International Conference

on

Capital Punishment in Asia: Progress and Prospects for Law Reform

4-5 November 2011

CONFERENCE PROGRAMME, ABSTRACT OF PAPERS AND BIOGRAPHICAL DETAILS OF SPEAKERS
FINAL PROGRAMME

Thursday, 3 November 2011

7:00pm- 8:30pm – Welcome Dinner hosted by the City University Law School at Royal Park Hotel, Shatin (by invitation)

Friday, 4 November 2011

9:00am-9:30am – Registration, Connie Fan Multi-media Conference room (MMR), CityU

9:30am-11:00am – INAUGURAL SESSION

Welcoming Remarks: Professor Anton Cooray, Associate Dean, School of Law, City University of Hong Kong

Inaugural Speech: Professor Arthur Ellis, Provost, City University of Hong Kong

Opening Address by the Guest of Honour, Mr Kevin P Zervos, Director of Public Prosecutions, Justice Department, Government of the HKSAR

Keynote Address: Professor Franklin Zimring, William G Simon Professor of Law, Berkeley Law School – “Large Issues and Small Steps towards Progress in Ending Executions in Asia”

Questions/Comments

Vote of Thanks: Dr Surya Deva, Associate Professor, School of Law, City University of Hong Kong

Group Photo

11:00am-11:15am – Tea (MMR)

11:15am-12:45pm – SESSION I: Death Penalty – Situating Asia within International Human Rights Perspectives

Chair: Dr Mark Kielsgard, Assistant Professor, School of Law, City University of Hong Kong

1) Dr Saul Lehrfreund, Executive Director, The Death Penalty Project, London

Restricting the Use of the Death Penalty: The Relevance of International Human Rights Norms to Capital Punishment in Asia
2) **Mr Y S R Murthy**, Associate Professor and Executive Director, Centre for Human Rights Studies, Jindal Global Law School

*Role of National Human Rights Institutions (NHRIs) in the Abolition of Death Penalty: A Critical Evaluation with Reference to the Asia Pacific Region*

3) **Mr Sam Garkawe**, Associate Professor, School of Law and Justice, Southern Cross University, Australia

*Australian Attitude to the Death Penalty in Asia*

Questions/Comments

12:45pm-2:00pm – Lunch by invitation (Shing Hin Restaurant, 8/F Amenities Building, CityU)

2:00pm-4:30pm – **SESSION II: The Death Penalty in China – Review of Reforms and Recent Trends**

Chair: **Professor Roger Hood**, Emeritus Fellow, All Souls College Oxford and Adjunct Professor, School of Law, City University of Hong Kong

1) **Professor Renwen Liu**, Director, Criminal Law Department of the Institute of Law, Chinese Academy of Social Sciences (CASS), Beijing

*A Review of Reform on the Death Penalty System and Its Prospects in China*

2) **Ms Michelle Miao**, PhD Candidate, University of Oxford and **Professor Zhao Bingzhi**, Dean, College for Criminal Law Science of Beijing Normal University, Beijing, China and

*Examining the Impact of International Human Rights Forces in Shaping Chinese Attitudes and Practices regarding Capital Punishment*

3) **Dr Susan Trevaskes**, Associate Professor, Griffith University, Australia

*“Suspending Death” in Chinese Capital Cases: The Road to Reform*

4) **Dr Børge Bakken**, Associate Professor, Department of Sociology, University of Hong Kong

*The Norms of Death: On Capital Punishment in China*

Questions/Comments

4:30pm-4:45pm – Tea (MMR)
4:45pm-6:00pm – SESSION III: Reviewing the Position in Singapore and Taiwan

Chair: Mr Parvais Jabbar, Executive Director, The Death Penalty Project, London

1) Professor Michael Hor, Faculty of Law, National University of Singapore
   Death Penalty Developments in Singapore: Same Old Story or Beginning of the End

2) Ms Hsin-Yi Lin, Executive Director, Taiwan Alliance to End the Death Penalty (TAEDP), Taiwan
   How to Bring Back the Moratorium in Taiwan?

Questions/Comments

6:30pm-8:00pm – Dinner hosted by the Jindal Global Law School at Festive China Restaurant, Festival Walk (by invitation)

Saturday, 5 November 2011

9:00am-11:15am – SESSION IV: The Death Penalty in India – Time to Move Beyond the “Rarest of Rare” Cases?

Chair: Mr Jack Burke, Senior Teaching Fellow, School of Law, City University of Hong Kong

1) Professor B B Pande, Former Professor of Law, Faculty of Law, University of Delhi
   The Indian Death Penalty Thinking Still Shrouded in ‘Unscientific Reactionism’

2) Professor C Raj Kumar, Vice Chancellor, O.P. Jindal Global University and Dean, Jindal Global Law School and Amit Bindal, Assistant Professor and Assistant Director, Centre for Penology, Jindal Global Law School
   Abolition of Death Penalty in India: Legal, Constitutional and Human Rights Dimensions

3) Mr Bikramjeet Batra, India Campaigner, Amnesty International
   ♫ “Don’t be Cruel...” ♩: Law, Cruelty and the Death Penalty in India

4) Dr Surya Deva, Associate Professor, School of Law, City University of Hong Kong
   Death Penalty in the ‘Rarest of the Rare’ Cases: A Critique of Judicial Choice-Making

Questions/Comments

11:15am-11:30am – Tea (MMR)
11:30am-12:45pm – SESSION V: The Death Penalty Debate in Pakistan and Malaysia

Chair: Professor Michael Hor, Faculty of Law, National University of Singapore

1) Mr Kamran Arif, Co-chairperson, Human Rights Commission of Pakistan
   The Right to a Fair Trial and the Death Penalty Debate in Pakistan

2) Ms Roseann Rife, Head of Special Projects, Global Thematic Issues, Amnesty International
   Campaigning for Abolition in Asia from Amnesty International Perspective: The Case of Malaysia

Questions/Comments

12:45pm-2:00pm – Lunch hosted by the Office of the European Union to Hong Kong and Macau at City Top, 9/F Amenities Building, CityU (by invitation)

2:00pm-4:15pm – SESSION VI: Reform Prospects in Japan and South Korea

Chair: Mr Robert Godden, Asia-Pacific Campaign Coordinator, Amnesty International

1) Professor David T Johnson, Department of Sociology, University of Hawaii
   Progress and Prospects for Law Reform in Japanese Capital Punishment

2) Dr Mai Sato, Centre for Criminology, University of Oxford
   Arguing Abolition from a Non-human Rights Perspective: Public Judgment on the Death Penalty

3) Ms Maiko Tagusari, Secretary General, Centre for Prisoners Rights, Japan
   What is Changing and Unchanging: Two Years after Political Change in Japan

4) Professor Byung-Sun Cho, Cheongju University College of Law, South Korea
   Capital Punishment in South Korea: Progress and Prospects for Law Reform in East-Asian Context

Questions/Comments

4:15pm-4:30pm – Tea (MMR)
4:30pm-5:45pm – SESSION VII: Summing Up and Chartering the Future Agenda

Chair: Dr Surya Deva, Associate Professor, School of Law, City University of Hong Kong

1) Ms Maria Castillo Fernandez, Head of Office, Office of the European Union to Hong Kong and Macau

   The European Initiative for Democracy and Human Rights – Political Commitment Matched by Substantial Project Support

2) Professor Roger Hood, Emeritus Fellow, All Souls College Oxford and Adjunct Professor, School of Law, City University of Hong Kong

   Concluding Address: Asia in the International Context – The Way Forward
Mr Kevin Zervos, SC, is Director of Public Prosecutions with the Hong Kong Department of Justice. Mr Zervos is a specialist in human rights and in the prosecution of white collar crime. In 1984, he worked in Australia with the Special Prosecutor’s office responsible for the investigation and prosecution of large scale revenue frauds. From 1985, he was Senior Assistant Director of the office of the Commonwealth Director of Public Prosecutions at the Melbourne and Sydney Offices where he was in charge of the Major Fraud Section. From 1989 to 1992, he was General Counsel to the Independent Commission Against Corruption in New South Wales. From 1992 to date, he has worked as counsel with the Hong Kong Department of Justice, initially attached to the Commercial Crime Unit where he mainly prosecuted white collar crime cases, then as head of Appeals specializing in Human Rights and later as Chief of Staff. In May 2003, Mr. Zervos was appointed Senior Counsel in Hong Kong. In 2009, he completed a Masters of Laws (Human Rights) at the University of Hong Kong.

Mr Zervos has conducted the full ambit of trials and appeals in all fields of law. In trial work he has specialized in commercial crime, including credit card and currency frauds, banking and corporate frauds, infringement of intellectual property, money laundering and corruption. In appeal work he has conducted cases involving constitutional law, human rights, administrative law as well as most aspects of the criminal law and law of evidence. He has presented numerous papers and given talks on a variety of legal topics including human rights, appeals, commercial crime, fraud, money laundering, corruption and sentencing.
Large Issues and Small Steps towards Progress in Ending Executions in Asia

Franklin E Zimring

There are clear concentrations in the geography of executions as the 21st century begins, with nine out of ten of the planet’s executions on the Asian continent. Europe in 2011 is execution-free while Asia exhibits a wide variety of different death penalty policies and some pockets of high execution volume.

One cluster of theories to account for these geographic differences emphasizes the dynamic of national development. According to this story, Asia lags behind Europe in economic and political development but is catching up quickly. The authorization and use of killing as a state punishment is a hold-over from less developed political and economic conditions and the differences can be expected to abate with further Asian development.

The second cluster of explanations emphasizes substantive differences between Asian nations and European nations and expects that differences in death penalty policy may continue as long as the underlying conditions that have driven executions in Asia persist. One theory of Asian difference concerns cultural values and public opinion.

Lee Quan Yew of Singapore links active capital punishment to “Asian values,” emphasizing collective well-being instead of individual rights and People’s Republic of China prosecutors will mention “cultural values” in explaining high rates of execution in that nation. A second cluster of theories sees the persistence of authoritarian governments of the left and the right as the major substantive explanation for high execution states in Asia. This is a political rather than cultural account.

The recent history of the death penalty in Asia suggests the “Asian values” explanation is a myth but shows instead the concentration of execution in authoritarian states and a decline in executions when democratic reforms take hold. But the persistence of autocratic governments is an obstacle to swift reductions in execution. Yet even autocratic states are aware of the negative reactions to high rates of execution in the developed world.

Two modest steps can help diminish state killings in Asia. First, a regional NGO that collects and spreads information can be of great value. Second, a campaign to secure commitments against the use of executions as a tool against political crime can remove a dangerous incentive for state killing that has played a prominent role in East Asia in the 20th century.
Franklin E Zimring

Professor Franklin Zimring is a professor of law at the University of California at Berkeley since 1985. He was appointed the first Wolfen Distinguished Scholar in 2006. Professor Zimring was a professor of law and Director of the Center for Studies in Criminal Justice at the University of Chicago from 1967 to 1985.

Professor Zimring’s major fields of interest are criminal justice and family law, with special emphasis on the use of empirical research to inform legal policy. He is best known for his studies of the determinants of the death rate from violent attacks; the impact of pretrial diversion from the criminal justice system; and criminal sanctions. He has been a visiting professor at the University of Pennsylvania and Yale University, and a fellow of the Center for Advanced Studies in Behavioral Sciences. He is a fellow of the American Society of Criminology and a member of the American Academy of Arts and Sciences.

Professor Zimring is the author or co-author of three books and several empirical studies on state execution. His most recent book (with David T Johnson) on capital punishment is The Next Frontier: National Development, Political Change, and the Death Penalty in Asia (Oxford University Press, 2009).
Restricting the Use of the Death Penalty: The Relevance of International Human Rights Norms to Capital Punishment in Asia

Saul Lehrfreund

For those countries in Asia that have either signed or ratified the International Covenant on Civil and Political Rights (ICCPR), changes to domestic law and practice on capital punishment need to be considered in order to achieve compliance with contemporary human rights norms that have progressively restricted the use of the death penalty.

This paper will look at the development of minimum human rights standards to be applied in countries that still impose capital punishment and in so doing, to look at the critical role of the judiciary in ensuring that the domestic law is interpreted and construed consistently with contemporary international human rights norms especially in countries whose governments have failed to reform death penalty laws.
Saul Lehrfreund

Saul Lehrfreund is the co-founder and an Executive Director of the Death Penalty Project an international NGO based at Simons Muirhead& Burton. He has been running the Death Penalty Project since its inception in 1992. In November 2000, Saul was awarded an MBE for services to international human rights and in July 2009, he received an Honorary Degree of Doctor of Laws from the University of Reading.

Saul specialises in constitutional and international human rights law and has represented prisoners under sentence of death, *inter alia*, before the Judicial Committee of the Privy Council; the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights; and the United Nations Human Rights Committee.

In 1995 the Death Penalty Project won the category of “best pro bono activity” at the inaugural ‘UK Lawyer Awards’, and in the same year Saul received an individual award from the International Bar Association for his contribution to the promotion and protection of human rights. In 1999, he and ParvaisJabbar were joint winners of the Times/Justice Young Lawyer of the Year award.

Saul is a founder member of the British Foreign Secretary’s Death Penalty Panel and provides legal assistance to British prisoners facing the death penalty as a member of the Pro Bono Panel of the UK Foreign & Commonwealth Office. He was appointed as the UK nominated representative at the EU-China Human Rights Dialogue Seminar held in Beijing in June 2005. He is a member of the University of Reading’s Law School “Pro Bono” Steering Committee and in 2009, Saul was invited to join The Times Law Panel.
Role of National Human Rights Institutions (NHRIs) in the Abolition of Death Penalty: A Critical Evaluation with Reference to the Asia Pacific Region

Y.S.R. Murthy

The National Human Rights Institutions (NHRIs) have emerged as key entities in the task of protection and promotion of human rights. They complement the efforts of various United Nations Charter-based bodies, treaty-bodies, special procedures mandate holders under the international system as well as regional systems for the protection of human rights in the Europe, Americas and Africa. The NHRIs constitute a crucial component of the national protection systems to uphold the rule of law, good governance and human rights.

This paper reviews the legal obligations under the international human rights law and in particular obligations flowing from the ICCPR. While noting that there has been impressive growth of NHRIs in the Asia Pacific region in the past two decades, this paper critically evaluates the potential as well as performance of these entities in the law reform towards abolition of death penalty. Despite recommendations from the Advisory Council of Jurists to the Asia Pacific Forum of National Human Rights Institutions, the paper argues that there exists a considerable gap between the potential and performance of NHRIs and makes a number of recommendations on how they can mount effective advocacy for the abolition of death penalty.
Y.S.R. Murthy

Y.S.R. Murthy is presently working as the Associate Professor and Executive Director, Centre for Human Rights Studies and Assistant Dean of the Jindal Global Law School, O.P. Jindal Global University. Prior to it, he served in the National Human Rights Commission of India in various capacities for over 12 years including as the Director, Research. He took part in several fact-finding missions and coordinated the Commission’s work on a wide range of issues; organised many public inquiries, and led the Commission’s efforts through advocacy, law reform and policy reform.

Australian Attitude to the Death Penalty in Asia

Sam Garkawe

This paper will examine Australia’s position with regard to the death penalty in Asia. After briefly outlining the history and present situation regarding the death penalty under Australia law, the main part of the paper will analyse Australia’s response to possible death penalty sentences amongst Asian nations. Amongst the issues discussed will be Australian extradition law – will Australia extradite a suspect to an Asian nation where the alleged crime potentially carries the death penalty? Will Australia cooperate in a criminal investigation being conducted in Asia where the defendant, if convicted, may be subject to the death penalty? What is Australia’s attitude towards offenders (both Australian and non-Australians) already sentenced in an Asian nation to the death penalty? The paper will conclude with a short examination of whether Australia has a role to play in encouraging Asian nations to abolish the death penalty.
Sam Garkawe

Sam Garkawe is an Associate Professor at the School of Law and Justice at Southern Cross University, NSW where he presently teaches human rights, criminal law & procedure, victimology and international criminal justice. His main research interests are in the fields of victimology, international criminal justice and human rights. He has published widely in these areas. He is a founding editor of the *Australian Journal of Human Rights* and in 2001 was a Research Fellow at the Institute of Human Rights and Criminal Justice Studies at Technikon SA, Johannesburg, South Africa. Sam has been a visiting Professor at Hamline University, Minnesota (2001), Whittier University, California (2004), City University of Hong Kong (2006) and Chapman University, California (2009). He also taught a human rights and terrorism summer course in Israel in July 2005, 2006 & 2007. His most recent publication is Martin Flynn, Sam Garkawe and Yvette Holt (eds), *Human Rights: Treaties, Statutes & Cases* (2011), published by LexisNexusButterworths.
SESSION II

A Review of Reform on the Death Penalty System and Its Prospects in China

Liu Renwen

Since the Supreme People’s Court of China took back the death penalty review power from the local courts on 1 January 2007, the sentence and execution of death penalty in judicial practice has decreased to a much extent. On 25 February 2011, the Chinese legislator abolished death penalty for thirteen ‘nonviolent crimes’. This was the first time for the legislator to take out the death penalty articles from the criminal code instead of adding the death penalty articles to the criminal code. Why and how did such reforms happen? What will be the next step of China’s reform on death penalty? This paper will examine these questions.
Liu Renwen

Professor LIU Renwen is Professor and Director of the Criminal Law Department of Law Institute, Chinese Academy of Social Sciences. He got his PhD at China University of Political Science and Law, and earned Post-Doctoral Certificates at CASS and Peking University. He has been a visiting scholar, among others, at Yale Law School, Harvard Law School, Columbia Law School, NYU School of Law, Oxford University Criminology Center, and the Max-Planck-Institut für ausländisches und internationales Strafrecht. He also once worked as the Legal Official at the International Criminal Court. Professor Liu’s publications include Chinese Criminal Law, Comparative Criminal Justice, Death Penalty, International Criminal Court, etc.
Examining the Impact of International Human Rights Forces in Shaping Chinese Attitudes and Practice regarding Capital Punishment

Michelle Miao and Zhao Bingzhi

For a long time, China’s continued use of capital punishment stood in pronounced opposition to the international trend toward restriction and eventual abolition. Yet the last decade saw a surprising turn of this trend: the issue of Chinese capital punishment has taken on a new set of features. What is the role of international human rights movements in promoting such changes? This research, partly based on elite interviews of judges, prosecutors and legislators in 2010 in China, charts the recent transformation of China’s attitudes towards international human rights forces and explains that the international human rights law and practices have been significant motivating factors for the death penalty reforms, although their influences have limitations in China.
Michelle Miao

Ms Michelle Miao holds two Masters Degrees in Law, one from the School of Law of Renmin University of China and the other from New York University Law School. She was an associate with HellerEhrman LLP New York and Hong Kong offices and has worked as teaching assistants and research assistants in various academic institutions including New York University Law School, University of Oxford and Tsinghua University Law School. She is currently working on her DPhil project on the recent capital punishment reforms in China and the impact of international human rights movements.

Zhao Bingzhi

Professor Zhao Bingzhi is Dean of the College for Criminal Law Science and the Law School of Beijing Normal University. He is the first individual awarded a doctorate degree on Criminal Law in China. He was a visiting scholar at Duke University, School of Law. He is now a standing director of China Law Society, President of its Sub-Society of Criminal Law, Vice-Chairman of the International Association of Penal Law, member of the Law Consultation Group in the Committee of Academic Degree in the State Council, consultant to the Supreme People's Court of China, member of the Expert Consultant Committee of the Supreme People’s Procuratorate of China. Professor Zhao was also among the first group of legal scholars who were awarded the title of “the Ten Distinguished Young Jurists in China” in 1995.
“Suspending Death” in Chinese Capital Cases: The Road to Reform

Sue Trevaskes

China has a unique sentencing option called ‘a death sentence with a two-year reprieve’ (*sixing huanqiliangnian*). It is widely referred to in Chinese criminal justice parlance as ‘*sихuan*’ (death suspension). This sentencing option can be given to offenders in capital cases where it is deemed unnecessary to execute immediately. In the past, it has only been used in about 10 to 15% of capital cases and for the majority of cases, immediate execution was the preferred option taken by courts. However, its use as an alternative sentence to ‘immediate execution’ is now becoming much more prevalent. This is important because the vast majority of those given *sихuan* are not executed at all and their sentences are later commuted to a life sentence. This paper explores its most recent role in “killing fewer, killing cautiously”, in particular, its role as a means of implementing China’s new national policy of “balancing leniency and severity”.

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Sue Trevaskes

Sue Trevaskes is an Australian Research Council Research Fellow at Griffith University, Australia. Her research examines criminal justice in China. She has published widely in the area of crime and punishment. Her books include *Courts and Criminal Justice in Contemporary China* (Lexington Press, 2007) and *Policing Serious Crime in China* (Routledge, 2010). She is currently writing a third volume on the death penalty in China.
It has been claimed that Chinese have a “deeply rooted culture” of support for the death penalty. Instead of such a flawed cultural assumption, it is proven by all kinds of empirical sources over the years that the death penalty in China has much less to do with deeply ingrained cultural values than it has with political incentives. In China the death penalty is not part of a cultural penal populism, but rather reflects a political penal elitism.
Dr Børge Bakken is Associate Professor at the Department of Sociology at the University of Hong Kong. He is also director of the Master of Social Sciences in Criminology at the same university. He has published widely on issues relating to crime and discipline, politics and culture in the People’s Republic of China.
Death Penalty Developments in Singapore: Same Old Story or Beginning of the End

Michael Hor

Singapore is perhaps unique amongst the developed economies of the world to have not only preserved its 19th-century death penalty regime intact, but also supplemented it with a few more capital offences in more recent times. External and Internal pressure to change has been increasing. Although official pronouncements have been unyielding, there are signs that a quiet incremental reform may already be afoot. This paper examines these trends.
Michael Hor

Michael Hor is a Professor at the Faculty of Law, National University of Singapore, where he has researched and taught in criminal law and justice for over 20 years. He has held visiting positions in the University of Toronto and the University of Hong Kong.
How to Bring Back the Moratorium in Taiwan?

Lin Hsinyi

For more than four years between December 2005 and April 2010, Taiwan did not carry out any executions. In 2009, it ratified the ICCPR and incorporated it into domestic law. Just when everyone thought Taiwan was nearing the goal of abolition, the government restarted executions on 30 April 2010. On 4 March 2011, it carried out further executions, bringing the total to nine executions in less than a year.

This paper offers a brief look at the government’s policy toward capital punishment over the years and endeavours to analyze the reasons that led Taiwan to restart executions in 2010. The goal is also to open a discussion on how Taiwan can return to a moratorium and eventually abolish the death penalty. How can we reach that goal?
Lin Hsinyi

Lin Hsin-yi has previously worked at the Judicial Reform Foundation (JRF) (1999-2005), where she served as executive secretary and later as office director. While at the JRF, Lin worked with a number of death penalty cases that motivated her to become involved in the anti-death penalty movement. When the Taiwan Alliance to End the Death Penalty (TAEDP) was founded in 2003, Lin led one of the TAEDP’s work groups and later became a board member. Since 2007 she is the director of the TAEDP.

Lin represents the TAEDP at the steering committee of the World Coalition Against the Death Penalty and the working group of the Anti-Death Penalty Asia Network. She is a member of Amnesty International Taiwan’s supervisory board.
The Indian Penal Code 1860 reflected the early nineteenth century repressive and draconian punishment thinking. As a sequel to that, death penalty (DP) was not only accorded a prime place in the scheme of punishments, but was a formally assigned form of punishment for as many as eight diverse kind of offences under the Penal Code. However, by mid-twentieth century on account of input of enlightened ideas in the field of punishment and far reaching socio-political changes, the DP orthodoxy had begun to soften. The DP policy was further profoundly impacted in the post-independence era, by factors such as constitutionality and judicial creativity. As a consequence, the constitutionality of DP was challenged in several cases before the Supreme Court. Although the Court upheld the constitutionality of DP, in the Full Bench decision of Bachan Singh(1980) a significant judicial limitation of its applicability in ‘rarest of rare’ cases was created.

The current DP debate is primarily located in two arenas, namely: (a) exercise of judicial review power by the appellate judiciary, particularly the Supreme Court, and (b) exercise of power of mercy by the Executive. In both these arenas the DP debate is far from uniform, predictable and based on coherent sentencing considerations. The debates appear more like knee-jerk reactions to the raw impact of growing criminality, particularly the violent kind. As a consequence you have Court rulings that go in to justify DP on retributive or societal feelings of revenge. This leads to a trend of adding new situations to the ‘rarest of rare’ categorization that was originally meant to restrict DP. Similar is the state of exercise of mercy power: Mercy petitions remain pending for inordinately long periods, not only because of ideological or personal preferences of the Executive or the party in power, but mostly because of sheer lethargy or lack of concern for the condemned prisoner. Even where the petition is disposed off little consideration is given to the needs and sufferings of the ‘condemned’. The task of reform of the DP policy and Law ought to address the aforesaid contentious issues. The real challenge is of ridding the DP theme of the myths and mythologies of the past.
BBPande

Professor BBPande took law teaching in 1962, after obtaining masters Degree in Law from Lucknow University. His five decade career as a law teacher and researcher has been accomplished in several institutions in India and abroad, such as the University of Jabalpur (1962-1970), University of Delhi (1971-2005/0, University of Dar es salaam, Tanzania (1981-83), University of Lucknow (1991-1994), University of Cardiff and City university Hong Kong etc. Professor Pande has specialized in subjects like Criminal Law, Criminal Procedure Law, Law Of Evidence, Criminology, Juvenile Delinquency, Jurisprudence and Human Rights Law. He earned Research Fellowship and visited the Max- Planck Institute for Foreign and International Criminal Law, Freiburg (Germany) in 1988, 1992, 1995 and 1997. Currently he is President of the Indian Society of Criminology (ISC) and has been conferred their prestigious senior Social Scientist Award and Kumarappa- reckless Award in 1995 and 2002. Professor Pande has to his credit over one hundred research publications in national and foreign journals and edited works. He has made over one hundred and fifty seminars presentations on diverse criminal justice themes in national and international conferences and intellectual meets.

Professor Pande is an experienced hand in dealing with Death Penalty theme. His first major research titled: “Face to Face with Death Sentence: Supreme Courts Legal and Constitutional Dilemma”, was published in 1979, followed by: “Murder Most Foul, Though not Rarest of Rare” in 1996 and in November 2005, he initiated discussion on “Taking Sides in Death penalty Debate” at a Lunch Seminar at the City University Hong Kong. This makes Professor Pande no stranger to the City university audience, where he was a Visiting Professor during September-December 2005.
Abolition of Death Penalty in India: Legal, Constitutional and Human Rights Dimensions

C Raj Kumar and Amit Bindal

This paper argues for the abolition of death penalty in India on the basis of the existing legal, constitutional and human rights framework in India. The need for abolition of death penalty is not only an aspirational objective to be pursued under the international human rights framework, but also a critical component of Indian constitutionalism. The jurisprudential foundations of death penalty as a form of punishment will be examined in the light of the different objectives of punishment as well as their effectiveness. There is a need to examine by empirical analysis the effectiveness of death penalty as a state instrument of punishment assessing the validity of deterrence as one of the objectives of death penalty. The paper will examine the contemporary global trends in which nearly half of the countries around the world have abolished death penalty and what could be constitutional basis in India for moving in that direction. The paper would also argue that the abolition of death penalty in India should move beyond the existing notions of its implementation in “rarest of rare” cases and lead to the fundamental recognition that nobody, including the state has the right to take away anyone’s life. This is particularly relevant in the context of India when there have been numerous incidents of abuse of power by the law enforcement authorities. The case for abolition of death penalty will be made bearing in mind that this is not in any way undermining the efforts to develop an effective criminal justice system where certainty of punishment and upholding of the rule of law would be more valuable and effective reforms in criminal justice process than imposition of death penalty.
C Raj Kumar

Professor C. Raj Kumar is a Professor and Vice Chancellor of O.P. Jindal Global University and the Dean of the Jindal Global Law School. Professor Kumar is also a Member of the National Legal Knowledge Council (NLKC) and Member of the Steering Committee, Ministry of Law & Justice, Government of India. He was an Associate Professor at the School of Law of City University of Hong Kong, where he taught for many years. Professor Kumar was a Rhodes Scholar at the University of Oxford, UK and obtained a Bachelor of Civil Law (B.C.L.); a Landon Gammon Fellow at the Harvard Law School, USA and obtained a Master of Laws (LL.M.) and a James Souverine Gallo Memorial Scholar at the Harvard University. He holds a Doctor of Legal Science (S.J.D.) from the University of Hong Kong. He has a Bachelor of Laws (LL.B.) from the University of Delhi, Madras. Professor Kumar's areas of specialisation include, human rights and development, terrorism and national security, corruption and governance, law and disaster management, comparative constitutional law and legal education. He has over hundred publications to his credit and has published widely in journals and law reviews in Australia, Hong Kong, India, Japan and USA. Professor Kumar has held consultancy assignments in the field of human rights and governance. He has been a Consultant to the United Nations University (UNU), Tokyo; United Nations Development Programme (UNDP); and the International Council for Human Rights Policy (ICHRP), Geneva and the Commission to Investigate Allegations of Bribery or Corruption (CIABOC), Sri Lanka. Professor Kumar is an Attorney at Law and is admitted to the Bar Council of Delhi, India and the Bar of the State of New York, USA.

Amit Bindal

Professor Amit Bindal is an Assistant Professor at JGLS. Professor Bindal obtained his Master of Laws (LL.M.) from the Indian Law Institute, where he won a gold medal in Jurisprudence and secured highest marks in Criminology, which was one of his areas of specialisation. He obtained a Bachelor of Laws (LL.B.) from the University of Delhi; and he graduated with Honours in English Literature from the Hans Raj College, University of Delhi. Professor Bindal’s areas of specialisation include Legal Theory, Human Rights, Criminology, Law of Evidence and Post-Colonial Studies. Presently, he is also a visiting faculty member at the Indian Law Institute teaching Human Rights and Constitution. He has published various articles in Law Journals like Bangalore Law Review, Journal of Indian Law Institute. Professor Bindal was one of the Senior Editors of the commemorative issue of the Jindal Global Law Review (JGLR), the flagship journal of the JGLS (Volume 1, Issue 1, September 2009). He has also contributed various short articles and comments in magazines such as Combat Law (Human Rights Law Network), and AWAZ Times. Professor Bindal has researched as an intern with the National Commission for Women and contributed to the preparation of report on the Plight of Women Working in Unorganised Sector. He was admitted to the Bar Council of India in 2008.
“Don’t be Cruel...” ∙ Law, Cruelty and the Death Penalty in India

Bikramjeet Batra

This paper examines questions around ‘cruelty’ of the death penalty in India. Amnesty International takes the position that the death penalty is the ultimate cruel, inhuman and degrading punishment. Although international law jurisprudence does not yet subscribe to that view, there has been significant progress on the question of which aspects of the death penalty may amount to cruel, inhuman and degrading treatment or punishment. Similarly India’s Supreme Court, despite upholding the constitutionality of the death penalty, has also examined the question of cruelty of certain aspects of the death penalty. This paper examines the cruelty of certain aspects of the Indian capital punishment regime – prolonged stay on death row, conditions of detentions, mode of execution and the alternative punishment of life imprisonment without possibility of release – from a lens of Indian and international law. It will also engage with the US debate on cruel on unusual punishment, where relevant.
Bikramjeet Batra

Bikramjeet Batra is India Campaigner at Amnesty International. Previously he worked as a Lawyer in New Delhi; Legal Officer at Amnesty International India and Research Associate at the Institute of Advanced Legal Studies, Pune. He studied law at the universities of Pune and Warwick and was a visiting fellow at the Centre for Study of Law and Governance, Jawaharlal Nehru University, New Delhi. He is a recipient of the New India Fellowship and is currently completing a manuscript on the death penalty in India.
Death Penalty in the ‘Rarest of Rare’ Cases: A Critique of Judicial Choice-making

Surya Deva

In 1980, the Indian Supreme Court in *Bachan Singh v State of Punjab* interpreted the ‘special reasons’ requirement for death penalty to mean that the death penalty should be awarded only in ‘the rarest of rare cases when the alternative option is unquestionably foreclosed.’ This judicial interpretation, which might have operated as a barrier on the number of executions in India, may suggest that the Supreme Court has been progressive (if not pro abolitionist) on the issues of death penalty. However, this has not been the case always. The Supreme Court has applied its own ‘rarest of rare’ yardstick inconsistently, offered unsound normative justifications to sustain death penalty in selected cases and has also advocated the idea of capital punishment in certain situations. It also seems that some recent cases have raised larger policy issues that cannot be adequately dealt with by the judiciary on a case-by-case basis.

On reviewing all decisions given by the Supreme Court between January 2000 and October 2011, I will argue that the principle of ‘rarest of rare’ cases has outlived its utility, especially because the arbitrary exercise of sentencing power by the apex court violates the equality guarantee of the Constitution. It is, therefore, desirable for the government to conduct a public consultation and then provide clear guidance to courts as to the cases in which death penalty should be awarded, if at all.
Surya Deva

Dr Surya Deva is an Associate Professor at the School of Law of City University of Hong Kong. He has taught previously at the Faculty of Law, University of Delhi and at the National Law Institute University, Bhopal. His primary research interests lie in Corporate Social Responsibility, Indo-Chinese Constitutional Law, International Human Rights, Globalisation, and Sustainable Development. He has published numerous book chapters and journal articles in these areas and also written two major reports on Access to Justice: Human Rights Abuses Involving Corporations (concerning India and China) for the International Commission of Jurists (ICJ), Geneva. His first book entitled Regulating Corporate Human Rights Violations: Humanizing Business will be published by Routledge in January 2012. He is the Faculty Editor of the City University of Hong Kong Law Review.
The Right to Fair Trial and the Death Penalty Debate in Pakistan

Kamran Arif
Kamran Arif

Mr Kamran Arif, a human rights lawyer, is Co-chairperson of the Human Rights Commission of Pakistan.
Campaigning for Abolition in Asia from Amnesty International Perspective: 
The Case of Malaysia

Roseann Rife

Since 1977, Amnesty International has advocated against the death penalty in all cases regardless of the nature of the crime, the characteristics of the offender or the method of execution. As a result of this long-standing experience in researching and campaigning for the abolition of the death penalty, the organization plays a leading role in the international abolition movement and its global membership joins together in targeted advocacy efforts, such as support for the UN resolution on a moratorium on the use of the death penalty as well as actions on individual cases to stop executions in countries worldwide. But in some countries international pressure seems to have less impact than others, arguably in what are now perceived as the ‘hard-core’ retentionist countries. Increasingly Amnesty International works closely with other local activists and organizations to build public support for abolition in retentionist countries and to create local networks and coalitions. How has Amnesty International adapted its advocacy strategies to target the remaining retentionist countries and how does the organization work in countries where its own membership numbers are low or even non-existent. Looking at the organization’s current work in Africa, the US and Asia, with a particular look at Malaysia, how are the debates shifting and what actions are most effective for a membership organization?
Roseann Rife

Roseann Rife is Head of Special Projects, in the Global Thematic Issues Programme at Amnesty International working with Teams involved in Abolition of the Death Penalty and Health and Detention Conditions. Prior to this she was Deputy Program Director of the Asia-Pacific Programme in the Asia-Pacific Regional Office in Hong Kong. She has worked with other non-governmental organizations, both in the USA and in Hong Kong dealing with human rights and international law. She has done research in human rights law as well as Chinese Criminal and Labour Law. In 2004 she was a fellow based at the Office of the United Nations High Commissioner for Human Rights in Cambodia. Roseann has degrees in International Relations and International Human Rights Law.
Progress and Prospects for Law Reform in Japanese Capital Punishment

David T Johnson

This paper examines efforts to reform capital punishment in Japan. In recent years there have been several attempts, from movements to introduce life without parole as an alternative to death and to enact a moratorium on executions, to proposals to require unanimity in decision-making at capital trials and to open the gallows to public and media observers. So far, none of these efforts has resulted in law reform. What has changed is the manner in which Japan conducts capital trials. Since 2009, murders (and some other serious offenses) have been adjudicated by mixed panels composed of three professional judges and six lay judges. This paper explores the effects of the new lay judge system on Japan’s capital punishment complex.
David T Johnson

The Japanese government’s official justification for the retention of the death penalty is majority public support. Japan does not consider the prohibition of the death penalty as a human rights issue, and treats it as a matter of domestic criminal policy. In abolitionist countries, state institutions treat the death penalty as a matter of principle based on human rights. Historically, these appeals to principle have been the major driver of abolition, which has been implemented through judicial and political leadership. However, governments in retentionist countries tend to argue that total prohibition is not yet established as a human rights norm, and that international treaties can only be binding to those that choose to be bound by them. How should the Japanese government respond to public opinion? Should they insulate policy from public opinion because the death penalty leads to a loss of life with little consideration to offenders’ rights (which leaves the question of how to persuade them to view the death penalty as a human rights issue)? Or should they continue to be responsive to public demands, on the assumption that abolition would actually erode the perceived legitimacy of state institutions? Should they, in other words, consider the death penalty as a ‘necessary shadow’ of democracy? This paper examines public attitudes to the death penalty in Japan, drawing on findings from three different types of surveys. It discusses the measurement of public attitudes, the use of public opinion survey in policy, and the implications for the Japanese government.
Mai Sato

Mai Sato holds the Oxford-Howard League post-doctoral fellowship at the Centre for Criminology, University of Oxford. She joined the Centre in January 2011. Before coming to the Centre, she completed her PhD at King’s College London in 2010. Her thesis focused on public attitudes to the death penalty in Japan. It examined the impact of information and “deliberation” on attitudes to punishment, and how trust in people and in institutions can explain support for, and opposition to, the death penalty. Prior to her PhD, she completed her Inter-Collegiate LLM at SOAS after obtaining her undergraduate degree jointly from the University of York and Chuo University in Japan. She also works half-time at the Institute for Criminal Policy Research on Euro-Justis, an EU-funded project on public trust in justice, and teaches a short course on quantitative analysis at King’s College London.
What is Changing and Unchanging: Two Years after Political Change in Japan

Maiko Tagusari

In 2009, Japan experienced the two major changes: one is a power shift to DPJ-led government from LDP and the other is introduction of Lay Judge System. Since then, contrary to the expectation of many of the progressives outside Japan, there has been almost no change about the death penalty system. Public prosecutors take a strong initiative on the administration of the system and despite the establishment of the Minister’s Panel on the Capital Punishment System strict control on the relevant information is prevailing. Since November 2010, we have seen several death sentences under the new lay judge system. The sentences have been handed down without recognition that the crime situation in Japan remains quite safe and the homicide rate continues to hit the lowest record. Media contribute to the public anxiety about crimes and tend to convey the vocal voices of victims’ families which demand extensive use of capital punishment. On the other hand, serious failures of criminal justice system which includes wrongful death sentences and recent scandals of public prosecutors’ misconducts have not led to any systematic reform so far.

It is not easy even to precisely evaluate the Japanese situations and of course there is no magic bullet to abolish the penalty. At least, however, a fight against the death penalty requires a wide view about the punishment as a whole as well as an alliance with a wide range of movements seeking for a society based on respect for human dignity.
Maiko Tagusari

Maiko Tagusari is Secretary-General of Center for Prisoners’ Rights Japan (CPR). She passed the National Bar Examination in 1992 and started practicing law in 1995 as a member of Daini Tokyo Bar Association. Since then she has been working in the area of human rights in penal institutions, including legal representation of death row inmates. She serves as Vice Secretary-General of Committee on Prison Law Reform of Japan Federation of Bar Associations (since 2005) and Vice Chair of JFBA Death Penalty Moratorium Implementation Committee (since 2009). She graduated Faculty of Law, University of Tokyo, in 1993.
There appear to be three alternative futures of de facto abolitionist South Korea: (1) a continuation of the current moratorium on execution, (2) formal abolition, and (3) resumption of execution. In 2010, there was an attempt to reintroduce executions as well as efforts to activate anti-death penalty activism and a legislative abolition. The current de facto abolitionist situation has been caught between extremes, hope and despair. An analysis of South Korean death penalty issues at the levels of the executive, the judicature and the legislative branch shows a gradual transition to formal abolition. A gradual transition needs a certain period. Some abolitionists could disappointedly believe that a period without capital punishment is unnecessary. Retentionists, on the other hand, hope to use the moratorium period to fix capital punishment’s flaws. Is there really evidence for the premise that abolition will follow such a period of review? The South Korean case will be an evidence that the moratorium is no ultimate strategy of abolition, but a very last resort for the gradual transition to formal abolition. During the suspension period the infrastructure for abolition should be put in place. What important is that South Korea’s 13 years moratorium on execution, not become a goal in itself, and that it be continually presented as a step towards total and permanent replacement of capital punishment.
Byung-Sun Cho


Professor Cho is a Professor of Law at Chongju University College of Law in Korea. He specializes in Criminal Law, Criminal Procedure and Legal Philosophy. Professor Cho has served as an exchange professor (Humboldt Research Fellow) at the University of Freiburg in Germany. He was the Chairman of the Law Faculty at Chongju University from 1993 to 1995 and the Dean from 2004 to 2006. He has been involved in research projects on such varied topics as Environmental Criminal Law, Organ Transplantation, Corruption, Death Penalty, Transitional Justice, and Collective Guilt. He has served as a legal consultant to the Korean Ministry of Justice for the Enactment of Regulatory Offense Law. Professor Cho has traveled extensively in Europe, the USA and Asia to deliver lectures and presentations on criminal justice topics. As a Guest Professor he taught Korean Criminal Justice at the Saint Louis University Law School in Missouri, USA in the spring semester of 2000 and 2003, at the Renmin University Law School in Beijing, China in 2009, and at the Kansai University Law Faculty, in Osaka, Japan in 2011.
The abolition of the death penalty worldwide is one of the main objectives of the EU’s human rights policy. Political commitment by the EU has been matched by substantial financial support for concrete projects.

By being the biggest donor, the EU plays the leading role in efforts by civil society organizations around the world to campaign for the abolition of the death penalty. The EU uses all available tools of diplomacy and cooperation assistance to work towards the abolition of the death penalty. The EU encourages public debate, strengthening public opposition and putting pressure on retentionist countries to abolish the death penalty, or at least introduce a moratorium as a first step. The EU also acts against the death penalty in multilateral forums, such as the United Nations.

As part of its continuous effort to advocate the EU’s global human rights policy, the Office of the European Union to Hong Kong and Macao is proud to co-sponsor this valuable and ground breaking International Conference on Capital Punishment.
Maria Castillo Fernandez

Ms Maria Castillo Fernandez has been Head of Office of the European Union to Hong Kong and Macao since September 2008. Her career in the European Commission has also included working as Desk Officer for relations with Russia (1996-2000), Legal Advisor and manager of research programmes in the field of exchange of EU scientists and research networks (1990-1996) and Legal Advisor in charge of thematic human rights issues. Ms Castillo completed postgraduate studies in international relations and European law (College of Europe, Bruges - Institute of European Studies, Strasbourg) following her degree in law from the Universidad Autónoma de Madrid. She was decorated with the Cruz de Oficial de la Orden del Mérito Civil by the King of Spain on 24 June 2008.
Concluding Address: Asia in the International Context – The Way Forward

Roger Hood

As one of the conveners of this conference, I will attempt to bring together the main themes arising from the papers and discussion, place them in the broader global context and suggest ways in which scholars, lawyers, and politicians might overcome barriers to reform so as to further advance along the road to abolition of capital punishment in Asian countries.
Roger Hood

Roger Hood is Professor Emeritus of Criminology at the University of Oxford and Emeritus Fellow of All Souls College. From 1973 to 2003 he was Director of the Oxford Centre for Criminological Research. He is at present an Adjunct Professor, City University of Hong Kong Law School. In 1986 he received the Sellin-Glueck Award of the American Society of Criminology for ‘Distinguished International Contributions to Criminology’. As consultant to the United Nations, he was responsible for preparing the Secretary-General’s 5th, 6th and 7th Quinquennial reports on the status of the death penalty worldwide. Amongst other books, he is author of The Death Penalty: a Worldwide Perspective (1st ed. 1989; 4th edition, co-authored with Carolyn Hoyle, was published in 2008 and has been translated into Chinese). He has been appointed CBE (Commander of the Order of the British Empire), Honorary Queen’s Council, and a Fellow of the British Academy. He holds Honorary Doctorates of Law from Birmingham and Edinburgh Napier Universities and in 2011 was awarded the Beccaria Medal by the International Society for Social Defence and a Humane Criminal Policy.