



European Union on abolition of death penalty: An appraisal

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Abstract

The Death penalty has become a major issue in the debate between the 'abolitionists' and 'retributionists'. Nonetheless, today about two-thirds countries of the world have abolished the penalty. In this drive, the European Union (EU) has emerged as a major player in support of complete abolition, prevailing upon others to do so. This article analyses the EU policy framework rooted in human rights and its efforts to abolish the death penalty worldwide. The EU has relentlessly pursued its objective, advocating it in all global forums like the UN and linking it with its trade diplomacy, along with other supportive measures like ensuring adherence to related international treaties, assistance to civil society and legal support. The EU's persistent efforts have enabled the majority of the world to abolish the death penalty. But the advocacy is not without contentions. The article examines these counterarguments and implications of the EU's policy postures, and evaluates the overall contribution of the EU in the abolition of the death penalty.

Keywords: Death penalty, capital punishment, human rights, retribution, moratorium, European Union

Introduction

All states vouch for the right to life of their citizens and residents, but some maintain the right to deprive the same under certain circumstances. This makes the issue of the abolition of the death penalty (henceforth referred to as ADP) by the states a debated one. The practice, also known as capital punishment, encompasses moral, philosophical, religious, legal, and political dimensions, with arguments in support of its retention or abolition. In the fitness of things, it would be appropriate to understand the arguments of retentionists/'retributionists' or those in favour of continuation of the age-old practice, and the 'abolitionists', opposed to state execution in the modern world.

Those in favour of the Death Penalty (henceforth referred to as DP) justify it because:

- It provides justice and closure to the families of the victim, already traumatised by long trials and helps them to come to terms with the loss of the beloved and prevents further wounding by the murderer and the system^[1].
- It serves as a deterrent to others from repeating such crimes. If the system doesn't instil fear of the consequences, the heinous crimes will be on the rise^[2].
- It is the only moral and just punishment for the monstrous crimes. Retribution is society's expression to make a moral judgment by imposing the same level of punishment for his wrongdoing. Unlike revenge that might be limitless, retribution is a punishment that is limited and proportional in worst cases, and therefore, moral^[3].

Those who are opposed to DP would argue that it is a violation of human rights and that:

- There is no evidence to show that DP will deter crime or murder rates. For persons involved in mass shootings or for those emotionally disturbed or acting under the influence of alcohol or drugs, the law makes no difference, and in fact, murderers who plan the killing

also plan to avoid being caught^[4]. Further, the entire modalities for execution are more expensive than life, and the taxpayer has to bear the cost of DP.

- No system is foolproof, and with prejudices in the justice system against persons from certain religions, races, castes or economic standings, without being able to hire effective lawyers, and with the possibility of false testimony and manipulation or emotions of the dominant/articulate section running high, the case of the vulnerable becomes difficult. Evidences also exist where the innocence of the person is proved after his execution and DNA samples saving the life of the accused after the judicial system concluded someone guilty^[5]. Targeting political rivals is also another area of concern.
- In the name of law, the deliberation, decision and planning to intentionally terminate the life of a human being is nothing short of murder. The premeditated and cold-blooded killing of a human being by the state (DP) calls into question whether the state has the right to do so^[6]. The vengeance and more bloodshed serve no justice nor lead to 'closure' and to heal. The justification of retribution tunes the mind of the public to approve killing on some occasions, and it is dangerous. The death sentence systematically threatens individuals with death and the mental and physical torture (prohibited by various domestic and international instruments) of the execution is the worst form of cruel, inhuman and degrading treatment and punishment, and inherently immoral^[7].

Notwithstanding diverse views on DP, drawing their sustenance from the Human Rights principles, Universal Declaration of Human Rights (UDHR) 1948 and other instruments like the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), the drive towards ADP has gained momentum in contemporary times. Amnesty International notes, by the end of 2024, as many as 113 countries have abolished DP in

law^[8]. Notable exceptions include the US, China, Japan, India, Singapore and most West Asian countries.

EU advocacy: Europe has a long history of association, both theoretically and in practice, the support of and opposition to DP^[9]. The experimentation with ADP continued in Europe, but since the end of WWII, the drive towards ADP has gained momentum along with the stress on human rights. Today, in all European countries (except Belarus and Russia), capital punishment is abolished, although France, the UK and Latvia were slow to adopt this, with complete abolition implemented only in 1981, 1998 and 2012, respectively.

Central to the European system and advocacy of ADP is the European Union (EU), providing its 27-member states (after the exit of Britain), an identity, stability and growth along with strengthening of fundamental human and political values. The EU today is a major practitioner and advocate of ADP worldwide. The EU anchors its support to ADP on human rights grounds, largely sharing the ideas and concerns of the abolitionists. It considers DP as incompatible with human dignity and the inalienable right to life, and violates the right to live free from torture or cruel, inhuman or degrading treatment or punishment, without any evidence to suggest that it acts as a deterrent to crime^[10]. Accepting discrimination on various grounds by a skewed justice system, it states it points out that DP, when retained, can become a tool for instilling fear, repressing opposition, and quashing the legitimate exercise of human rights, such as the rights to the freedoms of expression, association and assembly^[11]. Therefore, the EU strongly believes that DP serves no purpose and violates human rights and dignity. Hence, it strongly advocates worldwide.

The initiative for ADP in the region came from the European Parliament of the EU in the late 1970s, but the EU was hesitant to intervene in an area considered as member states'^[12]. But with the increasing support by member states in 1980, the European Parliament adopted its first resolution, The Resolution on the Abolition of the death penalty in the European Community, followed by a series of resolutions calling for ADP in the European Community (precursor of the EU) region^[13]. In its practice and support to ADP, besides domestic human rights concerns, the EU's action and policies are guided by two instruments –the ECHR and the EU Charter of Fundamental Rights (CFR). Inspired by the UDHR, the newly formed Council of Europe adopted the European Convention on Human Rights (ECHR) on 4 November 1950 (entered into force on 3 September 1953), ensuring human rights. Since adoption, the convention has added seventeen additional protocols furthering rights that included complete ADP (no.13), ratified by all its 46-member countries, except Azerbaijan (till 2024)^[14].

Similarly, in the context of new developments in the post-Cold War period and the entry of qualitatively different new members from Central and Eastern Europe that had no tradition of liberal democracy and market economy joining the EU, the EU had to re-stress its central values and direction for the future. Accordingly, when the Lisbon Treaty was signed in 2007 (implemented from 1st December 2009), it incorporated a legally valid CFR that enumerated the basic and aspirational values of the EU. Among others, the Charter prohibits DP or execution (Article 2)^[15]. This would also mean that not only existing members but also

EU membership aspirants have to abolish DP in their country if they want to be in.

Global advocacy: Having ensured ADP in its region, the EU today strongly advocates the same to others and notes with dismay the continuation of DP in some states in the US and Japan (both with observer status in the Council of Europe)^[16]. The EU, in its EU Action Plan on Human Rights and Democracy (2015-2019), prioritised (objective no.13) abolition worldwide, thus assuming to itself the leadership role in promoting ADP worldwide^[17]. The EU guidelines on the DP, adopted in 1998, clearly call for universal ADP or at least a moratorium with a view to abolition and to use all diplomatic, aid and trade measures to compel ADP^[18]. In 2017, along with Argentina and Mongolia, it formed an Alliance for Torture-Free Trade to stop the trade in goods used for capital punishment and torture^[19]. Expanding the scope of goods covered by the 2005 EU Anti-Torture regulation, the EU, in May 2025, prohibited all trade in a list of 'inherently abusive goods that can only be used for torture and other ill-treatment'^[20].

The EU also submits amicus curiae briefs in capital cases at first instance and in capital appeals, in particular in America. The amicus curiae brief provides an extra source of information to the court, including the interests of global organisations and citizens. As amicus, the EU has contributed to the human rights discourse, which is then used to inform the jurisprudence of American state and federal courts. The EU argues that it has an identifiable "interest" in filing amicus curiae briefs^[21]. Further, in line with the EU Guidelines on the DP, the EU has consistently raised the issue in its political or human rights dialogues with countries that still use capital punishment. It has encouraged the abolition of the DP or, as a first step, the introduction of a moratorium on the use of the DP, and to respect international minimum standards by countries still awarding DP^[22].

The EU has been urging all those countries that have not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the DP, to ratify it. ADP has become one of its thrust areas in its external human rights policy, coupled with trade measures. Whether it is in the UN General Assembly or other international forums, the EU is consistently raising the issue of DP and arguing for its abolition. The EU has also allocated more than €22 million from 2008 to 2016 to fight against DP by way of funding civil society organisations fighting for ADP^[23]. It has eagerly supported the United Nations moratorium on the death penalty, adopted on 17 December 2024 as a step towards worldwide abolition^[24]. The EU has used every opportunity to press for ADP.

Implications: Whether the entire world would finally abolish DP and when this would happen is a matter of debate. But there is no gainsaying that because of the EU's transcendental efforts for ADP, and its persuasion, the world is increasingly seeing the worth of human life in all its dimensions.

However, this moral crusading of the values is not without contention. For instance,

1. The EU perceives the inextricable link between ADP and human rights. Here, the DP is singled out as a priority area in the range of human rights concerns, and all 'retentionist' viewpoints are dismissed as

- inconsistent with human rights. The contention that DP does not violate human rights as it is not prohibited specifically by UDHR or ICCPR, or that the use of DP is a part of the criminal justice system, more than a human rights issue, is just brushed aside^[25]. Therefore, any debate with the retentionists or even the middle path (DP in a few exceptional cases) is not entertained as it does not fit into the EU's human rights framework.
2. The prescription to accept human rights premise comes with hard power assertion, such as demanding ADP as essential for membership or for aid (allowing tariff concessions under GSP+, requiring adherence to related human rights conventions)^[26]. However, there is a double standard in its approach is evident as pressure is more on Asian and African countries than on countries like the US and China, which have always had their way.
 3. The EU advocacy has not brought down the number of executions despite the number of countries adopting ADP. In 2024, Amnesty International records, at least 1,518 were executed in 15 countries 2024, up by 32% from 2023^[27]. In other words, though the world is increasingly giving up DP, the number of cases of award in those countries where DP is still practised, like China, Iran, and Saudi Arabia, is going up, and the EU is ineffective. Moreover, the EU overlooks the fact that states might accept ADP formally but may resort to extra-judicial killing in the name of 'war on drugs' or 'heinous' crimes, etc., and the legal instruments on abolition hardly deter such a situation^[28].
 4. The EU advocacy presents it as the regulator of the global conscience, implying primacy of its thought and its acceptance by others (Eurocentricism and universality of its values). To the EU, the presence of DP is not a marker of civilised life, which it presumes to be the forerunner, and hence, the need to take the abolition worldwide for a civilised world^[29]. In its eagerness, Article 2(7) of the UN Charter, which specifies non-intervention in the domestic affairs of a country, hardly becomes relevant to it. This raises concerns of national sovereignty/choices versus EU norms/advocacy^[30].
 5. The high-profile criminal/terrorism cases have had their impact on public opinion, and ultra-right-wing groups are demanding the retention or its reintroduction. Even the EU region is not an exception to this trend^[31]. Hence, questions are often asked whether the ADP drive is sustainable. In other words, the EU sentiment is not uniformly shared across the world.

Concluding remarks: The EU's relentless efforts at the global level have qualitatively changed the debate on DP. The punishment, once seen as normal even in modern times, and implemented by Nuremberg tribunals, is now seen as an antithesis of civilised life. When the UDHR was adopted, not many states were abolitionists, but today almost two-thirds of the world has adopted it. In this move, the contribution of the EU is significant. The EU, not only ensured ADP internally, but has prevailed upon others to abolish DP. This posture, based on human rights base has come under criticism from various quarters, but the EU is undeterred. There is always a space for greater deliberations, and it would be advisable for the EU to heed and engage with the legitimate counter voices on DP. But

for the self-assured EU, the abolition of the DP is a fundamental aspect of the promotion of peace, reconciliation, democracy, and human rights, and it was for the relentless pursuit of these values that the EU was awarded the Nobel Peace Prize in 2012. With persuasion and logic, it may be hoped that the EU will be successful in the abolition of DP worldwide soon.

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