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Abolishing the Death Penalty in the Commonwealth: Legal, Moral, and Political Dimensions

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ABSTRACT

Capital punishment is a controversial discourse in the legal and political arena of most Commonwealth countries. Where some member states have already established capital punishment and harmonized their legal systems with the expectations of international human rights, others are still exercising and using it with reason being homeland security, public opinion or culture. This paper will assess the progression of the legal, moral, and political aspect of death penalty in the Commonwealth. It discusses the role of the legacies of colonial law systems, different constitutional frameworks and the understanding of justice in general; all of these lead to the enforcement or discontinuation of the death penalty. The human dignity, retribution, and the sanctity of life moral arguments are analyzed, and political factors, including populism, institutional cogency, and external press opposing tendencies are also assessed as well in the paper. With guidance on how different jurisdictions such as United Kingdom, South Africa, India and Pakistan compare, the study shows that there has been an uneven but steady movement towards abolition. It claims that the journey to ending death penalty by Commonwealth nations is determined less by law as it is by an intricate balance between judicial desire, political authority and a changing popular mind. The paper ends with a suggestion on unified legal reforms that will acknowledge international commitments, but at the same time take into account the domestic rights and moral systems.

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Introduction

The Commonwealth of Nations is the confederation of fifty-six states connected by the common history and striving to the democratic style of behavior and the analysis of the problem of death penalty can be performed within the attractable environment in the Commonwealth of Nations. As the major source of the legal systems of these countries, the United Kingdom abolished the death penalty long ago (many decades), but today more than half of the Commonwealth countries either allow the practice of death penalty in statutes or orally open the option of doing so. This polarization has shown deeper divisions within colonial forms of law and new forms of national and international human rights norms.

The death penalty in the Commonwealth is as such, a constitutional issue and representative, of a bigger series of issues which entail the constitutionality questions and the issues of judicial separatism and political legitimacy. This is the complexity of legality formalism and political resistance to which the reluctance to relinquish the death penalty in the diverse Commonwealth nations expounds. Pakistan, Nigeria and India continue to use the death penalty (most often in the case against the crimes of terrorism, homicide or blasphemy), South Africa and Canada have recently joined the growing number of abolitionist states. Commonwealth Charter only binds the member states in observing the human rights and the rule of law, but it does not bind the local policies on the penal codes. This has helped other states to manipulatively construe the requirement of human rights but end up imposing death sentence.[1]

In addition to being legal or illegal, capital punishment has been shaded with the moral and political arguments, which have added another dimension of complexity to the whole process. The death penalty may be seen in some Commonwealth societies as an imperative remedy against violent crime well supported by the population and populist postulations. In some, the abolitionist agenda has been presented as a moral demand on the basis of the dignity of the human person, the imperfect nature of justice systems and the worldwide trend in the abolition of cruel and inhuman punishments.[2] Political arithmetic of maintaining or repealing the death penalty is frequently an indication of institutional beadings, geopolitical considerations and social values that are influenced by religions, cultures and history.[3]

A comparative Commonwealth perspective is the exploration of these interconnected legal, moral and political aspects which this paper examines. It states that the way towards abolishing capital punishment is rocky and depends on factors local to countries, their constitutions, legal interpretation and political motivation though international law and human rights rhetoric continues to add to the abolitionist case. Looking at abolitionist and retentionist jurisdictions in

[1] Roger Hood et al., *The Death Penalty: A Worldwide Perspective*, Fifth Edition, Fifth Edition (Oxford, New York: Oxford University Press, 2015).
[2] "Executions and Death-Penalty Reforms in Britain | London Museum," accessed July 4, 2025, https://www.londonmuseum.org.uk/blog/executions-and-death-penalty-reforms-in-britain/.
[3] "Police Abolition and Transformative Justice in the Footsteps of Thomas Mathiesen's Penal Abolition in: Justice, Power and Resistance Volume 7 Issue 2 (2024)," accessed July 4, 2025, https://bristoluniversitypressdigital.com/view/journals/jpr/7/2/article-p148.xml.

the Commonwealth, this paper points out the contradicting trends and forces that influence the future of the death penalty.

Historical and Legal Foundations of Capital Punishment in Commonwealth Countries

From a legal standpoint, the death penalty in Commonwealth countries is still very much the same way as it was when it was introduced by the British colonial government. Capital punishment was absolutely essential to the British imperial rule and it was also extensively included in the colonies' penal codes in Asia, Africa, and the Caribbean. Consequently, these post-colonial states are in the habit of keeping legal provisions even after gaining independence with the mindset that law and order and state sovereignty are guaranteed by these provisions. In places like India, Pakistan, Nigeria, and Malaysia, the present-day Penal Codes that call for the death penalty are mostly the same as those created during the colonial period.[4]

The post-independence legal reforms in the Commonwealth states have been quite inconsistent. The UK has been taking steps to reduce the execution of the death penalty since the middle of the 20th century, and assertable abolished it in 1998. On the other hand, other nations have not followed this course. South Africa and Canada, for example, have done away with the death penalty as part of their constitutional changes, which also highlight human rights and democratic accountability. States that continued with the death penalty, however, did so as a symbol of power, particularly those which were faced with terrorism, political unrest, and high crime rates. This patchwork system of laws has become common in the Commonwealth: in the year 2024, at the time when this article was written, there are around 30 states that are abolitionists, either in law or in practice, and the rest of those who still retain and practice it.[5]

The legal reasons stated for capital punishment in these jurisdictions are mostly, derived from general statutory provisions and their interpretation of the constitution which give them the right to take life as one of the due processes. Indian and Pakistani courts, for instance, have issued the decision that the death penalty is constitutionally admissible, basing their interpretation of the clause that guarantees the right to life in the understanding that it is not absolute and that it is allowed in some cases to perform state executions. This legal interpretation, although it is still accepted, it is definitely losing ground as human rights organizations, that are at the root of global abolition of the death penalty, are now claiming that such formulations actually weaken the resistance to capital punishment.[6]

Moreover, foreign and regional legal treaties including the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights have shaped the

[4] "Legacy of Empire: The Common Law Inheritance and Commitments to Legality in Former British Colonies | The American Journal of Comparative Law | Oxford Academic," accessed July 4, 2025, https://academic.oup.com/ajcl/article-abstract/59/1/111/2571319.
[5] "Transnational Litigation against the Mandatory Death Penalty and Anti-Sodomy Laws: A New Commonwealth Human Rights Strategy?: Commonwealth & Comparative Politics: Vol 59, No 2," accessed July 4, 2025, https://www.tandfonline.com/doi/abs/10.1080/14662043.2020.1852678.
[6] "The Global Decline of the Mandatory Death Penalty | Constitutional Jur," accessed July 4, 2025, https://www.taylorfrancis.com/books/mono/10.4324/9781315557656/global-decline-mandatory-death-penalty-andrew-novak.

legal debate in majority of the Commonwealth countries. Not consistently binding, these instruments have served as the source of a normative framework in which legal reasons to argue against the death penalty are presented as is the South African Constitutional Court judiciary reasoning on death penalty abolishment or the developing jurisprudence of the Caribbean Court of Justice.

Overall, the legal history of capital punishment in the Commonwealth legal systems has established it as a complicated and both legally and politically difficult task to abolish. The persistence of the colonial-era penal codes, different interpretations of constitutional and definitions by challenges to international norms enforcement, as well as their low levels in any given country are further hindering the development of an integrated approach in capital punishment abolishment.

The Legal Arguments for Abolition

The legal critique of capital punishment in Commonwealth countries rests on several core arguments grounded in constitutional rights, procedural justice, and evolving international norms. Foremost among these is the claim that the death penalty violates the right to life—a foundational principle in most constitutions and international human rights treaties. Although many Commonwealth constitutions allow for exceptions to the right to life in cases involving "lawful sanction," critics argue that this clause has been overly broad and insufficiently scrutinized, allowing executions even where due process is flawed.[7]

The second legal concern arises from the irreversible nature of capital punishment. Numerous studies document wrongful convictions, inadequate legal representation, and systemic biases that increase the risk of executing innocent individuals. In countries like India, where the "rarest of the rare" doctrine governs death sentencing, the lack of consistent judicial reasoning has produced significant disparities in death row outcomes.[8] The potential for judicial error—especially in systems marked by corruption, delay, or limited access to appeals—makes the death penalty an inherently dangerous legal tool.

Furthermore, the discriminatory application of capital punishment has been raised as a constitutional issue in many jurisdictions. It has been empirically demonstrated the more likely groups already referred to as marginalized e.g., the poor, ethnic minorities, and political dissidents are to be ultimately put on death row. The trend is violative of the idea of equality before the law and presupposes structural bias within the functioning of criminal justice systems throughout the Commonwealth.[9]

Besides the domestic constitutional considerations, the need to keep capital punishment has been

[7] "Questionably Foreclosing Life Imprisonment: The Death Penalty Framework in Indian Trial Courts | Jindal Global Law Review," accessed July 4, 2025, https://link.springer.com/article/10.1007/s41020-024-00224-4.
[8] "Capital Punishment: Overview, Merits and Demerits," accessed July 4, 2025, https://thelegalquotient.com/criminal-laws/penology/capital-punishment/3127/.
[9] "The Politics of Abolition: Reframing the Death Penalty's History in Comparative Perspective - Carolyn Strange, Daniel Pascoe, Andrew Novak, 2024," accessed July 4, 2025, https://journals.sagepub.com/doi/10.1177/14624745241298220.

regarded as inconsistent with international law obligations increasingly. Though not every nation in the Commonwealth is a signatory to the Second Optional Protocol to the ICCPR, most have committed to wider duties under international law, to safeguarding human dignity, and avoiding the cruel, inhuman or degrading treatment. These developing norms on human rights are increasingly mounting a legal challenge on retentionist states, which are especially adopting to closer approximation with the global governance standards or engaging in transnational justice mechanisms.

Finally, the right to life argument against the death penalty is based on the fact that it is in improper conflict with the modern principles of constitutionalism and rule of law. Such aspects as the impossibility to ensure fair trials, excessive focus on vulnerable groups of people, the irreversibility of the death penalty all contribute to weakening the role of such a practice in any human rights-respecting legal regime.

The Moral and Philosophical Debate

The abolishment capital punishment in the commonwealth countries is strongly inspired by the moral and philosophic arguments besides the legal arguments. Down the very core of the argument for abolitionism is the human dignity, that regardless of the most heinous crime, any human being has a natural value to be leveled out by no means. In this perspective, the execution under state sanction contradicts the principles of a fair community and interferes with ethical integrity of legal system.[10]

Retributive model of justice (seek to punish wrong doers accordingly to harm committed) often have been quoted as a moral base on death penalty. But this model has been questioned more and more. Critics claim that retribution is way off track towards vengeance, as it serves the purpose of justice, and society has no right to inflict harm of the same magnitude that they would condemn. Rather, abolitionist theorists promote a rehabilitative or restorative model of justice, one based upon modifying offenders and changing broader environmental factors that create the crime.[11]

Moral attitude to capital punishment is also affected by religion and cultural philosophy. The death penalty is justified and opposed through religious arguments in most of the Commonwealth states. Although certain understandings of Islam and Christianity up-hold retribution in the most extreme situations, a grass-roots theological movement is beginning to position forgiveness, compassion and re-formation as superior values in the moral hierarchy. Such opinions are becoming popular in such countries as South Africa or Ghana, where religiously based communities are making their appearance on the scene of penal reform debate.[12]

Another key set of the issues is the moral compulsion not to cause irreversible harm, particularly due to the dangers of mistaken execution. Not every justice system can be perfect and a wrongful

[10] "'Abolition in Waiting' by Carol S. Steiker and Jordan M. Steiker," accessed July 4, 2025, https://scholarlycommons.law.wlu.edu/crsj/vol29/iss2/4/.
[11] "Project MUSE - US Death Row Literature and Public Mobilization against Capital Punishment," accessed July 4, 2025, https://muse.jhu.edu/pub/1/article/921517/summary.
[12] Sandra Kutt, "The Death Penalty across Borders: Analysis of Regional Approaches and International Human Rights Perspectives," 2024, http://dspace.lu.lv/dspace/handle/7/66992.

execution of an innocent individual can be regarded as the biggest and incorrigible justice failure. This is perhaps the most compelling moral argument that has been more convincing in countries with a weak legal aid system and disadvantaged people are more prone to judicial miscarriage.

Finally, public opinion, while often cited as supportive of the death penalty, is not static. Studies show that when the public is informed of wrongful convictions, discriminatory application, and alternative sentencing options, support for capital punishment tends to decline. This indicates that moral reasoning, when embedded in civic education and legal discourse, can shift societal views toward abolition.

Political and Institutional Challenges to Abolition

Efforts to abolish the death penalty in Commonwealth countries often face significant political and institutional resistance. While legal and moral arguments for abolition have grown stronger, the practical realities of governance, electoral politics, and weak institutions continue to impede progress.

One of the most persistent obstacles is the use of populist rhetoric by political leaders, who often invoke public fears about crime and terrorism to justify the retention of capital punishment. In countries like Pakistan, Nigeria, and Bangladesh, politicians frame the death penalty as a necessary tool for deterrence and public safety, particularly in the context of national security crises or high-profile criminal incidents.[13] This politicization of penal policy reduces the space for nuanced legal or ethical debate, and reinforces a culture of retribution rather than reform.

Additionally, judicial conservatism poses a major challenge. Courts in retentionist Commonwealth countries often defer to the legislature, upholding capital punishment laws on the grounds of separation of powers or majoritarian will. In some cases, such as India, constitutional courts have attempted to restrict capital punishment through narrow doctrines like "rarest of the rare," yet these standards have not resulted in consistent or meaningful reductions in executions.[14] The reluctance of courts to engage in robust rights-based review limits the judiciary's role in advancing abolition.

Institutional inertia also undermines reform. Many Commonwealth countries operate within bureaucratic systems where outdated penal codes, underfunded legal aid systems, and politically dependent prosecutorial bodies make it difficult to implement procedural safeguards or introduce legislative change. Furthermore, law enforcement agencies and prison authorities often under-resourced and poorly trained are ill-equipped to manage alternatives to capital punishment, such as life imprisonment with rehabilitation.[15]

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[13] "The Politics of Abolition: Reframing the Death Penalty's History in Comparative Perspective - Carolyn Strange, Daniel Pascoe, Andrew Novak, 2024," accessed July 4, 2025, https://journals.sagepub.com/doi/full/10.1177/14624745241298220.

[14] "The Inevitable Inconsistency of the Death Penalty in India 6 Cambridge Law Review 2021," accessed July 4, 2025, https://heinonline.org/HOL/LandingPage?handle=hein.journals/cambrilv6&div=20&id=&page=.

[15] "The Barbaric Punishment – Abolishing the Death Penalty | Brill," accessed July 4, 2025, https://brill.com/edcollbook/title/11047.

International pressure, while influential, is not always effective. Though many Commonwealth countries are party to international human rights treaties, compliance is often selective or symbolic. Domestic sovereignty is frequently invoked to resist external influence, especially from Western countries that are perceived as imposing foreign norms. This resistance is further amplified in post-colonial contexts where legal reform is viewed with suspicion, as a threat to national identity or independence.

Ultimately, the political and institutional architecture of many Commonwealth states has proven resistant to abolition. Without stronger judicial engagement, political will, and civil society advocacy, the death penalty remains a potent symbol of state authority despite its incompatibility with evolving human rights norms.

Case Studies of Successful Abolition

A closer look at countries within the Commonwealth that have abolished the death penalty reveals important lessons about the interplay of legal reform, political leadership, and societal transformation. Three illustrative cases South Africa, the United Kingdom, and Canada demonstrate distinct paths to abolition, shaped by unique historical and constitutional contexts.

In **South Africa**, the abolition of capital punishment was part of the broader post-apartheid constitutional transformation. The landmark 1995 judgment *S v Makwanyane* by the Constitutional Court held that the death penalty violated the right to life and dignity under the newly adopted Bill of Rights. The court rejected deterrence-based arguments and emphasized the values of human dignity, reconciliation, and a culture of rights, thus setting a powerful precedent for abolition grounded in constitutional morality.[16] The case of South Africa shows the fundamental element of transformative constitutionalism and judicial independence to ensure that embedded punitive norms can be broken down.

In the United Kingdom, the path was more gradualist in the legislation. In the 1960s, executions were stopped but it took a series of acts of Parliament to abolish it culminating in its complete abolition by the human rights act of 1998 which incorporated the procedures of the European convention on human rights. The shift toward abolition came after initial retention-minded opinion and during the parliamentary debates and advocacy proceedings together with cases of wrongful conviction. The process in the UK reveals how long-term political and civic involvement can transform the criminal policy eventual shaping the policy.[17]

The third model is Canada which abolished the practice by a mixture of political leadership and institutional responsibility. The final one was executed in 1962 whereas, in the year 1976, the Canadian parliament abolished death penalty when caused by civilian offences. This was encouraged by the facts of wrongful convictions and inefficacy of capital punishment as a deterrent. This position was subsequently confirmed by the Canadian Supreme Court which expressed the will of the country to respect human rights and Charter values which were

[16] "The Constitutional Court of South Africa: Thoughts on Its 25-Year-Long Legacy of Judicial Activism - Lucky Mathebe, 2021," accessed July 4, 2025, https://journals.sagepub.com/doi/abs/10.1177/0021909620946848.
[17] "The Barbaric Punishment – Abolishing the Death Penalty | Brill," accessed July 4, 2025, https://brill.com/edcollbook/title/11047.

observed in its judgments.[18]

All these case studies show that abolition is not just a legal exercise of abolition but a larger social exertion to justice, rights, and democracy accountability. Successful abolition advocacy in these countries contributed to its importance multi-institutional cooperation, objective advocacy, and constitutional imagination, regardless of whether it happened in the courts, legislatures, or civil society.

The Role of the Commonwealth Institutions and International Norms

The abolitionist movement within the Commonwealth has not occurred in isolation. It has been significantly shaped by the broader landscape of international human rights norms and the evolving influence of Commonwealth institutions. While these institutions lack binding authority, they exert normative and diplomatic pressure on member states to align their domestic laws with international standards.

The Commonwealth Charter, adopted in 2013, affirms the organization's commitment to the rule of law, human rights, and the protection of life and liberty. Although it stops short of explicitly condemning the death penalty, the Charter's emphasis on human dignity has enabled civil society groups and legal advocates to push for abolition as part of the Commonwealth's core values. The Commonwealth Secretariat has also facilitated policy dialogues and technical assistance aimed at encouraging penal reform in member states.[19]

Beyond internal mechanisms, international human rights law has become an increasingly powerful tool in challenging the legality and morality of capital punishment. The International Covenant on Civil and Political Rights (ICCPR), to which many Commonwealth countries are signatories, recognizes the right to life and, through its Second Optional Protocol, calls for the abolition of the death penalty. Although not all Commonwealth states have ratified this Protocol, its normative force has influenced national debates and judicial reasoning in several jurisdictions.[20]

Regional human rights systems further reinforce these obligations. In Africa, the African Commission on Human and Peoples' Rights has repeatedly called for a moratorium on the death penalty, while in the Caribbean, litigation before the Judicial Committee of the Privy Council has contributed to de facto limitations on its use. Even where domestic implementation remains weak, these international and regional instruments provide critical leverage for legal advocates,

[18] "Canada's Successful Experience With the Abolition of the Death Penalty | Office of Justice Programs," accessed July 4, 2025, https://www.ojp.gov/ncjrs/virtual-library/abstracts/canadas-successful-experience-abolition-death-penalty.

[19] "Chapter 7: The Death Penalty as an International Human Rights Concern: Developments and Challenges in: The Elgar Companion to Capital Punishment and Society," accessed July 4, 2025, https://www.elgaronline.com/edcollchap/book/9781803929156/book-part-9781803929156-12.xml.

[20] Hans Göran Franck, *The Barbaric Punishment* (Brill, 2021), https://brill.com/edcollbook/title/11047.

human rights defenders, and reformist judges to challenge retentionist policies.[21]

Despite these efforts, enforcement remains a challenge. The Commonwealth lacks a formal compliance mechanism, and its influence depends largely on diplomatic persuasion and peer pressure. However, naming and shaming, technical assistance programs, and coordinated advocacy have shown modest but measurable success in influencing public discourse and law reform processes.

Ultimately, while international norms and Commonwealth institutions cannot compel abolition, they play a vital supporting role in creating a legal and moral environment in which capital punishment is increasingly seen as inconsistent with modern constitutional democracies.

Recommendations

Given the legal, moral, and political challenges discussed, the path toward the abolition of the death penalty in Commonwealth countries must be multifaceted. The following recommendations outline key strategies that can guide both domestic and international efforts to end capital punishment:

Constitutional and Legislative Reform

Governments should initiate constitutional amendments or legislative reviews to restrict or repeal capital punishment laws. Where full abolition is politically difficult, interim measures—such as narrowing the scope of capital offences, instituting mandatory clemency reviews, or enforcing moratoria—can lay the groundwork for eventual abolition. Reform processes should be grounded in empirical data, public consultations, and comparative legal analysis from other Commonwealth countries.[22]

Judicial Leadership and Interpretation

Judiciaries need to adopt a more activist approach in the interpretation of constitutional right to life and dignity to the international human rights standards. The South African and Caribbean courts have shown how courts could gradually undermine the acceptability of capital punishment using the judicial reasoning. This shift can be encouraged through training programs on death penalty jurisprudence and international standards by the judges, prosecutors, and defense counsels.[23]

Strengthening Legal Safeguards and Due Process

In retentionist states, although the death penalty may be arbitrarily and discriminately applied, its arbitrary and discriminatory punitive use can be reduced by legal process enhancements. This

[21] "Does the EU Benefit From Increased Complexity? Capital Punishment in the Human Rights Regime," accessed July 4, 2025, https://www.ssoar.info/ssoar/handle/document/88433.
[22] Professor Carolyn Hoyle, "Efforts towards Abolition of the Death Penalty: Challenges and Prospects," n.d.
[23] Hoyle.

covers provision of effective legal counsel, appeal review and safeguards against torture or forced confessions. Hosting abolition has to be understood as an element of the greater reform of the system of criminal justice that would combat the inequalities and flaws in the procedure.[24]

Enhancing Civic Education and Public Engagement

Popular support of the death penalty is usually based on misrepresentation or prejudice or emotions towards violent crime. Governments, NGOs and academic institutions ought to venture in awareness strategies that would showcase the dangers of wrongful execution, discriminatory nature of death penalty as well as ineffective deterrence. It is possible to introduce more humane and effective methods of restorative justice by using victim-based models.

Leveraging International and Commonwealth Platforms

It is desirable that member states ratify international instruments like the Second Optional Protocol to the ICCPR and participated in peer review exercises like Universal Periodic Review. The Commonwealth Secretariat should be more active when it comes to the organization of technical aid, the popularization of statute models, and regional discussions among legislators, lawyers, and human rights activists.

Such recommendations have brought forward the importance of the abolition since it would not be a ritual activity but a required step to reach the stars of the human rights and fairness and democratic responsibility through domestic legal systems.

Conclusion

The capital punishment remains in a controversial position in the legal and political systems of the Commonwealth. Although there have been several strides towards abolition by a few member states, there are others unshackled by a history of punishments inculcated in the colonial legal systems. We see this variance as the mark of the tangled webs of legal theory, moral argument, and political calculation that form penal policy in varied jurisdictions.

This paper has maintained that abolition in the Commonwealth is a moral imperative as well as a legal requirement. It is unacceptable to interpret and apply death sentence in contemporary society under the ground of legal considerations that death penalty constitutes irreversible error, creates possibilities of discriminatory application, and contravenes the right to life. The practice, morally, contravenes the principle of human dignity and others exhibit a retributive ethos that is becoming more and more inconsistent with the changing values in society. Politically, although in some cases, opposition to abolition may be backed by populism, institutionalism and nationalism, there are positive precedents in South Africa, UK and Canada, which show that with judicial interest, legislative initiative, and social participation, change can occur.

The Commonwealth is in a position to provide a template of principled and coordinated abolition mechanisms the world over because of its common legal history and its respect of human rights.

[24] "Death Penalty Abolition, the Right to Life, and Necessity | Human Rights Review," accessed July 4, 2025, https://link.springer.com/article/10.1007/s12142-022-00677-x.

In order to keep this promise, member states should adopt a transformative philosophy of justice that focuses on human dignity, safeguards the fundamental rights, and gives credence to ideas of accountability, fairness, and equality before the law.