Death Penalty, Harm and Victimisation

The death penalty is literally judicial punishment by death. It is carried out in many parts of the world, particularly those adhering to Koranic law (that is, those countries in which the public and some private aspects of life are regulated by Islam). Over 60% of the world's population live in countries where executions still take place - namely China, India, Indonesia and the United States (US) - four of the world's most populous countries (United Nations (UN), 2014). It has been practiced by most societies at some point in their history, often accompanied by torture and often carried out in public. Methods range from beheading, stoning and hanging to use of an 'electric chair' or drugs. Despite its long existence, the recent trend in western societies in particular is towards abolition. The continued use of the death penalty in some parts of the US is the exception, which Garland (2010) has called 'a peculiar institution', an ‘anomaly’ (p 11).

Defining the death penalty as a human rights issue is something resisted by retentionist countries, but is useful for considering the harm related to it. As a matter of human rights, it sits in an uncomfortable position (O'Byrne, 2003). It is permitted by international law and therefore in international law does not by itself necessarily constitute cruel, inhuman or unusual punishment or torture. However, it may become an arbitrary violation of the right to life if imposed in circumstances that breach other rights - including the right to a fair trial and the prohibition on torture. It is particularly important that those facing the death penalty should be afforded special protection and guarantees to ensure a fair trial above and beyond those afforded in cases not carrying the death penalty. The reality is that the prevailing law and practice in many retentionist countries across the Caribbean, Africa and Asia do not provide the level of protection required in capital cases (UN, 2014). For example, in many of these cases, individuals who are sentenced to death have subsequently been found to be suffering from mental illness and/or an intellectual disability that affected the safety and lawfulness of their convictions and death sentences. Failure to follow agreed procedural safeguards in relation to trial in capital cases extends also to the right to appeal. However, in some countries such as North and South Korea, Japan, and parts of Pakistan for example, there is no automatic right to appeal and the sentence is carried out swiftly (UN, 2014).

Conversely, the expensive and harm inducing delay between trial and execution in the US to allow for appeals leads to lengthy stays on 'death row' and to a situation whereby more people on 'death row' die from natural causes than they do execution (Garland, 2010). However, this delay between sentence and execution has allowed a series of victims of wrongful convictions to come to light, especially when DNA evidence has been found subsequent to the trial. Thus, the recent concern in the US about the death penalty is mainly concerned with the process by which it is applied and with the limits of what is constitutional under the Eighth Amendment's ban on ‘cruel and unusual punishment’, rather than the morality of the sentence. In general, the death penalty is imposed upon the poorest, most powerless, most marginalised people in society and in the US can be considered a vestige of slavery and racial oppression (Lynch, 2013). Philips (2009) argues that because of suspect’s poverty, they are often assigned lawyers who lack the skills and resources to represent them capably. Whilst the biased imposition of the death penalty in the US remains, there is a general (western) trend towards abolition. In 2010 the UN General Assembly's made its most recent call for a global moratorium on executions. Despite such factors Unnever (2010) argues that global support for the death penalty remains high, and remains particularly elevated in the US.

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**Readings**

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