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# **Right to Life and Death Penalty: A Critical Analysis**

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**By**

**REV. FR. DR. JOHN FRIDAY MORDI**

*Department of Christian Religious Studies,  
College of Education,  
Agbor.*

## **Abstract**

*Life is a given, a precious gift from God who is believed to be the maker of all things. Every human society believes in the sacredness of human life since God alone is said to give it. The termination of human life through death penalties is a major concern to many who see life as a precious and holy gift from God. The different religions have varied understanding of life and so have different beliefs concerning death penalty. This paper submitted that life is sacrosanct and so should not be terminated by any human force for any reason whatsoever. It concluded that death penalty is a violation of the law of God that “Thou shall not kill”.*

The taking of human life has been strongly condemned by most world religions and philosophies over the centuries. International human right law has in turn sought to uphold this most sacrosanct of rights in a number of treaties. The life of an individual is clearly protected from being arbitrarily taken by the state. The right to life is not, however, as inviolable as it might seem at first sight. There are a number of situations where states may deprive individuals of life itself and to which international human right law does not prohibit the use of the death penalty as a punishment for crimes but does not encourage abolition and seek to limit its use. The use of violence in self defense lies at the base of other justification for the taking of human life. Killing is permitted in war times by many countries although the murder of civilians and prisoners of war are exceptions. Human rights law thus tries to respond to the myriad of ethical dilemmas raised by the right to life by establishing a range of prohibitions and exhortations.

In this work, some key works like right to life and death penalty were explained. It also examined death penalty in different religions of the world. It further took a

concise look at the advantages and disadvantages of death penalty, and then draws a conclusion after proffering some recommendations.

### **Human Rights**

The United Nations (1989), defined Human Right as “those rights which are inherent in our nature and without which we cannot live as humans. This portrays that human right derives from the nature of the human person. It is a claim which an individual has to be allowed to function as a person. For Reoch (1995) human rights “are the rights which every human being is entitled to enjoy and to have protection”.

The idea of human rights became clearer during the Second World War when Nazi Germany unleashed mayhem on her victims. After the war the Allied nations were determined to find solution to such atrocious actions to man. Hence the formation of United Nations Organization. In the preamble of its charter, the United States Declarations of Independence (1776) stated that all men are endowed with certain inalienable rights and among these are life, liberty and the pursuit of happiness”. Also the Universal Declaration of Human Right (1948) adopted by UN General Assembly declared in article 3 that “Everyone has right to life, liberty..”. In the rights to family (1980), the Catholic Church issued a charter in which it stated that right to life is directly implied by human dignity. The concept of right to life is central to debate on the issues of capital punishment, euthanasia, self defense, abortion and war. This brings us to the issue of death penalty or capital punishment.

### **Death Penalty**

Death penalty for Pazhayampalli (2004), is the execution of a criminal under a death sentence imposed by the competent public authority. It is a sentence of death upon a person by judicial process as a punishment for an offence. Pazhayampalli stated that the crimes that can result in a death penalty are known as capital offences. The term “capital” originates from the Latin word *capitalis* literally regarding the head. Hence a capital crime was originally punished by severing the head from the body.

### **The Historicity of Death Penalty**

The history of death penalty is not of modern invention but dates back to the ancient time. In the 18<sup>th</sup> century B.C. the “Code of King Hammurabi” of Babylon allowed the death penalty of 25 crimes, but murder was not included. The first recorded death sentence in history was in 16 century B.C. Egypt. A member of nobility was accused of magic and ordered to take his own life. Non nobility were usually killed with an axe. Legal executions came to America in 1776 when British soldiers hung Nathan Hale for spying during Revolutionary war.

In the medieval and early modern Europe, before the development of modern prison systems, the death penalty was also used as a generalized form of punishment. During the reign of Henry VIII as many as 72,000 people are estimated to have been executed. In 18<sup>th</sup> century Britain, there were 22 crimes that were punishable by death including crimes such as cutting down trees or stealing an animal.

The two most common forms in China in Tang period were strangulation and decapitation. In Tang China, when a person was sentenced to decapitation for rebellion or sedition, punishment was also imposed on their relatives, whether or not the relatives were guilty of participation in crime. The 20<sup>th</sup> century was one of the bloodiest of the human history. Massive killing occurred as the resolution of war between nation states. A large part of execution was summary execution of enemy combatant. Also modern military organization employed capital punishment as a means of maintaining military discipline. The soviet executed 158,000 soldiers for desertion during World War II. Moreover, various authoritarian states for example, those with fascist or communist governments employed the death penalty as a potent means of political oppression.

Death penalty has in the past been practiced by most societies. Currently, only 58 nations actively practice it, with 95 countries having also abolished it. In the European Union member states, Article 2 of the charter of fundamental rights of European Union prohibits the use of capital punishment. The UN General Assembly has adopted, in 2007 and 2008 non-binding resolutions calling for a global moratorium or executions with a view to eventual abolition. Although many nations have abolished death penalty over 60% of the world's population live in countries where executions take place.

### **Biblical Perspectives of Death Penalty**

The right of the state to inflict a death penalty seems incontestable. Pazhayampalli (2004), stated that the Old testament not only included capital punishment in its penal code but expressly prescribed it for certain crimes, specifically murder. In keeping with the divine command given to the patriarch, Noah after the flood, “for your own life blood I will surely require a reckoning... whoever sheds the blood of human, by a human shall that person blood be shed: for in his own image God made human kind” (Gen 9:5-6). The death penalty was also inflicted for many other crimes “whoever strikes a person mortally shall be put to death... whoever strikes a father or mother shall be put to death. Whoever kidnaps a person, whether that person has been sold or is still held in possession, shall be put to death. Whoever curses father or mother shall be put to death” (Ex 21: 12-17).

In the New Testament era, Christ seems to admit the right of public authority to put criminals to death. Pilate therefore said to him, “do you refuse to speak to me? Do

### *The Intuition*

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you know that I have power to release you and power to crucify you?" Jesus answered him: "you would have no power over me unless it had been given you from above" (Jn 19: 10-11). Then Jesus said to him (Peter), "put your sword back into its place, for all who take the sword will perish by the sword" (Mt 26:52).

St. Paul openly before Festus stated "if then I am a wrong doer, and have committed anything worthy of death, I do not refuse to die. (Acts 25:11). Concerning the representative of Civil authority, Paul says: "for it is God's servant for your good. But if you do what is wrong in vain! It is the servant of God to execute wrath on the wrong doer. (Rom. 13:14). Very clearly this constitutes an acknowledgment on the part of the inspired apostle that the state continued to have power of life and death in the administration of justice.

### **Abolitionism**

The death penalty was banned in China between 747 and 759. In Japan, Emperor Saga abolished the death penalty in 1818 under the influence of Shinto and it lasted until 1156. Therefore, capital punishment was not executed for 338 years in ancient Japan. In England a public statement of opposition was included in the twelve conclusion of the Lollard, written in 1395. Sir Thomas Mores' utopia, published in 1516, debated, the benefit of the death penalty in dialogue form, coming to no firm conclusion. More recent opposition to death penalty stemmed from the book of Italian Cesare beccaria *Dei Delittie Dlle pene* (on crimes and punishment) published in 1756. In this book, Beccaria aimed to demonstrate not only the injustice, but even the futility, from the point of view of social welfare, of torture and the death penalty. Influenced by the book, Grand Duke Leopold 2 of Hasbury, famous enlightened monarch and the future emperor of Austria, abolished death penalty in the then independent grand Duchy of Tuscany; the permanent abolition in modern times. On November 30, 1786, after having the de facto blocked capital executions, Leopold promulgated the reform of the penal code that abolished the death penalty and ordered the destruction of all instruments for capital execution in the land. The Roman republic banned capital punishment in 1849. Venezuela followed suit and abolished the death penalty in 1863 and San Marino did so in 1965. Portugal after legislative proposals in 1852 and 1863, the death penalty was abolished in 1867. In the United Kingdom, it was abolished for murder and for all peace time offences in 1998. The abolition occurred in Canada in 1976, in France in 1981 and Australia in 1973. In the United States, Michigan was the first to ban the death penalty on May 18, 1846. The death penalty was declared unconstitutional between 1972 and 1976 in USA. The latest country to abolish the death penalty for all crimes was Gabon, in February 2010. Human right activities oppose the death penalty, calling it cruel, inhuman and degrading punishment.

## **The Views of Religious Sects**

The world's religions have mixed opinions regarding death penalty, depending on the sect, individual believer, and the time period.

### **Buddhism**

There is disagreement among Buddhists as to whether or not Buddhism forbids the death penalty. The first of the five precepts (panca-sila) is to abstain from the destruction of life. The Dhammapada stated: "every one fears punishment, every one fears death, just as you do. Therefore you don't kill or cause to be killed" (chap 10). The final chapter of the Dhammapada stated "I call a Brahmin who put aside weapons and renounce violence towards all creatures. He neither kills nor helps others to kill (chap 26). These sentences are interpretation of scripture. There is dispute on this matter, historically; most states where the official religion is Buddhism have imposed capital punishment for some offenses. One notable exception is the abolition of the death penalty by the Emperor Saga of Japan in 818. This lasted until 1165, although in private minor executions continued to be practiced as a form of retaliation.

### **Judaism**

The official teachings of Judaism approve the death penalty in principle but the standard of proof for application of death penalty is extremely stringent. In practice, it has been abolished by various Talmudic decisions, making the situations effectively impossible and hypothetical. A capital case could not be tried by a normal Beit Din of three judges; it can only be adjudicated by a Sanhedrin of a minimum of 23 judges. Talmud states that the Sanhedrin effectively abolished capital punishment, making it a hypothetical upper limit on the severity of punishment, fitting in finality for God alone to use, not fallible people (419). The 12<sup>th</sup> century Jewish legal scholar, Maimonides (1967) said that "it is better and more satisfactory to acquire a thousand guilty persons than to put a single innocent to death" (p6). Maimonides argued that executing a defendant on anything less than absolute certainty would lead to a slippery slope of decreasing burdens of proof, until we would be convicting merely according to the judges caprice.

### **Islam**

Some forms of Islamic law as in Saudi Arabia may require capital punishment, but there is great variation within Islamic nations as to actual capital punishment. Apostasy in Islam and stoning to death in Islam are controversial topics. Furthermore, as expressed in the Qur'an, capital punishment is condoned. Instead, murder is treated as a civil crime and is covered by the law of retaliation, where the relatives of the victim decide whether the offender is punished with death by the authorities or made to pay "diyah" as compensation. Muslims frequently refer to the story of Cain and Abel when referring to killing someone. The Qur'an says "if anyone kills any person unless it be

punishment for murder or for spreading mischief in the land it would be as if he killed all people. And if anyone saves a life, it would be as if he saved the life of all people". (Qur'an 5:32). This verse, maintains that the punishment for murder is the death penalty. Although many hard line and extremist Muslim societies have adopted the capital punishment for other crimes other than the crime of murder, this is a violation of the Qur'anic law and is rejected by most orthodox commentators and scholars.

### **Christianity**

Views on the death penalty in Christianity run a spectrum of opinions, from complete condemnation of the punishment, seeing it as form of revenge and as contrary to Christ's message of forgiveness, support based primarily on Old Testament law. Among the teachings of Christ in the Gospels of Luke and Mathew, the message to His followers that one should "Turn the other cheek" and His example in the story periscope *Adulterae*, in which Jesus intervenes in the stoning of an adulteress are generally accepted as His condemnation of physical retaliation. More militant Christians consider Roman 13:3-4 to support the death penalty. Many Christians have believed that Jesus' doctrine of peace speaks only to personal ethics and is distinct from civil government's duty to punish crime.

### **Roman Catholic Church**

St. Thomas Aquinas accepts the death penalty as a deterrent and prevention method but not as a means of vengeance. The Roman Catechism states this teaching thus: "another kind of lawful slaying belongs to the civil authorities, to whom is entrusted power of life and death, by the legal and judicious exercise of which they punish the guilty and protect the innocent. The just use of this power, is far from involving the crime of murder. The end of the commandment is the preservation and security of human life. Now the punishments inflicted by the civil authority, which is the legitimate avenger of crime, naturally tend to this end since they give security to life by repressing outrage and violence. Hence these words of David; in the morning I put to death all the wicked of the land, that I might cut off all the workers of iniquity from the city of the Lord" (p.227).

In *Evangelium Vitae*, Pope John Paul II (1995), suggested that capital punishment should be avoided unless it is the only way to defend society from the offender in question, opining that punishment ought not go to the extreme of executing the offender except in cases of absolute necessity. Today, however, as a result of steady improvements in organization of the penal system, such cases are very rare, if not practically nonexistent. The Catechism of the Catholic Church (CCC) restated also the view of the Pope clearly (CCC 1994), that the assessment of the contemporary situation advanced by Pope John Paul II is not binding on all faithful was confirmed by Ratzinger (2004), when he wrote: "If a catholic were to be at odds with the Holy father on the

application of capital punishment or on the decision to wage war, he would not for that reason be considered unworthy to present himself to receive Holy Communion. While the church exhorts civil authorities to seek peace, not war, and to exercise discretion and mercy in imposing punishment on criminals, it may still be permissible to take up arms to repel an aggressor or to have recourse to capital punishment". There may be a legitimate diversity of opinion even among Catholics about waging war and applying the death penalty, but not however with regard to abortion and euthanasia.

Catholics teaching holds that the infliction of capital punishment is not contrary to the teaching of the Church, and the power of the state to visit upon culprits death penalty. Death penalty derives much authority from revelation and from the writings of theologians.

### **Southern Baptist**

They support the fair and equitable use of capital punishment for those guilty of murder or treasonable acts.

### **Anglican and Episcopalian Churches**

The Lambert Conference of Anglican Bishops (1988), condemned the death penalty. It reads "This conference...urges the church to speak out against ....all government who practice capital punishment, and encourages them to find alternative ways of sentencing offenders so that the divine dignity of every human being is respected and justice is pursued" (Prag 3).

### **The Evangelical Lutheran Church in America (ELCA)**

In 1991 social policy statement, ELCA officially took a stand to oppose the death penalty. It states that revenge is a primary motivation, for healing can only take place through repentance and forgiveness.

### **The Church of Jesus Christ of Latter Day Saints**

The Church of Jesus Christ of latter-day saints (Mormons) neither promotes nor opposes capital punishment, although the church founder, Joseph Smith, Jr. supported it. However, today the church officially states it is a matter to be decided by the prescribed process of civil law.

### **Esoteric Christianity**

The Rosicrucian fellowship and many other Christian esoteric schools condemn capital punishment in all circumstances.

### **Death Penalty in Nigeria**

The death penalty is provided for in section 33(1) of Nigeria constitution and states that "every person has a right to life, and no one shall be deprived intentionally of

his life save in execution of the sentence of a Court in respect of criminal offence of which one has been found guilty in Nigeria”. Five offences are punishable by death in Nigeria. These include murder, treason, treachery, directing and controlling or presiding at an unlawful trial by ordeal from which death results, and conviction for armed robbery. The introduction of the Sharia criminal law in some states in Northern Nigeria widened offences punishable by death. For instance, under Sharia law, death penalty can be applied for sexual crimes. The Constitution of the Federal Republic of Nigeria is the Supreme law of the land and any law inconsistent with its provisions is therefore inconsistent. The constitutionality of death sentence is not in doubt. In fact, the Supreme Court of Nigeria upheld the constitutionality of the death penalty, for example, in the case of *Onuora Kalu vs. the State*. In this case the appellant was charged with the offence of murder. The trial judge found him guilty. The appellant was accordingly convicted and sentenced to death.

There have been worldwide appeals and campaigns to abolish death penalty. Indeed, various international and regional instruments against death penalty are on increase each year. Since 1997, United Nations Commission on Human right has passed a resolution calling on countries that have not abolished the death penalty to establish a moratorium on executions.

Although the death penalty still remains constitutionally valid in Nigeria, there has been a national debate on it. While many argue for its retention, others argue for its abolition.

### **Arguments for and Against Death Penalty**

The right to life is a universal right, however, various jurisdictions recognize permissible limitation to this universal right. On this permissiveness let us look into the pros and cons of death penalty.

### **Arguments against Death Penalty**

1. Financial cost to tax payers of death penalty are several times that of keeping someone in prison for life. Most people do not realize that carrying out one death sentence costs 2-5 times more than keeping that same criminal in prison for the rest of his life. This has to do with the endless appeals, additional required procedures, and legal wrangling that drag the process out. It is not unusual for a prisoner to be on death row for 15-20 years. Judges, Attorneys, Court reporters, Clerks and court facilities all require a substantial investment by the tax payers. Does Nigeria have such resources to waste?
2. It is barbaric and anachronistic. Whether it's a firing squad, electric chair, gas chamber, lethal injection, or hanging, it is barbaric to allow state-sanctioned murder before a crowd of people.



3. The society has to move away from the “eye for eye” revenge mentality if civilization is to advance. The “eye for eye” mentality will never solve anything. A revenge philosophy inevitably leads to an endless cycle of violence. This is why the Israeli- Palestinian conflict has been going on for 60+ years.
4. It sends a wrong message: because the states are actually using murder to punish someone who committed murder. This does not make sense.
5. Life in prison is a better punishment and a more effective deterrent than death penalty. By killing an offender we do not correct him, but instead become as guilty as he is. If death penalty is allowed, the state that administers it must also face death penalty as a consequence for killing.
6. The possibility exists that innocent men and women may be put to death. There are several documented cases where DNA testing showed that innocent people were put to death by the government. We have an imperfect justice system where poor defendants are given minimal legal attention by often less qualified individuals.
7. The prisoner’s family must suffer from seeing their loved one put to death by the state, and as such would never forgive the state for that act, even though the prisoner has committed a serious crime.
8. Death penalty is useless because it does not correct the offender who is being put to death. Putting an offender behind bars is not only punitive but also corrective. By death sentence, the corrective aspect of the issue may be destroyed.

### **Arguments for Death Penalty**

1. The death penalty gives closure to the victim’s families who have suffered so much. Some family members of crime victims may take years or decades to recover from the shock and loss of a loved one. Some may never recover. The death penalty of a criminal member of a family brings to an end a horrible chapter in the lives of these family members.
2. It creates another form of crime deterrent. Crime would run rampant as never before if there was no way to deter people from committing the act. Prison time is an effective deterrent, but for some offenses more is needed.
3. Justice is better served. The most fundamental principle of justice is that the punishment should fit the crime. When someone plans and brutally murders another person, does it not make sense that the punishment for the perpetrator also be death?
4. Imprisoning the criminal and letting him out of prison would give him another chance to kill. But if he is killed, the chance is eliminated.
5. It reduces the problem of over population in the prison system. When you implement the death penalty as an option, it means that offenders must be killed. Thus it reduces the problem of overcrowded prison system.

## **Conclusion**

From the teaching of the Bible, the entire Christian tradition, and from all the world organizations so far examined, we must conclude that the state may in principle inflict death penalty for serious crimes. However, arguing from the dignity of the human person and the value of life, no one individual, government or institution has any absolute right to terminate life through any means whatsoever.

No matter the amount of logic, debate or controversy, the human life remains sacred and no one has right over it, state or individual. The human life is onus on God who gives life to man and takes it when he wills.

## **Recommendation**

1. Life is sacrosanct. No institution or human being has the right to take life either as punishment for crime or otherwise. Therefore, death penalty should be abolished wherever it is practiced.
2. A better option for death penalty should be life imprisonment as this would serve as deterrent to both the offender and others.
3. Recommending death penalty for the crime of murder or any other capital offence does not solve the problem of crime. Instead, it doubles it. For instance, by killing a criminal the state also commits the same crime which ipso facto makes the state liable to death and this is impossible. Therefore we do not punish a crime by committing the same crime.
4. Life should be respected. To live is a dignity given by God to all human beings. By imposing death penalty, the state or individual violates the law of God which says “thou shall not kill”, in this way, disregarding the value and dignity of life.

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