

AN OVERVIEW OF DEATH PENALTY POLICY IN BANGLADESH: A CALL FOR REFORM IN THE CONTEXT OF INTERNATIONAL PROSCRIPTIONS

MOHAMMAD SAIFUL ISLAM

International Islamic University Chittagong, Chattogram, Bangladesh

Email: lawsaiful@iiuc.ac.bd

Abstract - Punishment seems a key instrument for preventing a certain wrongdoing or illegal action. The death sentence has a long history of serving as a dignified first step, as well as an effective deterrent and crime-prevention measure. The modern criminal justice system seeks to reform the offender rather than exacting harsh punishment. Along with the claim that the death penalty violates an individual's right to life, there is a protracted discussion about the actual efficacy of the death sentence in preventing and deterring crime. A large number of non-fatal and economic crimes, as well as many other offences, have Bangladesh as the retentionist nation. The study makes an effort to investigate Bangladesh's policy toward the death sentence in contemporary times, when there is a global trend to curtail its use with a view to its eventual abolition. The scholarship has acknowledged that the Constitution and other ordinary laws both have the mandatory death penalty. The study demonstrates that the State's policymakers heavily rely on the death penalty to reduce crime, even occasionally new offences that convey the death penalty have been added to the law since the country became a signatory to the International Covenant on Civil and Political Rights (ICCPR). The study's final goal is to find ways to lessen the death penalty; therefore, it displays numerous models that could work as viable approaches for policymakers to consider.

Keywords: Death Penalty; Criminal Justice; Policy Reform; Bangladesh

1. INTRODUCTION

Punishment is a crucial tool to prevent a certain behavior or conduct that is considered inappropriate and illegal under the law. Punishment refers to the imposition of suffering and sanctions on the offender for violating the legal and legitimately mandated regulations. Punishment is "the legal process whereby violators of criminal law are condemned and sanctioned in accordance with specified legal categories and procedures" (Garland, 1993). The goal of the punishment is to offer the offender corrective measures so that, in the future, he might live a pure life and be praised for his good deeds and contributions to society. Punishment seeks to change the offender, stop them from committing other crimes, and discourage others from adopting criminal attitudes to protect society. The implementation of punishment may involve monetary fines, incarceration, exile, flogging, forfeitures, the death sentence, and the suspension of certain privileges etc. (Kader & Hussain, 2010: 237-238; Demleitner, 2014; Husak, 2017). The highest punishment in the administration of criminal justice is the death sentence, sometimes known as "capital punishment." Historically, it considers an effective means of deterrent and preventive method of a crime. Although, the efficiency of the death sentence in deterring crime is hotly contested. Additionally, constant discussion is taking place concerning to human rights violations, particularly the disrespect of the right to life, which has been internationally acknowledged as the most crucial human right.¹

The eradicating of the death penalty is now regarded as a symbol of a civilized nation, and people presume that nations that do not practice the death sentence are advanced and civilized. Another reason against the death sentence is that the deliberate killing of the perpetrator serves more as an act of retaliation than it does as a means of crime control. Implementation of the death penalty has a substantial chance of degrading a person's worth, potential, merit, and intelligence. State authorities may occasionally use the death sentence arbitrarily or unconstitutionally to oppress political rival leaders and followers. The death sentence, the worst penalty allowed by law, is supported, imposed, and continues executions in Bangladesh at an upper rate (Hoyle & Lehrfreund, 2020: 142). From case

¹ Article 6 of the International Covenant on Civil and Political Rights (ICCPR) 1966.

initiation to sentencing, Bangladesh's criminal justice system is flawed for numerous reasons, including a lack of independence and impartiality.

In order to conclude a pre-trial investigation, the police frequently coerce the accused into giving a confessional statement through distress in remand. Based on coerced confession, the trial court routinely imposes the utmost sentence on the accused (Odhikar, 2022). From 1976 to 2017, a total of 448 individuals were executed in Bangladesh (Hoyle & Lehrfreund, 2020: 142). In the year 2017, a total of six executions were recorded (Amnesty, 2018). During the period spanning from January 2018 to December 2022, Bangladesh witnessed the execution of a minimum of 13 individuals, while trial courts imposed a total of 912 death sentences (Amnesty, 2023b). The international community has consistently worked to eliminate the death penalty or at the very least maintain a moratorium on its execution in the "retentionist" nation.

2. Objectives and Method of the research

The study has established the subsequent aims and objectives:

- i. The present study aims to investigate the prevailing policy of Bangladesh regarding the death sentence, specifically focusing on the legal and practical aspects. This will be achieved by examining the range of offences that are subject to capital punishment inside the country.
- ii. In order to present a compelling solution for mitigating the prevalence of death sentences, with the ultimate objective of abolishing capital punishment, a proposal is put forth.
- iii. In order to facilitate substantial dialogue among policymakers, lawmakers, civic organizations, and academics with the aim of reaching a consensus on the elimination of the death sentence.

The study mostly used a qualitative approach, using the analytical technique. The research has advanced by conducting an examination of reliable primary and secondary legal sources. The primary legal sources contain the Constitution, criminal and procedural laws, legislation, case law, court judgments, and other legal regulations pertaining to the field of inquiry. The information pertaining to the imposition and execution of the death sentence in Bangladesh has been compiled from a report issued by national and international organization. In addition, secondary sources include a range of scholarly materials such as books, reputable journal papers, informative web publications, media reports, newspaper articles, and internet pamphlets.

3. Overview of Bangladesh's Policy Towards the Death Penalty

3.1 Nature of offences punishable by the death penalty:

Bangladesh is a nation that upholds the death sentence for a multitude of offences both in its legal framework and practical implementation. The offences that qualify for the imposition of death sentence have not been consolidated within a single statutory framework. However, these provisions can be identified in numerous legislative enactments aimed at regulating and adjudicating various criminal acts. There exist a total of 64 offences that are subject to the death penalty, as stipulated by several statutes. Among these offences, 51 pertain to the actions of ordinary individuals,² while the remaining 13 are specifically associated with the conduct of military and paramilitary forces.³

The examination of legislation pertaining to the death penalty reveals that the types of offences that warrant this punishment encompass a range of categories. These include but are not limited to acts of homicide, violent crimes, economic offences, offences against the State, espionage, illegal possession of firearms, war crimes, violations related to food safety and consumer rights, counterfeiting of currency and government stamps, offences against flight safety, incidents of acid violence, acts of terrorism, human trafficking, drug trafficking, acts of constitutional sedition, and offences committed within defense and paramilitary forces. The applications of the death sentence

² See Table 1 for death penalty offences connected with the ordinary people.

³ See Table 2 for the offences punishable by the death penalty under the defense and paramilitary forces laws.



and the number of executions in Bangladesh from 2010 to 2022 are examined in Table 3 and Figures 1 and 2.

Table 1: Offences punishable by death for ordinary people

SL.	Name of the Acts	Number of Offence(s)	Section(s)	Offences
1	The Penal Code 1860	10(Ten)	Sec. 121	“Waging or attempting to wage war, or abetting waging of war against Bangladesh”
			Sec. 132	“Abetment of mutiny in the Army, Navy or Air Force of Bangladesh”
			Sec. 194	“Giving or fabricating false evidence with the intention that make conviction and execution of an innocent person”
			Sec. 302	Murder
			Sec. 303	“Murder by life-convict”
			Sec. 305	“Abetment of suicide of child, insane or intoxicated person”
			Sec. 307	“Attempt to murder by a life convicts, if hurt is caused”
			Sec. 326A	“Voluntarily grievous hurt by corrosive substance”
			Sec. 364A	“Kidnapping or abducting a person under the age of ten”
			Sec. 396	Dacoity with murder
2	The Arms Act 1878	1(One)	Sec. 20A	Unauthorized use of a firearm with the intention to the commission of murder.
3	The Explosive Substances Act 1908	1(One)	Sec. 3	“Unlawfully or maliciously causing explosion likely to endanger life, person or property”
4	The Official Secrets Act 1923	2(Two)	Sec. 3(3)	Espionage activities
			Sec. 5(3)	Wrongful communication of

				information
5	The Enemy Agents Ordinance 1943	1(One)	Sec. 3	Aiding the enemy
6	The Constitution of the Bangladesh 1972	1(one)	Article 7A	Constitutional sedition
7	International Crimes (Tribunals) Act 1973	8(eight)	Sec. 3(2)(a)	Crimes against Humanity and 20
			Sec. 3(2)(b)	Crimes against Peace
			Sec. 3(2)(c)	Genocide
			Sec. 3(2)(d)	War Crimes
			Sec. 3(2)(e)	violation of humanitarian rules
			Sec. 3(2)(f)	“crimes under international law”
			Sec. 3(2)(g)	“attempt or conspiracy to commit war crimes”
			Sec. 3(2)(h)	“complicity in or failure to prevent commission of any such crimes”
8	The Special Powers Act 1974	5(Five)	Sec. 15	Sabotage
			Sec. 25	“Hoarding or dealing in the black-market”
			Sec. 25A	“Counterfeiting currency-notes and Government stamps”
			Sec. 25B	Smuggling
			Sec. 25C	“Adulteration of, or sale of adulterated food, drink, drugs or cosmetics”
9	The Aviation Security Anti-Crime Prevention Act 1997	3(Three)	Sec. 11(3)	Aircraft hijacking
			Sec. 13(1)	“Violence endangering safety of aircraft”
			Sec. 14(1)	“Destruction of air traffic infrastructure”
10	Woman and Child Repression Prevention Act 2000	9(Nine)	Sec. 4(1)	“Causing death or attempts to cause death with flammable substances”
			Sec. 4(2)(a)	Destruction of the eyesight,

				hearing, and disfiguration of the face, breast, or sexual organ
			Sec. 8	Detaining for ransom
			Sec. 9(1)	Rape
			Sec. 9(2)	Causing death by rape
			Sec. 9(3)	Gang rape
			Sec. 9(4)(a)	Attempt to murder or hurt after rape
			Sec. 11(a)	Causing death for dowry
			Sec. 12	“Mutilation of a child for the purpose of begging or selling”
11	The Acid Offense Prevention Act 2002	2(Two)	Sec. 4	“Causing death by acid”
			Sec. 5(a)	“Causing complete or partial destruction of the eyesight or the hearing, or disfiguration and destruction of face, breast, sex organ through acid”
12	The Anti-Terrorism Act 2009	1(One)	Sec. 6(2)(a)	“Causing death, grievous hurt or confining, abducting any person as a part of terrorist activities”
13	The Human Trafficking Prevention and Suppression Act 2012	1(One)	Se. 7	“Human trafficking by organized group”
14	The Narcotics Control Act 2018	6(Six)	Table 7(c), 8(c), 9(c), 10(c), 11(c), 12(c) of Sec. 36(1)	Manufacturing/ cultivation/ processing/storing/ transporting/carrying/auction/ trading/possession of specific narcotic trees and substances
		51		

Table 2: Offences punishable to death for defense and military personnel

SL.	Name of the Acts	Number of Offence(s)	Section(s)	Offences
1	The Army Act 1952	3(Three)	Sec. 24 Sec. 31	Disobeying command “Mutiny and insubordination”

			Sec. 36(1)	“Desertion and aiding deserters”
2	The Air Force Act 1953	2 (Two)	Sec. 34	Disobeying command
			Sec. 37	Mutiny
3	The Navy Ordinance 1961	6(Six)	Sec. 29	“Misconduct by persons in command”
			Sec. 30	“Misconduct by other officer and men”
			Sec. 31	“Willfully delays or discourages any action or service”
			Sec. 32	“Corresponding with, supplying or serving with the enemy”
			Sec. 36(1)	Mutiny
			Sec. 37	“Failure to suppress or prevent mutiny”
4	The Bangladesh Border Guard Act 2010	1(one)	Sec. 28	Mutiny
5	The Bangladesh Coast Guard Act 2016	1(one)	Sec. 29	Mutiny
13				

Table 3: Death Sentences and execution in Bangladesh 2010-2022

Year	Death sentences	Execution
2010	32+	9+
2011	49+	5+
2012	45+	1
2013	220+	2
2014	142+	0
2015	197+	4
2016	245+	10
2017	273+	6
2018	229	0
2019	220	2
2020	113+	2
2021	181+	5
2022	169+	4

Source: Global Reports of Amnesty International on Death Sentences and Executions.



Figure 1: Imposing death sentences in Bangladesh 2010-2022

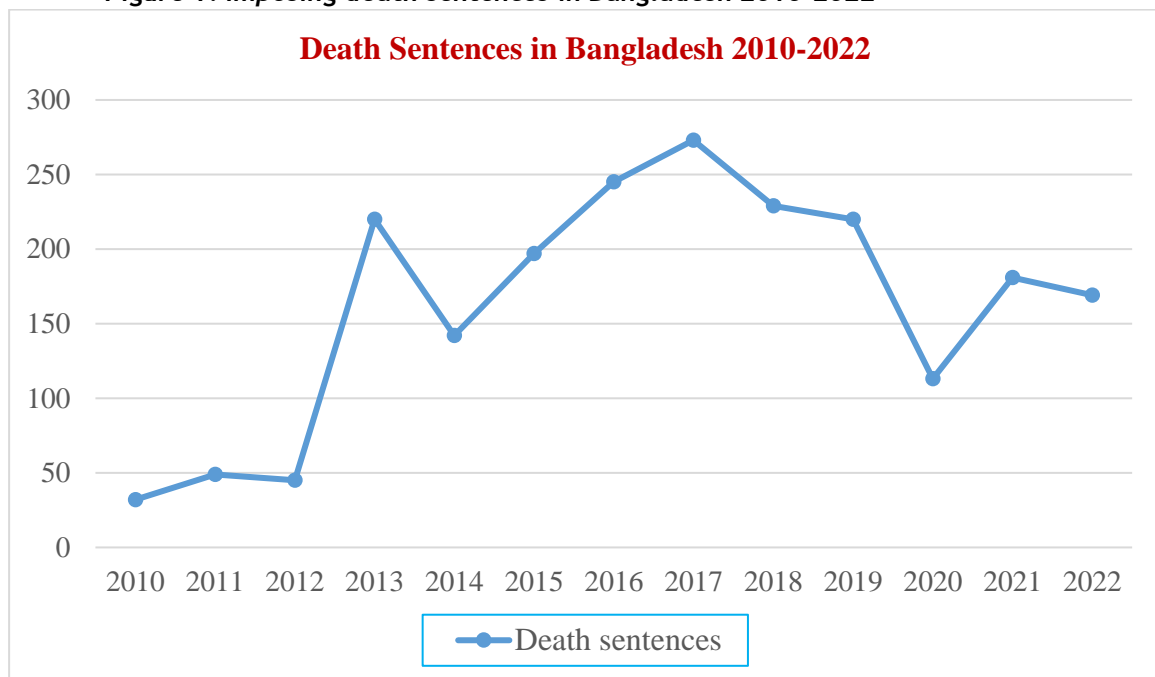


Figure 2: Execution of death penalty in Bangladesh 2010-2022



3.2 Retaining mandatory death penalty:

Bangladesh continues to uphold the mandatory death penalty, without any alternative forms of punishment, for several offences outlined in various laws. These offences include:

1. Abrogating or suspending the Constitution, as stipulated in the Constitution of Bangladesh (Article 7A of The Constitution of Bangladesh).



2. Murder committed by an individual who is already serving a life sentence (Sec. 303 of the Penal Code 1860).
3. Attempt to murder committed by an individual who is currently serving a life sentence (Sec. 307 of the Penal Code 1860).
4. Causing death as a consequence of non-payment of dowry (Sec. 11(a) of the Woman and Child Repression Prevention Act 2000).
5. Providing assistance to the enemy (Sec. 3 of The Enemy Agents Ordinance 1943).
6. Disobeying command under the Air Force Act (Sec. 34 of the Air Force Act 1953)
7. Mutiny under the Air Force Act (Sec. 37 of the Air Force Act 1953).
8. Mutiny under the Navy Ordinance (Sec. 36(1) of the Navy Ordinance 1961).

The application of the mandatory death sentence is deemed undesirable as it curtails the judge's discretionary power to choose suitable sanctions in light of the available evidence, witness testimonies, and contextual circumstances surrounding the commission of a crime. The lack of judicial discretion to cogitate extenuating circumstances related to the offense is a matter of significant concern (FIDH, 2010: 12). The United Nations Human Rights Committee has made an observation that the imposition of the mandatory death penalty without any judicial discretion is deemed to be arbitrary. The court responsible for imposing the death punishment must ponder both the individual characteristics of the perpetrator and the specific circumstances surrounding the offense.⁴ The Apex Court of Bangladesh, in a significant development, has ruled that the law of the mandatory death penalty is unconstitutional. The highest court clarified that the law should not limit punishment solely to the death penalty, regardless of the crime's severity. Because it limits the court's discretion in evaluating the credibility of evidence, witnesses, and specific circumstances relevant to each case.⁵ However, the state and legislature have not yet made any amendments or modifications to the mandatory death sentence provisions as outlined in the mandated legislation.

3.3 Constitution itself grasps death penalty:

The topic at hand pertains to the Constitution of Bangladesh, which serves as the paramount legislation of the country; there exist a provision for the use of the death penalty in cases involving the abrogation or suspension of the Constitution through the use of force or any unconstitutional means.⁶ According to the stipulation outlined in Article 7A, the act of abrogating and suspending the Constitution is considered an act of sedition, which is punishable by the death penalty. The constitutional provision does not explicitly reference capital punishment or the death penalty, but rather addresses the highest punishment authorized by the current legal framework. The harshest form of sentence in Bangladesh is undeniably the death penalty, as stipulated in section 53 of the Penal Code 1860. The Constitution is considered as the highest law and serves as the benchmark for the creation and implementation of all subsequent legislation. Remarkably, the death penalty is explicitly enshrined inside the Constitution itself.

3.4 Contemporary penal policy reliance on the death penalty:

According to the data presented in Figure 3, it is evident that a total 12 of 64 offences were subject to the death penalty during the British government prior to 1947. Furthermore, during the period of 1947-1971 in Pakistan, 12 additional offences were added that carried the death penalty. However, during the Pakistan era, a number of defense laws were enacted, resulting 11 new offences punishable by capital penalty under different military legislations. The remaining 40 offences have been included into the legal framework of the country since its attainment of independence. It is worth noting that a significant proportion of crimes, specifically 22 out of 40, have been assimilated into the criminal justice system within the preceding two decades, since the year 2000. The analysis

⁴ The United Nations Human Rights Committee General Comment no. 36 of ICCPR on Article 6 (right to life) para 37, CCPR/C/GC/36, September 3, 2019.

⁵ *Bangladesh Legal Aid and Services Trust (BLAST) vs. Bangladesh*, 1 SCOB (2015) AD 1.

⁶ Article 7A of Bangladesh Constitution. The inclusion of this provision happened in 2011 through the amendment of the Constitution (Fifteenth Amendment) Act 2011, at that time when the global and international efforts towards the gradual elimination of capital punishment.

suggests that contemporary legislators are increasingly reliant on the utilization of capital punishment within their penal policies as a means to deter criminal behavior (Rahman, 2020: 22).

Figure 3: Death penalty introducing in various regime

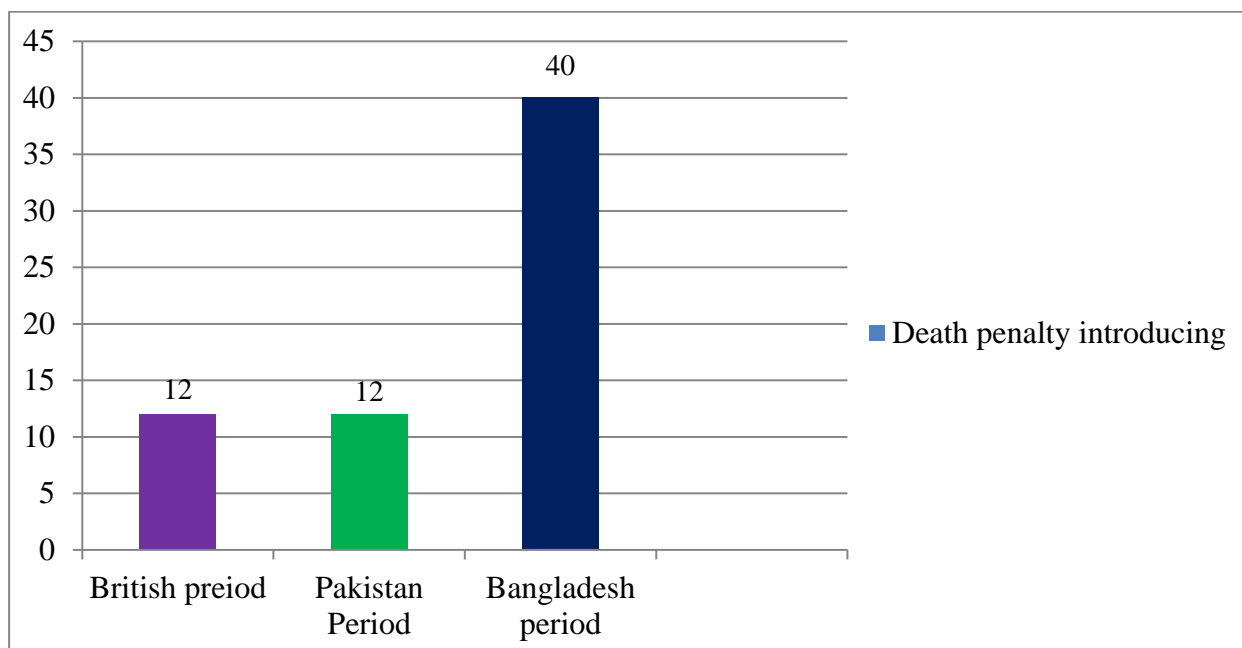
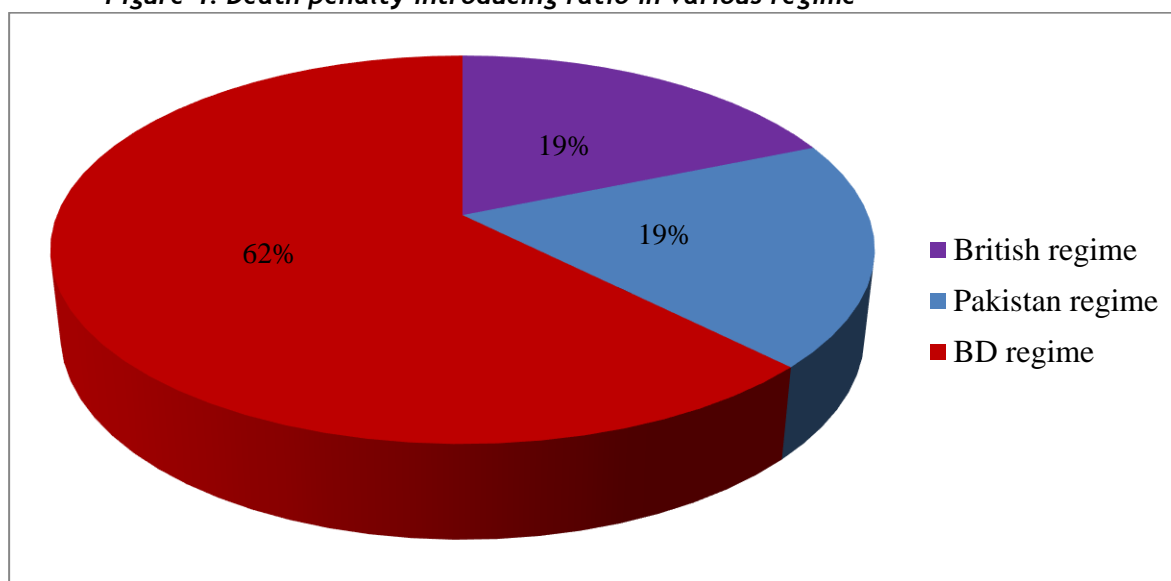


Figure 4: Death penalty introducing ratio in various regime



Figures 3 and 4 depict the frequency of offences that are subject to the death penalty across different legal systems. The data indicates that 19% of death penalty offences were recorded during the British time, whereas similarly 19% of offences were documented during the Pakistan period. However, a significant increase of 62% in death penalty offences assimilated following the independence of Bangladesh in 1971, persisting to the present.

3.5 Excess of non-violent crimes for death penalty:

ICCPR specifically stipulates that the application of the death sentence is permissible solely for the most grave or serious crimes that result in loss of life.⁷ The UN Human Rights Committee provides a

⁷ Article 6(2) of ICCPR 1966.

comprehensive explanation of the term "most serious crimes" that encompasses four key aspects. Firstly, the use of the death punishment should be limited to exceptional circumstances. Secondly, crimes that warrant the death penalty should be associated with extremely grave consequences. Thirdly, these crimes should involve intentional killing. Lastly, offences that do not involve intentional and direct causation of death, such as attempt to murder, corruption, economic and political crimes, abduction, armed robbery, drug offences, piracy, and sexual offences, should not be considered for the imposition of the death sentence.⁸ Additionally, the United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions has explicitly stated that the death penalty ought to be abolished in cases involving economic and drug-related crimes.⁹

Table 4: List of violent/ most serious crime for the death penalty

SL.	Name of the Act	Section(s)	most serious nature Crime
1	The Penal Code 1860	Sec. 194	"Giving or fabricating false evidence with the intention that make conviction and execution of an innocent person"
2		Sec. 302	Murder
3		Sec. 303	"Murder by life-convict"
4		Sec. 305	"Abetment of suicide of child, insane or intoxicated person"
5		Sec. 396	Dacoity with murder
6	International Crimes (Tribunals) Act 1973	Sec. 3(2)(a)	Crimes against Humanity
7		Sec. 3(2)(c)	Genocide
8		Sec. 3(2)(d)	War Crimes
9	Woman and Child Repression Prevention Act 2000	Sec. 4(1)	"Causing death or attempts to cause death with flammable substances"
10		Sec. 9(2)	Causing death by rape
11		Sec. 11(a)	Causing death for dowry
12	The Acid Offense Prevention Act 2002	Sec. 4	Causing death by acid
13	The Anti-Terrorism Act 2009	Sec. 6(2)(a)	"Causing death, grievous hurt or confining, abducting any person as a part of terrorist activities"

⁸ The United Nations Human Rights Committee General Comment no. 36 of ICCPR on Article 6 (right to life) para 35, CCPR/C/GC/36, September 3, 2019.

⁹ Report of the United Nations Commission on Human Rights Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1996/4, at para 556, 25 January 1996.

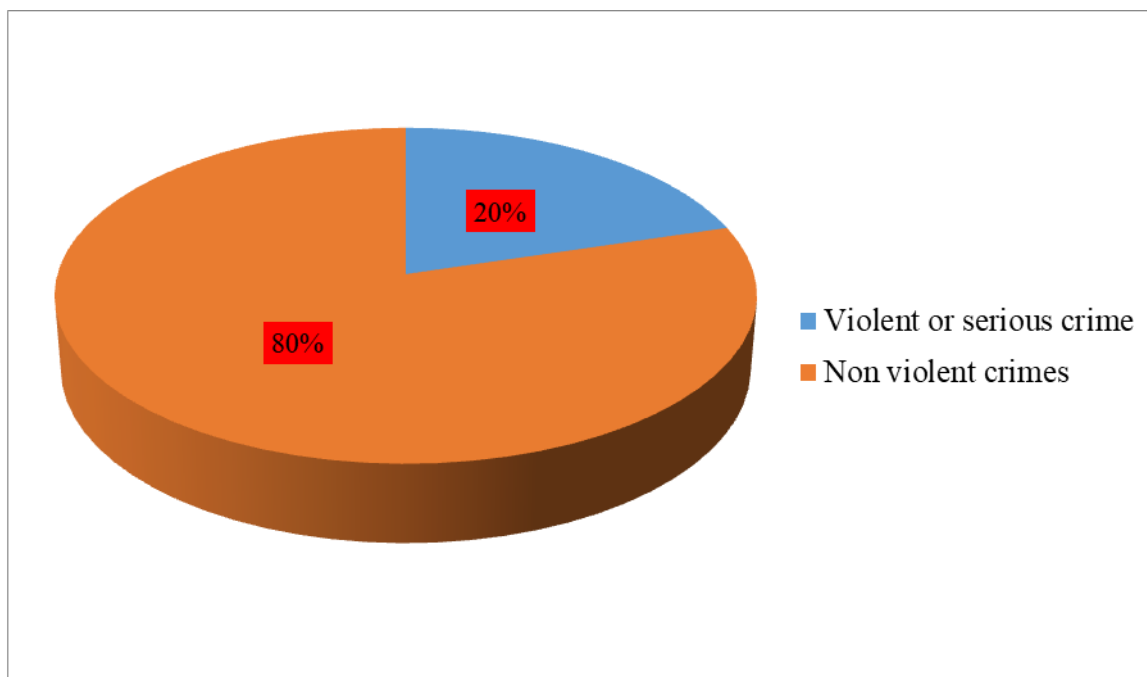
Figure 5: Percentage of death penalty for non- violent crimes

Table 4 illustrates that the occurrence of fatal outcomes or fatalities is a fundamental component in just 13 out of the 64 offences. Another way to say it, the death penalty has been introduced for 51 offences that are not connecting with serious crimes and have no fatal consequences. As a result, according to the data presented in Figure 5, it can be observed that 20% of the crimes that warrant the imposition of the death penalty are categorized as violent, while the remaining 80% are associated with non-violent offences.

Bangladesh, as a signatory to the human rights instrument ICCPR, fails to uphold the treaty's prescribed requirements which specifically stipulate that in a country that retains the death penalty, it must only be enforced for the “most serious offences” (Odhikar, 2022: 2). Regrettably, the death penalty rules in Bangladesh are in violation of the ICCPR due to the fact that they still impose capital punishment for offences of a non-fatal and economic nature, such as engaging in black market activities, counterfeiting, and adulterating food products¹⁰ (FIDH, 2010: 12).

3.6 Unfair criminal process concerning death penalty cases

The right to a fair and impartial trial is universally acknowledged as a vital human right.¹¹ The Constitution of Bangladesh does not clearly enumerate fair trial as of right; nevertheless, it contains various sections that unambiguously imply the fundamental right of citizens to obtain a fair trial.¹² The primary focus of Article 35 of the Constitution is to provide the fundamental elements of a fair trial, specifically emphasizing the right to a “speedy and public trial” conducted by a court or tribunal established by the law that is both independent and impartial.¹³ The fundamental objective of a public trial is to ensure the provision of a fair trial (Islam, 2010: 217). ICCPR mandates the assurance of a fair trial and the safeguarding of other rights throughout the legal proceedings in capital cases involving individuals who are subject to the imposition of the death sentence. Criminal sanctions may solely be inflicted upon an individual who has undergone accurate process of law, encompassing the assurance of the “presumption of innocence,” a just opportunity to respond to the charges levied against them inside a duly established court, and the provision of competent legal representation (Hoyle & Lehrsfreund, 2020: 149).

¹⁰ See The Special Powers Act 1974.

¹¹ Article 10 of UDHR 1948; Article 14 of ICCPR 1966.

¹² See Article 27, Article 31, and Article 33 of Bangladesh Constitution.

¹³ Also, section 352 of the Code of Criminal Procedure 1898 mentions public trial.



The attributes that must be ascribed to the criminal justice system include the guarantee of fair trial procedures, transparency in investigations, impartiality in decision-making, and unbiased opportunities for the defendant. However, the empirical study revealed that judges exhibited dissatisfaction with regards to using torture during detention,¹⁴ the practice of forceful confessions, the deceptive of evidence, the absence of competent legal representation provided by the state, instances of wrongful acquittals, and wrongful convictions.¹⁵ Additionally, the research reveals that the criminal justice system is marred by instances of corruption, ineptitude, violations of due process, and the arbitrary and unreliable handling of defendants throughout the stages of arrest to conviction (Hoyle & Lehrfreund, 2020: 141, 148).

Bangladesh has not been successful in ensuring the procedural rights of individuals who have been sentenced to death. Moreover, there has been criticism directed against the judicial proceedings for their failure to meet international principles of a fair trial. This criticism stems from the imposition of death sentences in absentia, as well as the use of military or special tribunals that do not adhere to proper due process (Amnesty, 2018; Amnesty, 2019; Amnesty, 2021; Amnesty, 2022; Amnesty, 2023a). The prevalence of the death penalty in lower courts is heightened as a result of deficiencies within the criminal justice system, including instances of corruption, investigative errors, misuse of state power, coerced confessions, insufficient judicial autonomy, political interference, and public pressure.

3.7 Extending the scope of the death punishment

The Human Rights Committee's remark on Article 6 of the ICCPR in 1982 strongly indicated a solid expectation for the elimination of the death sentence. The Committee asserts that the consideration of all methods of abolition should be regarded as indicative of advancement in the realization of the right to life.¹⁶ Despite the global advancement of the death penalty abolition movement, Bangladesh has chosen to maintain its use of death penalty. In reality, there exists a broader spectrum of offences that are subject to the death sentence. In 2000, Bangladesh ratified and accessed the ICCPR. Remarkably, despite being a signatory to the treaty, the nation has enacted multiple laws that authorize the application of death penalty for various categories of offences. These include the Acid Offense Prevention Act of 2002, the Anti-Terrorism Act of 2009, The Bangladesh Border Guard Act 2010, the Human Trafficking Prevention and Suppression Act of 2012, The Bangladesh Coast Guard Act 2016, and the Narcotics Control Act of 2018. It is noteworthy that a significant proportion of these crimes are characterized by their nonviolent nature.

Furthermore, in 2011, the Constitution was amended by the inclusion of a mandatory death penalty clause for anybody found guilty of committing constitutional sedition.¹⁷ Moreover, in the year 2020, Bangladesh expanded the range of criminal offences that warrant capital punishment through legislative amendments. In relation to this matter, the government has included two additional

¹⁴ See M Rafiqul Islam and S M Solaiman (2003). "Torture under police remand in Bangladesh: a culture of impunity for gross violations of human rights", *Asia-Pacific Journal on Human Rights and the Law* 2: 1-27.

¹⁵ In a particular empirical study, it was shown that 29 out of 30 judges acknowledged the possibility of incorrect convictions. Judges observe that wrongful convictions might arise as a result of various factors, including erroneous investigations, instances of police corruption, the fabrication of evidence, inadequate legal counsel, and external influences such as political or media pressure (Hoyle & Lehrfreund, 2020: 152). The findings of the study, which examined a four-year period of criminal appeals in the High Court Division (HCD) of the Supreme Court, indicate that the HCD has overturned the convictions of 83 individuals previously found guilty by trial courts. This study explores the annual percentage of cases in which the HCD approved the acquittal or exoneration of individuals who were wrongly convicted by subordinate courts. In 2011, the HCD approved the acquittal of wrongly convicted individuals in 58.53% of cases. In 2012, the HCD granted exoneration in 52.63% of cases. In 2016, the higher court approved the acquittal of wrongfully condemned individuals in 14.28% of cases. And in 2017, the HCD approved exoneration to the wrongfully condemned individuals in 40% of cases (Islam, 2019: 137).

¹⁶ The UN Human Rights Committee General Comment no. 6: Article 6 (right to life) para 6, adopted on 30 April 1982.

¹⁷ Article 7A of Bangladesh Constitution.

offences in the roster of crimes punishable by the death penalty.¹⁸ The Human Rights Committee has made an observation regarding the treatment of the expansion of the death penalty, noting that it is being handled in a manner that goes against the intended purpose and objectives of the ICCPR.¹⁹ Similarly, international organizations and jurists have observed that Bangladesh flagrantly violates the rules and “goes against the spirit of the Covenant” (FIDH, 2010: 12).

3.8 Politically motivated death sentence:

The imposition of the death sentence in Bangladesh may be characterized by arbitrariness and subjectivity, which can be attributed to factors such as the absence or erosion of democratic principles, a lack of adherence to the rule of law, deficiencies in governance, and the absence of genuine judicial independence in court proceedings. There have been occasional allegations suggesting that rulers or governments have employed the death penalty as a deliberate tool within the judicial system to exert control over political adversaries²⁰(Odhikar, 2022: 1). The case has demonstrated that a total of 21 individuals were convicted and then sentenced to death sentence by a trial court. These convictions were the result of an accusation made against a single individual for the act of murder.²¹ In this particular case, both the individual who has suffered harm and the individuals facing allegations are engaged in political opposition. The jurists observe that the imposition of the death penalty on 21 individuals for a single murder is highly uncommon (Malik, 2010).

Furthermore, throughout the nation's history, there have been instances of numerous military regimes implementing a significant number of capital punishments. Even civil individuals were subject to capital punishment under the martial law. The United Nations human rights office has raised apprehension on the imposition of the death penalty by certain courts and tribunals, citing concerns over the lack of impartial and fair judicial proceedings. According to the said Office, the cases conducted before the tribunal have regrettably failed to adhere to the international requirements of fair trial and due process, as outlined in the ICCPR²² (Shamdasani, 2016). Amnesty International remarks, the use of the death sentence occurred in violation of international standards for a fair and impartial trial during the court processes (Amnesty, 2022).

3.9 Uncertain time on death row:

The execution of the death penalty is a long-time matter in Bangladesh. The execution of death sentences does not occur immediately subsequent to the conviction rendered by the trial court. The individual who has been found guilty would undergo an indeterminate period of incarceration on death row, progressing through many stages during which the legal proceedings advance to the higher court's decision and finality. **Firstly**, it is necessary for the guilty individual to endure a period of time on death row, during which the approval of the HCD is obligatory in order to carry out the death penalty. In line with legal provisions, when the trial court announces a death sentence, the proceedings must be presented to the HCD, and the execution of the sentence cannot take place unless it is approved by the HCD.²³ The HCD could or could not approve the death penalty. **Secondly**, the decision made by the HCD does not possess ultimate authority in carrying out capital punishments. The potential for

¹⁸ Section 9(1), 9(4)(a) of Woman and Child Repression Prevention Act 2000.

¹⁹ The United Nations Human Rights Committee General Comment no. 36 of ICCPR on Article 6 (right to life) para 50), CCPR/C/GC/36, September 3, 2019.

²⁰ Online (2019, July 4). “Bangladesh: 9 people sentenced to death for 94 Hasina attack.” Aljazeera, from <https://www.aljazeera.com/news/2019/7/4/bangladesh-9-people-sentenced-to-death-for-94-hasina-attack>; (2022, October 10). “7 BNP men get death penalty for killing a Mymensingh AL leader.” The Business Standards, from <https://www.tbsnews.net/bangladesh/7-be-hanged-murder-swechhasebak-league-leader-masudur-510998>; (2022, October 10). *Seven get death penalty for killing AL leader in Mymensingh*. New Age. Retrieved December 15, 2022 from <https://www.newagebd.net/article/183279/seven-get-death-penalty-for-killing-al-leader-in-mymensingh>

²¹ Kailash Sarkar. (2010, September 7). *Gama Killing Convicts- President pardons 20*. The Daily Star. Retrieved December 15, 2022 from <https://www.thedailystar.net/news-detail-153988>

²² Article 14 of ICCPR specifies the right to a fair trial.

²³ Section 374 of The Code of Criminal Procedure 1898.



challenge arises from the opportunity for the convicted individual to exercise their right to appeal²⁴ to the Appellate Division of the Supreme Court, so contesting the decisions and penalties imposed by the HCD. The process of listening to and evaluating the appeal requires a longer duration. In actuality, the Supreme Court faces a significant load due to the substantial accumulation of pending cases, resulting in prolonged duration of 10-15 years for the final decision of many cases (Odhikar, 2022: 4).

Thirdly, the Appellate Division possesses the authority to review its decision subsequent to issuing an order or judgment.²⁵ Assuming that the Appellate Division affirms the decision rendered by the trial court or the sentence imposed by the HCD. In such circumstances, the convicted individual has the opportunity to submit further application for the review of the decision made by the Appellate Division. **Lastly**, as an ending possibility, a condemned prisoner on death row has the option to submit a plea for clemency to the president, seeking a pardon according to the rules of the Constitution.²⁶ Therefore, following the decision to grant or deny presidential clemency, the process of the death penalty reaches its ultimate conclusion. As a result, it is typically necessary for a convicted felon on death row to be held in a condemned cell for an extensive period of time, spanning from the judgment by the trial court to the final decision rendered by the Appellate Division of the Supreme Court or the potential intervention of a presidential pardon (Manir, 2021). According to the findings of a study, it was observed that on average, the duration of the trial court process was around four and a half years. Additionally, the period of time between the trial court's verdict and the judgment made by the HCD was approximately five and a half years (Rahman, 2020: 9).

There are a substantial number of death reference cases currently awaiting appeal hearings before the HCD. The aforementioned cases were adjudicated in trial courts between six to twenty years prior. Throughout this duration, the convicted individuals remained confined within cells measuring ten feet by six feet, commonly referred to as condemned cells²⁷ while awaiting the final decision of the apex courts (Manir, 2021). One incidence that caused significant psychological distress involved the decease of a death row convict who had spent 13 years in a condemned cell. This occurred on the day when he was planned to be free after being declared innocent by the highest court's ruling (Manir, 2021). The prisoner has significant financial hardship as a result of delays in the criminal procedures, as they must bear the burden of financing legal help and supporting their family's everyday costs. This is particularly challenging when the prisoner is the lone breadwinner in the family (Hoyle, 2020: 9). As a result, this phenomenon leads to the exacerbation of poverty, imposing a significant hardship on individuals who are economically disadvantaged and marginalized.

3.10 *Pardoning perceived political:*

The act of pardoning or granting mercy to an individual who has been convicted of a crime is sometimes deemed essential in order to promote social harmony and ensure effective governance (Islam, 2010: 321). The opportunity to apply for pardon is acknowledged by international conventions as a right of those who have been convicted.²⁸ The issue of clemency holds particular importance for individuals who are awaiting execution. Clemency refers to a procedural mechanism by which the executive branch, specifically the president or administrative board, possesses the authority to

²⁴ “An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division- has confirmed a sentence of death or sentenced a person to death or to imprisonment for life...”, Article 103(2)(b) of Bangladesh Constitution.

²⁵ The Constitution states that “The Appellate Division shall have power, subject to the provisions of any Act of Parliament and of any rules made by that division to review any judgment pronounced or order made by it”, *ibid.* Article 105.

²⁶ *Ibid.*, Article 49.

²⁷ A condemned cell refers to a confined space within a jail specifically intended for housing those who have been sentenced to death. This cell is designed to restrict the movement of inmates, preventing them from interacting with their families and isolating them from other detainees within the same correctional facility. The architecture of the confinement is to restrict the accused's access to fresh air, sunlight, and opportunities for social interaction with fellow inmates (Odhikar, 2022: 3).

²⁸ Article 6(4) of ICCPR 1966; Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty in 1989; The UN resolution on the Moratorium on the execution of the death sentence.

mitigate a defendant's punishment or bestow a pardon (DPIC, 2022). In every state, the head of state is granted specific prerogative powers, including the authority to give pardons. Similar to the constitutions of numerous other nations, the Constitution of Bangladesh delineates the provisions pertaining to the authority of the president to bestow pardons.

Article 49 provides, "The president shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority." In addition, the penal and procedural laws serve to protect the president's prerogative power of mercy.²⁹ According to the constitutional mandate, the authority to grant clemency to a death-row convict is exclusively vested in the president. The act of granting clemency to an individual who has been found guilty is among the prerogative rights bestowed upon the president as enshrined in the Constitution. It cannot be altered, curtailed, or diminished by parliament³⁰ (Islam, 2010: 322). Similarly, the power under Article 49 cannot be applied "lightly or in cavalier fashion" (Ahsan, 2011). The power of presidential clemency may be "conditional or unconditional"³¹ but cannot be "arbitrary or discriminatory"³² (Karzon, 2005; Islam, 2010: 323-325).

In the Westminster parliamentary system of government, the president is the titular head of the state, but all official duties are administered in the name of the president. In practice, the president is selected by the governing party of the parliament from among its members or has a strong commitment to the party's policies. In reality, according to constitutional provisions, the president is unable to perform any duties assigned to them, whether by the Constitution or any regular legislation, without the guidance of the prime minister. However, the president does possess discretionary authority in appointing the prime minister and the chief justice.³³ Hence, similar to other governing authorities, the president wields the authority to grant pardons, which is contingent upon the advice provided by the prime minister³⁴ (Karzon, 2005; Khan, 2010; Islam, 2010: 322).

The granting of presidential clemency to individuals on death row has primarily been facilitated through a selection process driven by government decision-making, which ultimately prioritizes individuals based on their political affiliations³⁵ (Odhikar, 2022: 3). Occasionally, instances have come to light when individuals who have committed grave offences have been granted presidential mercy, with the basis for such decisions being influenced by political inclinations³⁶ (Karzon, 2005; Ahsan, 2011). The exercise of the presidential authority to grant pardons, accompanied by a certain level of political deliberation, raises concerns over the erosion of the spirit of the important principles cherished in the Constitution. In relation to the act of granting pardons while taking into account political involvement, it is imperative to acknowledge that "the offices of the president, prime

²⁹ Section 55A of The Penal Code 1860, Section 401(5), 402A of The Code of Criminal Procedure 1898.

³⁰ *State Of Punjab vs. Joginder Singh*, AIR 1990 SC 1396.

³¹ Section 401(5A) of The Code of Criminal Procedure 1898.

³² *Maru Ram vs India*, AIR 1980 SC 2147.

³³ Article 48(3) of Bangladesh Constitution.

³⁴ *Kehar Singh vs. the Union of India*, AIR 1989 SC 653.

³⁵ Online (2010, September 7). "Bangladesh pardons twenty death row convicts." THE TIMES OF INDIA, from <https://timesofindia.indiatimes.com/world/south-asia/bangladesh-pardons-twenty-death-row-convicts/articleshow/6511872.cms> ; Kailash Sarkar and Ashutosh Sarkar. (2010, September 8). *Wholesale pardon under question*. The Daily Star, from <https://www.thedailystar.net/news-detail-154123> ; (2014, March 5). "26 removed from death row." bdnews24.com, from <https://bdnews24.com/bangladesh/26-removed-from-death-row> , Kailash Sarkar. (2010, September 7). *President pardons 20*. The Daily Star. Retrieved February 10, 2023 from <https://www.thedailystar.net/news-detail-153988>.

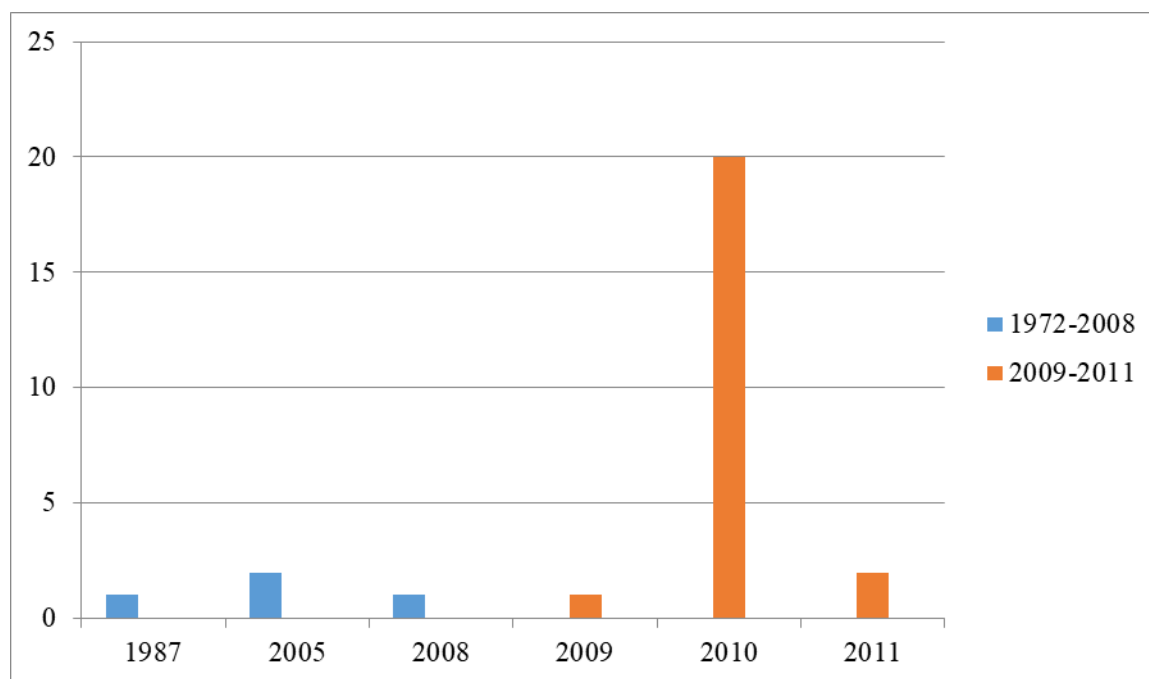
³⁶ Staff Correspondent. (2005, February 5). *Convicted BNP man gets amnesty after 22 years*. The Daily Star, from <https://archive.thedailystar.net/2005/02/05/d50205100186.htm> ; Staff Correspondent. (2012, February 27). *President pardons a criminal twice*. The Daily Star, from <https://www.thedailystar.net/news-detail-224063> ; Rashidul Hasan. (2012, November 15). *Zillur too merciful*. The Daily Star, from <https://www.thedailystar.net/news-detail-257572> ; Staff Correspondent. (2018, May 31). *President pardons top terror Joseph*. The Daily Star. Retrieved February 15, 2023 from <https://www.thedailystar.net/frontpage/president-pardons-top-terror-joseph-1584037>

minister, home minister, and law minister” cannot evade their duty to apply the constitutional provision in an arbitrary manner and capriciously (Karzon, 2005).

The government possesses the authority to suspend, remit, and commute the sentence to an alternative penalty as stipulated in the Penal Code.³⁷ When the sentence of any co-accused is commuted, it is imperative that the other convicts who have committed a similar offense are entitled to have their sentences remitted as well.³⁸ The government may choose to commute a death sentence based on the primary issue of excessive delay in the execution.³⁹ The government, operating within its administrative jurisdiction, has granted mercy to runaway criminals on the basis of political partisanship⁴⁰ (Asaduzzaman, 2021). The prominent legal experts and jurists have expressed the view that fugitive criminals are not entitled to any form of legal privileges or rights.⁴¹ If the occurrence of such a pardon were to transpire, it would constitute a flagrant breach of legality, a violation of established criminal law, and may be characterized as an abuse of power and an improper exercise of authority (Malik, 2021).

Nevertheless, according to the official government circular, the clemency process asserts that these convictions were executed as a result of conspiratorial actions, deliberate planning, and political provocation (Asaduzzaman, 2021). The presidential pardon, due to its significant political implications, raises deep concerns among individuals regarding the principles of the rule of law and effective good governance (Ahsan, 2011). It engenders a heightened propensity to engage in increasingly egregious transgressions within the societal framework (Rahman, 2012). The act of granting pardons for political reasons undermines the president's credibility and integrity, while also potentially hindering law enforcement agencies from effectively addressing acts that severely contradict societal norms and legal principles.

Figure 6: Presidential clemency since 1972



³⁷ Section 54 of The Penal Code 1860, Section 401, 402 of The Code of Criminal Procedure 1898.

³⁸ *Harbans Singh vs. State Of U.P. & Others* on 12 February 1982, AIR 1982 SC 849.

³⁹ *Nawab Singh vs. State of Uttar Pradesh*, AIR 1954 SC 278.

⁴⁰ Asaduzzaman. (2021, February 16). *Government pardon for Haris and Anis too*. Prothomalo English. Retrieved February 15, 2023 from <https://en.prothomalo.com/bangladesh/crime-and-law/government-pardon-for-haris-and-anis-too>

⁴¹ See *Anti-Corruption Commission vs. Mahmud Hossain*, 61 DLR (AD) 17; *Sazeda Nasima Sarwar vs. Govt. of Bangladesh*, 30 BLD 350; *Sarwar Kamal vs. State*, 64 DLR 329; *Anti-Corruption Commission vs. Md. Shahjahan*, 25 BLC (AD) 40.

Source: The home minister delivered the information to the parliament and then published the report in national newspapers.⁴² (Sarkar & Sarkar, 2010; Hasan, 2012; Correspondent, 2012).

Between the years 1972 and 2008, a mere four incarcerated individuals were recipients of presidential mercy. However, within a very little span of three years, specifically from 2009 to 2011, the president extended pardons to a total of 23 convicted individuals. In contrast to previous years, the occurrence of clemency in 2010 was notably unusual and exceptional. This has been subject to criticism by prominent legal professionals, jurists, and constitutional experts who argue that the president's exercise of his constitutional authority was influenced by political factors.

3.11 *Judicial attitude towards death penalty:*

Bangladesh's judicial system comprises two tiers of courts: subordinate courts, sometimes known as trial courts, and the Supreme Court. These courts have been involved in the imposition of death penalty. The former initially imposes the punishment, while the latter approves and makes finality about the death penalty. The subordinate court lacks the ability to carry out its functions with absolute independence. The process of judicial decision making can at times be impacted by extralegal factors, including but not limited to the judge's political background, the background of the individual involved in the case, political influence or interference, the state's devotion to a certain case, media and public pressure. As Posner positions, "judges are not intellectual giants, oracles or calculating machines, they are human workers, responding to the conditions around them" (Posner, 2010: 7). The severe incident is that the death sentence also punishes juveniles, although the law explicitly prohibits the death sentence on the juvenile.

The empirical study has revealed that subordinate court judges had a comprehensive understanding of the presence of corruption, torture, the fabrication of evidence, and other violations of due process within criminal justice systems, which have the potential to result in wrongful convictions. Despite being aware of defects in the criminal justice system, judges maintain confidence in the usefulness of the death sentence as restrictive to criminal behavior and believe that its continued implementation contributes to the betterment of society. They contend that the main objective of implementing death punishment is to stop individuals from engaging in abhorrent criminal acts, and they assert that it serves as a highly efficacious preventive measure (Hoyle & Lehrfreund, 2020: 141, 157). The Supreme Court exhibits a notable degree of insulation from political influence, potentially affording it greater independence compared to trial courts. Numerous instances have been identified wherein trial courts imposed death sentence, but the Supreme Court to subsequently commute the sentence or render an acquittal.⁴³ In 2015, the Supreme Court rendered a verdict in support of the elimination of mandatory

⁴² Kailash Sarkar and Ashutosh Sarkar. (2020, September 8). *Wholesale pardon under question*. The Daily Star, from <https://www.thedailystar.net/news-detail-154123> ; Rashidul Hasan. (2012, November 15). *Zillur too mercifull*. The Daily Star from <https://www.thedailystar.net/news-detail-257572> ; Staff Correspondent. (2012, November 18). *"Mercy president's, responsibility PM's."* The Daily Star. Retrieved February 20, 2023 from <https://www.thedailystar.net/news-detail-257911>.

⁴³ In 2003, an individual was apprehended on charges of murder, subsequently leading to their conviction and imposition of the death penalty by the trial court in 2006. In the year 2021, following a period of 15 years in incarceration, the Appellate Division of the Supreme Court rendered a verdict of acquittal. *The Daily Jugantor* (2022, March 23). Retrieved June 10, 2023 from <https://www.jugantor.com/todays-paper/city/533448/>. In the murder case of *Dr. S Taher Ahmed*, The trial court rendered a verdict of death penalty for four implicated individuals. Subsequently, the HCD of the Supreme Court upheld the death penalty for two individuals found guilty, while modifying the death penalty of two other offenders to life imprisonment. Finally, the Appellate Division of the Supreme Court has affirmed a judgment rendered by the High Court. *The Daily Star* (2022, October 6). Retrieved June 2, 2023 from <https://www.thedailystar.net/news/bangladesh/crime-justice/news/ru-prof-taher-ahmed-murder-appellate-division-stays-execution-death-row-convict-3136611>. In the case of *Bishwajit Das* murder, the trial court issued a verdict of death sentence for eight individuals and imposed life imprisonment for thirteen others. However, afterwards, the HCD affirmed the death sentence for two individuals while reducing the punishment for four others and exonerating two individuals. All of these individuals had first been sentenced to death by the trial court. *The Daily Star* (2017, August 6). Retrieved June 2, 2023 from <https://www.thedailystar.net/city/bishwajit-murder-jagannath-university-chhatra-league-men-bangladesh-high-court-verdict-appeal-1444399>. For more

capital punishment⁴⁴ It affirms prevailing perspective within the Commonwealth that the death sentence should be employed sparingly rather than routinely, appears that this decision has done tiny on the reduction of death penalty (Hoyle & Lehrfreund, 2020: 144).

4. The Way Out to Reduce the Use of Death Penalty in Bangladesh

The nation may consider implementing the following measures in order to mitigate the application of the death penalty, as part of a progressive approach towards its eventual eradication.

4.1 Confine the scope of death penalty exclusively to serious offences:

It is observed that in Bangladesh, a significant portion of the crimes that carry the death penalty do not align with the definition of serious crimes as outlined by international human rights norms. Consistent with the ICCPR treaty, it is incumbent upon the state party to conduct a thorough examination of its penal legislation to ensure that the imposition of the death penalty is not applied in cases involving non-serious offences. Consequently, in order to effectively enforce the regulations outlined in the ICCPR, the nation would need to decrease the prevalence of non-serious criminal offences.

4.2 Eliminate the capital punishment for offences of an economic or non-fatal nature:

In Bangladesh, the death sentence is applicable to several offences, including economic crimes that do not result in deadly effects. These crimes encompass activities such as counterfeiting, engaging in black market trade of goods, and the adulteration of food products. One potential policy option for the state would be to modify the utilization of the death penalty by substituting it with alternative penalties for economic and nonfatal offences.

4.3 Commute the death penalty to alternative forms of punishment:

In accordance with the current penal legislation, the government has the power to convert a death penalty into alternative forms of punishment as stipulated under the penal code. As an interim measure, prior to undertaking comprehensive modifications to the entirety of criminal legislation, the state has the option to mitigate the sentencing of a convicted individual facing capital punishment by substituting it with alternative forms of punishment.

4.4 Remove the mandatory death sentences:

In accordance with the ruling of the apex court of Bangladesh, it has been deemed unlawful to impose the mandatory death sentence as the sole provision for commit a crime. This provision limits the court's discretionary authority to make appropriate sentence determinations based on the reliable facts and evidence. Consequently, the authority may demonstrate deference to the superior court's decision by eliminating or modifying the provision pertaining to the obligatory imposition of death penalty.

4.5 Decimate attempt or abetment from punishable to death:

In the context of Bangladesh, there exist multiple penal provisions of capital punishment for attempted in the commission of specific crimes. Similarly, the act of aiding and encouraging the perpetration of offences that are subject to capital punishment is also classified as an offense warranting the imposition of the death penalty. The imposition of the death penalty has been criticized by the UN Human Rights Committee, which argues that it cannot be justified for individuals

understanding regarding acquittal and commutation of punishment by the Supreme Court, see Islam, M. Saidul (2019). "Random Wrongful Conviction and Exoneration, Rare Compensation: A Need for a Compensation Statute in Bangladesh." *IJCLS (Indonesian Journal of Criminal Law Studies)*, 4(2): 127-146. DOI: 10.15294/ijcls.v4i2.20863.

⁴⁴ *Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh* 1 SCOB (2015) AD 1.

who have only had a minor role in the commission of a crime. Therefore, it is possible for the country to alter the penalty for attempted or abetment to a crime by substituting any other form of punishment in lieu of capital punishment.

4.6 Refrain from extending the new offences for the death penalty:

The underlying essence of Article 6 of the ICCPR pertains to the expectation that the state party shall undertake appropriate actions aimed at the elimination of capital punishment. Consequently, subsequent to assuming the role of a signatory party to the treaty, it is advisable for the country to refrain from augmenting the catalogue of crimes that warrant capital punishment.

4.7 Take away the death penalty provision from the Constitution:

The Constitution is the highest law of the country, and all legislation must adhere to the principles and guidelines outlined in the Constitution. Put simply, the Constitution serves as the benchmark for the enactment of all other legislation. Remarkably, the Constitution of Bangladesh explicitly includes a clause mandating the imposition of the mandatory death penalty for individuals found guilty of engaging in the offense of constitutional sedition, as outlined in Article 7A. Since its promulgation prior to 2011, the Constitution has not included any penal clauses. The elimination of the death sentence from the highest legislation of the country should be considered as an important step in line with the objectives of the abolition movement.

4.8 Review the provision of the Special Powers Act:

The Special Power Act encompasses many clauses that prescribe the death penalty for a variety of offences, all of which are characterized by their non-lethal nature and non-serious nature. Additionally, a portion of these offences can be classified as economic crimes. Significant endeavors have been undertaken to reduce the quantity of offences that warrant capital punishment, primarily through a comprehensive evaluation of the Special Powers Act.

4.9 Guaranteeing fair and impartial trial in subordinate court:

In the context of criminal charges, it is universally recognized that every individual is entitled to receive a fair and impartial trial during the course of legal processes.⁴⁵ The judiciary in Bangladesh is *de jure* independent according to legal provisions; however, the subordinate or trial courts lack effective *de facto* independence. Numerous instances exist in which a significant number of individuals have been subjected to capital punishment due to public emotion. In the context of Bangladesh, there exists a notable inclination among the general people to advocate for the application of the death sentence. It is a well seen phenomena that when an offense infringes upon the sentiments of people, there is often a widespread mobilization and a significant number of protectionists who call for the imposition of capital punishment, regardless of whether the offense in question warrants such a severe penalty. The aforementioned scenario represents the ultimate consequence stemming from the absence of the rule of law, and the absence of a fair and unbiased trial. Hence, in order to reduce the frequency of death convictions, it is imperative to guarantee the provision of fair and impartial trials.

4.10 Declaring moratorium on the implementation of the death penalty as per the UN resolution:

In a final endeavor to eliminate the death penalty, the government may opt to implement a moratorium on the practice by endorsing a favorable vote on the United Nations General Assembly resolution pertaining to the "Moratorium on the use of the death penalty." Concurrently, the country would be the party of the "Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty."

⁴⁵ Article 14 of ICCPR 1966.



5. CONCLUSION

In summary, Bangladesh maintains the death penalty for an extensive range of offences and consistently executes capital punishment. Moreover, subsequent to acceding to the ICCPR in 2000, the country has recently delineated a number of additional criminal offences that warrant capital punishment through the enactment and modification of legislation that seemingly contravene the principles of international human rights norms. Furthermore, it is worth noting that the constitution incorporates the compulsory imposition of the death penalty. The US Supreme Court's Associate Justice Stephen Breyer uttered that "A modern system of criminal justice must be reasonably accurate, fair, humane, and timely."⁴⁶ The criminal court system in Bangladesh faces challenges in carrying out its tasks with fairness and impartiality, owing to a range of intricate issues. Extensive global research consistently demonstrates that individuals who are sentenced to death have a higher susceptibility to poverty, socioeconomically disadvantaged backgrounds, limited educational opportunities, unemployment, and a lack of adequate support systems. Similarly, the research on the socio-economic status of those sentenced to death in Bangladesh reveals that a majority of them were of a relatively young age, possessed limited educational qualifications, and experienced financial vulnerability, such as unemployment or low-income employment, at the time of committing the offense (Hoyle, 2020: 8; Odhikar, 2022: 3,4).

The international report reveals that many countries retain the practice of imposing the death penalty for a widespread range of offences. However, it is worth noting that only a limited number of countries actually carry out executions in recent years. Amnesty International documented instances of death penalty execution in 18 countries throughout the years 2020 and 2021. Furthermore, in the year 2022, executions were recorded in 20 nations (Amnesty, 2021; Amnesty, 2022; Amnesty, 2023a). This stance indicates that, although governments still maintain the provision for the death penalty, there is a strong inclination to reduce the prevalence of capital offences that warrant such punishment or to completely eliminate the use of the death penalty as a form of punishment. Consequently, despite Bangladesh's continued retention of the death penalty for a large volume of offences, it is possible for the country to mitigate the imposition of capital punishment by implementing the mechanisms already examined in this research.

REFERENCES

- [1] Ahsan, S. B. (2011, July 12, 2011). *President's pardon citizens' concern*. *The Daily Star* Retrieved from <https://www.thedailystar.net/news-detail-195257>
- [2] Amnesty. (2018). *Amnesty International Global Report: Death Sentences and Executions 2017*. Retrieved from London, UK: <https://www.amnesty.org/en/documents/act50/7955/2018/en/>
- [3] Amnesty. (2019). *Amnesty International Global Report: Death sentences and executions 2018*. Retrieved from London, UK: <file:///C:/Users/user/Desktop/ACT5098702019ENGLISH.pdf>
- [4] Amnesty. (2021). *Death Sentences and Executions 2020*. Retrieved from United Kingdom: <https://www.amnesty.org/en/documents/act50/3760/2021/en/>
- [5] Amnesty. (2022). *Amnesty International Global Report: Death Sentences and Execution 2021*. Retrieved from UK:
- [6] Amnesty. (2023a). *Amnesty International Global Report: Death Sentences and Execution 2022*. Retrieved from UK:
- [7] Amnesty. (2023b). *Bangladesh: Execution of two men reveals callous disregard for the right to life*. Retrieved from UK: <https://www.amnesty.org/en/latest/news/2023/07/bangladesh-execution-of-two-men-reveals-callous-disregard-for-the-right-to-life/>
- [8] Asaduzzaman. (2021, February 16, 2021). *Government pardon for Haris and Anis too*. *Prothomalo English* Retrieved from <https://en.prothomalo.com/bangladesh/crime-and-law/government-pardon-for-haris-and-anis-too>
- [9] Correspondent, S. (2012, November 18, 2012). *Mercy president's, responsibility PM's*. *The Daily Star*. Retrieved from <https://www.thedailystar.net/news-detail-257911>
- [10] Demleitner, N. V. (2014). *Types of punishment*. In M. D. D. a. T. Hörnle (Ed.), *The Oxford Handbook of Criminal Law*: Oxford University Press.

⁴⁶ *Barr v. Purkey*, The US Supreme Court (591 US 2020), 16 July 2020, dissenting opinion, retrieved from Amnesty International Report 2020.



- [11] DPIC. (2022). Clemency. Retrieved from Washington, DC: <https://deathpenaltyinfo.org/facts-and-research/clemency>
- [12] FIDH. (2010). *Bangladesh: Criminal Justice through the Prism of Capital Punishment and the Fight against Terrorism*. Retrieved from www.fidh.org/IMG/pdf/Report_eng.pdf
- [13] Garland, D. (1993). *Punishment and modern society: A study in social theory*: University of Chicago Press.
- [14] Hasan, R. (2012, November 15, 2012). Zillur too merciful. *The Daily Star*. Retrieved from <https://www.thedailystar.net/news-detail-257572>
- [15] Hoyle, C. (2020). *Living Under Sentence of Death: A study on the profiles, experiences and perspectives of death row prisoners in Bangladesh*. Retrieved from Dhaka:
- [16] Hoyle, C., & Lehrfreund, S. (2020). Contradictions in judicial support for capital punishment in India and Bangladesh: utilitarian rationales. *Asian journal of criminology*, 15(2), 141-161. <https://doi.org/10.1007/s11417-019-09304-0>
- [17] Husak, D. N. (2017). *Kinds of Punishment*. Social Science Research Network. doi:<http://dx.doi.org/10.2139/ssrn.2979458>
- [18] Islam, M. (2010). *Constitutional Law of Bangladesh (Second ed.)*. Dhaka: Mullick Brothers
- [19] Islam, M. S. (2019). Random Wrongful Conviction and Exoneration, Rare Compensation: A Need For A Compensation Statute in Bangladesh. *IJCLS (Indonesian Journal of Criminal Law Studies)*, 4(2), 127-146. DOI: 10.15294/ijcls.v4i2.20863
- [20] Kader, M., & Hussain, M. M. (2010). *Criminology (Second ed.)*. Dhaka Books 4 U.
- [21] Karzon, S. H. R. (2005, August 6, 2005). Legality of the presidential amnesty to a convict in a double murder case. *Law & Our Rights*.
- [22] Khan, M. H. (2010, September 21, 2010). Presidential clemency: Beyond question? *The Daily Star*. Retrieved from <https://www.thedailystar.net/news-detail-155234>
- [23] Malik, S. (2010, September 8, 2010). Wholesale pardon under question. *The Daily Star*. Retrieved from <https://www.thedailystar.net/news-detail-154123>
- [24] Malik, S. (2021, February 16, 2021). Government pardon for Haris and Anis too. *Prothomalo English*. Retrieved from <https://en.prothomalo.com/bangladesh/crime-and-law/government-pardon-for-haris-and-anis-too>
- [25] Manir, S. (2021, December 18, 2021). Living under the agony of death, Law Opinion. *The Daily Star*, p. Law & Our Rights. Retrieved from <https://www.thedailystar.net/law-our-rights/news/living-under-the-agony-death-2920256>
- [26] Odhikar. (2022). *BANGLADESH: Imposition of the death penalty and its impact*. Retrieved from Dhaka: https://www.ohchr.org/sites/default/files/2022-05/odhikar_replies-dp.pdf
- [27] Posner, R. A. (2010). *How judges think*: Harvard University Press.
- [28] Rahman, M. (2012, November 18, 2012). Mercy president's, responsibility PM's. *The Daily Star*. Retrieved from <https://www.thedailystar.net/news-detail-257911>
- [29] Rahman, M. M. (2020). *Living Under Sentence of Death: A study on the profiles, experiences and perspectives of death row prisoners in Bangladesh*. Retrieved from Dhaka
- [30] Sarkar, K., & Sarkar, A. (2010, September 8, 2010). Wholesale pardon under question. *The Daily Star*. Retrieved from <https://www.thedailystar.net/news-detail-154123>
- [31] Shamdasani, R. (2016). UN rights office expresses concern about death sentences in Bangladesh [Press release]. Retrieved from <https://news.un.org/en/story/2016/04/526262>