolished the death penalty by the end of 2014, 98 of which had done so in law and 35 of which had done so in practise. Only three of the 140 countries on the list officially abolished the death sentence in 2015, i.e., Suriname, Madagascar and Fiji 58 countries are regarded as retentionist, who still have the death penalty on their statute book, and have used it in the recent past.³⁶

Although only a slim majority of nations still retain and apply capital punishment, the list includes several of the most populous nations in the world (e.g., India, China, Indonesia, and the United States), leaving the lives of the vast majority of people everywhere open to the risk of being taken by this extreme measure.³⁷

According to the most recent report by Amnesty International, 23 countries carried out the death penalty

³² Report of the Secretary-General, E/2015/49.

³³ *Ibid.*

³⁴ *Supra* 49.

³⁵ *Supra* 49.

³⁶ *Supra* 49.

³⁷ *Supra* 61.

in 2016, down from 25 the year before.³⁸ There were at least 1,032 executions last year. There were a record 1,634 executions in 25 countries in 2015, according to Amnesty International. This number is the highest it has been since 1989. The top five countries in terms of the number of executions were China, Iran, Saudi Arabia, Iraq, and Pakistan.

The global figure of at least 1,032 does not include the thousands of executions thought to have taken place in China, making China the world's top executioner once again. However, the exact extent of the usage of the death sentence in China is unknown as this data is considered a state secret. Iran, Saudi Arabia, Iraq, and Pakistan accounted for 87% of all executions outside of China.³⁹ After being in the top five biggest executioners since 2006, the United States has dropped to seventh place, behind Egypt. The United States has not had fewer than 20 executions each year since 1991.

About one-eighth of the world's countries, or 23, are known to have carried out executions in 2016. This figure is down dramatically from where it was 20 years ago (40 countries carried out executions in 1997). While Chad, India, Jordan, Oman, and the United Arab Emirates all carried out executions in 2015, none were reported in 2016. Authorities in Belarus, Botswana, and Nigeria also resumed the practise in 2016. More than two-thirds of the world's countries are abolitionist, at 141.

Both Benin and Nauru legally abolished the death penalty in 2016. The vast majority of the world's nations have done so, totaling 104. In 1997, just 64 nations had completely abolished the practise of slavery.

The death penalty was commuted or abolished in 28 countries in 2016. Sixty persons were freed from death row in nine different countries in 2016: A total of four countries from Bangladesh, five from China, one from Ghana, five from Kuwait, one from Mauritania, and one from Nigeria (32). In order: Sudan (9), Taiwan (1), and Vietnam (2). Increased significantly from 2015, in 2016, Amnesty International documented 3,117 death sentences in 55 countries (1,998 sentences in 61 countries). Twelve nations had significant increases; in some cases, like Thailand, this was because the government was more forthcoming with data to Amnesty International.⁴⁰

As of the close of 2016, at least 18,848 people were waiting for execution. Executions were most commonly carried out through beheading, hanging, death injection, and shooting. Countries like Iran (where at least 33 people were executed in public) and North Korea continue to carry out public executions. Furthermore, it appears that at least two juvenile offenders who were under the age of eighteen when they committed the offence for which they were executed in Iran in 2016 were executed.

International fair trial criteria were not met in several nations when people were given death sentences or put to death. Countries like Bahrain, China, Iran, Iraq, North Korea, and Saudi Arabia have all been accused of using torture to coerce "Confessions". The overall figures show that the trend is still strongly towards abolition, notwithstanding these troubling changes. With the exception of China, only three countries—Iran, Iraq, and Saudi Arabia—have documented records of all executions in modern history.

In this chapter, we'll look at the various worldwide standards that can be applied to death sentence cases, as well as regional standards from Europe, the Americas, Australia, Africa, and Asia that can be compared with one another. Some of the major questions will also be addressed, and the article will consider how common law principles apply. The significance of planning for abolition will also be discussed.⁴¹

³⁸ *Supra* 50.

³⁹ *Supra* 120.

⁴⁰ *Supra* 112.

⁴¹ *Supra* 111, p. 2-3.

1.4 INTERNATIONAL INSTRUMENTS ON DEATH PENALTY

1.4.1 DECLARATIONS AND TREATIES

In international human rights treaties, including the International Covenant on Civil and Political Rights ('ICCPR') of 1966, the death penalty is addressed as a component of the right to life. Some components of this punishment's imposition and administration have been deemed to be illegal throughout time as well. It wasn't until the Second Optional Protocol to the International Covenant on Civil and Political Rights (1989) went into effect that the international community witnessed the first worldwide, international legal instrument aimed at abolishing the death sentence.⁴²

1.4.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

Everyone has the right to life, liberty, and security of person, as stated in Article 3 of the Universal Declaration of Human Rights (1948). There was substantial debate among the States Parties during the drafting of the UDHR about whether or not the death penalty should be included as an express exception to the right to life, or whether or not a formal statement should be added that they should move towards abolition. Abolitionist sentiments were bound to be divisive back when the death penalty was still used routinely in the vast majority of countries. The agreement was for everyone involved to remain completely silent and let the attorneys sort out the ambiguities.⁴³

1.4.3 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)

The international Covenant on Civil and Political Rights (ICCPR), was adopted by the United Nations General Assembly in 1966 and came into force on 23rd March 1976. It had been signed by virtually every country in the world. Article 6 of the ICCPR states that:

1. "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present covenant and to the convention on the prevention and punishment of the crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorise any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant".⁴⁴

Article 6 of the ICCPR was extensively addressed by the United Nations Human Rights Committee (the UN body whose interpretations of the ICCPR are deemed authoritative) in its General Comment in 1982. Although the ICCPR does not mandate the end of the death sentence, the Committee has stated that they

⁴² *Supra* 61.

⁴³ *Supra* 111.

⁴⁴ H.Q. Agarwal, "Human Rights", (ed. 11th), Central Law Publications, p.345, (2008).

would view any progress made toward ending the practise as "progress in the enjoyment of the right to life."⁴⁵ The Committee added that capital punishment should only be used as a "exceptional measure." It reemphasized key procedural protections, such as the requirement that the death penalty be applied in accordance with the law in effect at the time the crime was committed, the right to a fair hearing before an independent tribunal, the presumption of innocence, the right to minimum guarantees for the defence, and the right to review by a higher tribunal.⁴⁶

“The Committee also reviewed periodic reports of state-parties to the ICCPR, and has often referred to abolition of the death penalty in its observations on reports of retentionist States.⁴⁷ In other cases, the Committee has also reiterated the importance of following the safeguards listed in Article 6 and other provisions of the ICCPR, and provided a roadmap to abolition.”⁴⁸

⁴⁵ Human Rights Committee, “*Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*”, General Comment No 6 (1982), para 6, U.N. Doc. HRI/GEN/I/Rev. at 6 (1994).

⁴⁶ *Ibid.*

⁴⁷ UN Human Rights Committee, Report of Sierra Leone, CCPR/C/SLE/CO/1, (2014); UN Human Rights Committee, Russian Federation, CCPR/C/RUS/CO/6, (2009).

⁴⁸ UN Human Rights Committee, Japan, CCPR/C/JPN/CO/5, (2008); UN Human Rights Committee, United States of America, CCPR/C/USA/CO/3, (2006).