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Capital Punishment and the Rule of Law: A Comparative Study of UK Abolition and Bangladesh's Retentionist Framework

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ABSTRACT

This article examines the jurisprudence of capital punishment by comparing the abolitionist model of the United Kingdom with the retentionist model of Bangladesh. Although the two jurisdictions share a common law tradition, they have adopted opposing stances on the death penalty. This study analyses that divergence through three lenses: judicial fallibility, constitutional governance, and the rule of law. It traces the evolution of the death penalty within the common law and considers the philosophical underpinnings of the retributive, utilitarian, and reformatory theories of punishment that remain relevant to contemporary debate. Particular attention is paid to the risk of wrongful conviction and the consequences of irreversible punishment within inherently fallible criminal justice systems. The article also examines the significance of judicial discretion, individualised sentencing, human dignity, and constitutional morality in death penalty case law. The United Kingdom, having confronted serious concerns about human rights and miscarriages of justice, has phased out capital punishment, whereas Bangladesh has retained the death penalty for the most serious offences while tightening its procedures and subjecting it to closer judicial scrutiny. The central question, this article suggests, is not merely whether capital punishment should be retained or abolished, but whether the doctrine of the rule of law in a constitutional democracy can accommodate an irrevocable punishment within a system that is inherently prone to human error. It concludes that the problem of judicial fallibility has long been central to the death penalty debate and continues to shape the development of criminal justice systems around the world.

Keywords: Capital Punishment; Death Penalty Jurisprudence; Judicial Fallibility; Rule of Law; United Kingdom; Bangladesh; Comparative Constitutional Law; Human Rights; Wrongful Convictions; Sentencing Discretion; Constitutional Morality; Criminal Justice Reform; Human Dignity; Abolitionism; Retentionism.

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I. INTRODUCTION

No issue in criminal justice attracts as much legal, moral, and political controversy as capital punishment. The debate reaches beyond punishment itself into questions of constitutionalism, human dignity, judicial accountability, and the rule of law. Many states have replaced the death penalty with life imprisonment, yet others retain it as a lawful sanction for the most serious crimes. The United Kingdom and Bangladesh present a striking contrast: they share a common legal heritage, but they have followed sharply different paths on the death penalty.

The United Kingdom has abolished capital punishment and has embedded within its law human rights norms that bar its reintroduction. Bangladesh, by contrast, retains the death penalty for a range of offences as an instrument of criminal justice and public safety. This divergence raises a compelling legal question: can an irreversible penalty be lawful within a criminal justice system that is itself subject to human and institutional imperfection?

Focusing on the death penalty, this study explores the development of capital punishment jurisprudence in the United Kingdom and the People's Republic of Bangladesh through the framework of judicial fallibility and the rule of law. It contends that, although the two jurisdictions have reached different legal outcomes, each confronts the same dilemma: how to align criminal punishment with constitutional purpose and standards of fairness while maintaining public confidence in the administration of justice.

II. HISTORICAL DEVELOPMENT OF CAPITAL PUNISHMENT

The United Kingdom's path from retention to abolition was gradual and heavily shaped by ideology. In the eighteenth century, the "Bloody Code" rendered a large number of offences punishable by death.¹ Over time, however, debate grew in both the legislature and the courts about the efficacy and ethics of the death penalty. Wrongful convictions, proportionality, and human rights became central concerns of the twentieth century.

The decisive step was the Murder (Abolition of Death Penalty) Act 1965, which suspended and ultimately abolished the death penalty for murder.² Capital punishment was subsequently

¹ On the eighteenth-century "Bloody Code," under which the number of capital offences in England and Wales grew from roughly 50 in 1688 to over 200 by the early nineteenth century, see LEON RADZINOWICZ, *A History of English Criminal Law and Its Administration from 1750*, Vol. 1 (Stevens & Sons 1948) 3-4.

² Murder (Abolition of Death Penalty) Act 1965, c. 71 (UK). The Act suspended the death penalty for murder in Great Britain and substituted a mandatory sentence of life imprisonment; abolition was made permanent by affirmative resolutions of both Houses of Parliament in December 1969.

removed from United Kingdom law altogether in consequence of the country's obligations under the European Convention on Human Rights and its protocols.³

British colonial rule shaped the criminal justice system that Bangladesh inherited. Capital punishment remained in force for certain serious crimes under the Penal Code of 1860, which continues to exert considerable influence.⁴ After independence, Bangladesh retained the practice and, in some instances, extended the scope of the death penalty through special legislation directed at terrorism, narcotics, and other grave offences.

Unlike the United Kingdom, where legal and political discussion moved towards abolition, Bangladesh has seen a stronger case made for retention. Fear of violent crime, terrorism, and especially the most serious offences has often made capital punishment appear to be an effective deterrent and a symbol of justice for the victim.

III. PHILOSOPHICAL FOUNDATIONS OF THE DEBATE

The debate over capital punishment can be understood only by examining its philosophical foundations.

The retributive theory of punishment, associated with Immanuel Kant among others, holds that punishment is justified because it is deserved by the offender.⁵ On this view, some crimes, including intentional murder, are too grave to be overlooked and warrant the death sentence. Proportionality is central for retributivists, who argue that justice requires the punishment to be commensurate with the offence.

Utilitarianism, the approach associated with Jeremy Bentham, assesses punishment by its social consequences.⁶ Proponents of the death penalty argue that it deters serious offences and safeguards society against dangerous criminals. Critics, however, question whether the empirical evidence conclusively establishes that it is a more effective deterrent than long-term imprisonment.

A reformatory approach focuses instead on the possibility of rehabilitation. It regards offenders as capable of change and holds that reintegration, which the criminal justice system should

³ See European Convention on Human Rights, Protocol No. 6 (concerning abolition of the death penalty, 1983) and Protocol No. 13 (concerning abolition of the death penalty in all circumstances, 2002); Human Rights Act 1998, c. 42 (UK). The United Kingdom ratified Protocol No. 13 on 10 October 2003.

⁴ Penal Code 1860 (Act No. XLV of 1860) (Bangladesh).

⁵ See IMMANUEL KANT, *The Metaphysics of Morals* (MARY GREGOR tr, Cambridge University Press 1996) 105-107.

⁶ See JEREMY BENTHAM, *An Introduction to the Principles of Morals and Legislation* (J.H. BURNS and H.L.A. HART eds, Clarendon Press 1996).

promote, is preferable to permanent exclusion. This outlook has profoundly influenced the modern abolitionist movement.

Underlying these competing perspectives is the larger question of human dignity. If every person possesses a dignity inherent in his or her life, does the State have a moral right to take it away? This question has strongly shaped modern human rights doctrine and remains at the heart of legal reform worldwide.

IV. JUDICIAL FALLIBILITY AND THE RISK OF WRONGFUL CONVICTIONS

The strongest case against capital punishment rests on the possibility of judicial error. No criminal justice system can be infallible. Wrongful convictions arise from a combination of investigative errors, false confessions, unreliable witness evidence, prosecutorial misconduct, inadequate legal representation, and judicial misappreciation of evidence.

When such errors come to light, ordinary criminal sanctions can be corrected. Even where a person has been convicted in error, the injustice can be remedied, at least in part, through acquittal, compensation, or release. An execution, however, cannot be reversed.

The history of criminal justice across several jurisdictions shows that wrongful convictions are not merely abstract concerns. Advances in forensic science, such as DNA testing, have brought many wrongful convictions to light. These developments have reinforced the abolitionist argument by exposing the danger of a punishment that cannot be undone.

This concern was a major factor in the abolition process in the United Kingdom. Public confidence in capital punishment declined as awareness grew of the risk of sentencing innocent people to death. It came to be recognised that, however great the efforts of judicial institutions, they remained subject to error, and this recognition altered the moral and legal equation.

The position is comparable in Bangladesh. As in many developing jurisdictions, its criminal justice system faces institutional challenges, including limited investigative capacity, case backlogs, and resource constraints. The risk of error cannot be wholly eliminated by appellate review or death reference proceedings. Judicial fallibility therefore remains a significant concern in contemporary Bangladeshi death penalty law.

V. THE RULE OF LAW AND CONSTITUTIONAL GOVERNANCE

Under the rule of law, state power is exercised in accordance with established rules rather than at the discretion of those in authority. The principle demands equality before the law and respect for fundamental rights, fairness, and accountability.

In abolitionist jurisdictions, the death penalty is regarded as inconsistent with the rule of law because it is irreversible and human error cannot be eliminated. The concern is not merely how severe the punishment for offenders should be, but how confident the State can be in administering such a punishment without inflicting irreparable injustice.

The United Kingdom gradually came to treat human dignity and the right to life as integral to constitutional governance. Although it grappled with the most egregious offences, abolition reflected a broader concern to restrain state power and to safeguard fundamental rights even in such cases.

The position in Bangladesh is more complex. The Constitution guarantees the right to life and personal liberty while permitting the deprivation of life in accordance with procedure established by law.⁷ Capital punishment is therefore constitutionally permissible, provided it is applied in accordance with due process and judicial determination.

This distinction is important. The constitutional question in Bangladesh is whether the death sentence is applied consistently with constitutional safeguards, principles of fairness, and the evolving standard of justice.

VI. SENTENCING DISCRETION AND THE INDIVIDUALISATION OF JUSTICE

Judicial discretion is a central issue in contemporary death penalty practice. Mandatory death sentences have attracted growing criticism because they leave no room to consider the circumstances of the individual offender or of the offence itself.

Under the principle of individualised sentencing, criminal responsibility exists along a continuum. The appropriateness of punishment may be affected by a number of factors, including age, mental state, degree of involvement, intention in committing the crime, context, and potential for rehabilitation.

The judiciary in Bangladesh has begun to emphasise discretion in capital cases. In *Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh*, the Appellate Division took a significant step by holding provisions imposing mandatory death sentences to be unconstitutional and by underscoring the importance of assessing each death sentence individually.⁸

⁷ Constitution of the People's Republic of Bangladesh, art. 32 ("No person shall be deprived of life or personal liberty save in accordance with law.").

⁸ *Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh*, 1 SCOB [2015] AD 1 (Appellate Division, Supreme Court of Bangladesh), affirming the declaration that provisions imposing a mandatory death penalty, including section 303 of the Penal Code 1860, are unconstitutional.

This development reflects a wider international trend. In jurisdictions that retain the death penalty, judges have grown more reluctant to impose it automatically. Instead, they seek to ensure that sentencing is proportionate and tailored to the specific circumstances of each case.

This approach strengthens the rule of law, reduces arbitrariness, and makes judicial decisions more predictable.

VII. PUBLIC OPINION AND CONSTITUTIONAL MORALITY

Public perceptions of justice can be a source of support for capital punishment. In many societies, particularly following highly publicised crimes, demands for severe punishment gain political traction.

In constitutional democracies, however, there is often a tension between public opinion and constitutional morality. Constitutional governance is concerned not only with giving effect to the will of the majority but also with guaranteeing fundamental rights and upholding equity-based legal principles.

The United Kingdom's experience of abolition illustrates this tension. Although capital punishment remained a popular cause in public discourse in some respects, political leaders and legal actors ultimately chose abolition. That choice rested on the principle that fundamental rights should not be determined by popular opinion and sentiment alone.

In a nation such as Bangladesh, the public continues to show strong acceptance of capital punishment for crimes such as murder, sexual violence, and offences against children. Policymakers therefore face the challenge of reconciling their constitutional obligations of fairness, due process, and human dignity with their democratic responsibilities.

Public support alone cannot resolve the legal and moral questions surrounding capital punishment. Rather, the legitimacy of criminal sanctions rests on their alignment with constitutional values and the broader ends of justice.

VIII. COMPARATIVE REFLECTIONS

The divergence between the United Kingdom and Bangladesh should not be understood as a contest between progress and tradition. It reflects, instead, differing views on the relationship between punishment, public security, and constitutional values.

The United Kingdom concluded that the disadvantages of capital punishment, notably judicial fallibility and human rights concerns, outweighed its benefits. Bangladesh continues to regard capital punishment as a legitimate sanction for the most serious crimes while strengthening the procedural protections that surround it.

Despite these differences, both jurisdictions are concerned with fairness, proportionality, and the risk of wrongful conviction. The significance of these concerns is that they bear not only on whether capital punishment should exist, or whether it is just, but on how criminal justice systems can retain their legitimacy in the face of inescapable human limitations.

IX. CONCLUSION

The question of capital punishment brings into focus deep issues of law, morality, and state authority. The comparison with the United Kingdom shows that concerns about human dignity, judicial error, and constitutional governance can lead to abolition. While retaining capital punishment, Bangladesh increasingly recognises the importance of procedural safeguards, individualised sentencing, and judicial scrutiny.

Both jurisdictions share a common experience: no criminal justice system is perfect, and the risk of judicial error is ever-present. The justness of the death penalty therefore turns not only on deterrence or retribution but also on the capacity of legal systems to reconcile expectations of fairness and the rule of law with an irreversible punishment.

The question at the heart of every constitutional democracy is not simply whether offenders should be sentenced to death. It is whether a state committed to justice, due process, and the rule of law can place confidence in an irreversible penalty within a system that remains fallible. That question remains unresolved in the field of death penalty law, and it will continue to shape the future of that law.
