

The Abolition of Mandatory Death Penalty: Implementation in Malaysia and the United Kingdom

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ABSTRACT

This paper examines Malaysia's recent abolition of the mandatory death penalty in July 2023 and contrasts it with the United Kingdom, where the death penalty for murder was fully abolished in 1969. It explores the ongoing debate surrounding capital punishment, with a focus on human rights and ethical concerns. The primary objective is to identify the challenges in implementing the Abolition of Mandatory Death Penalty Act 2023 and to propose potential improvements. A qualitative research methodology was adopted, involving semi-structured interviews with key stakeholders in the criminal justice system, including a deputy public prosecutor, a magistrate, and experienced lawyers. The study draws on primary legal sources, such as the Malaysian Penal Code, the Abolition of Mandatory Death Penalty Act 2023, and the UK's Homicide Act 1957, as well as secondary sources, including journal articles and online databases. The findings aim to assist stakeholders, particularly law enforcement and policymakers, by offering informed recommendations to further strengthen Malaysia's criminal justice system in upholding the principles of fairness and aligning with established international human rights standards.

INTRODUCTION

The death penalty in Malaysia has existed since the British colonial administration on the death penalty for murder, and the death penalty itself was adopted and applied in the Malaysian criminal justice system. However, recently in July 2023, Malaysia announced the abolishment of the death penalty on 11 capital offenses, one of which is murder. Malaysia's abolition of the mandatory death penalty is an important step toward aligning with international human rights norms. A comprehensive study of 1,535 Malaysians' views on the mandatory death penalty by Amnesty Malaysia in 2015 provides unique data. The majority of respondents opposed the mandatory death penalty. Since its publication, the minister, legislators, and diplomats have acknowledged it and used it to discuss capital sentence reform. In addition, the Deputy Minister in the Prime Minister's Department for Law and Reforms Institution Mr. Ramkarpal Singh, participated in a dialogue with seven death-row and life-sentenced prisoners to hear their opinions on the proposed abolition of the mandatory death penalty. Malaysia's government moved forward with the abolishment of the death sentence. However, a death sentence may still be imposed subject to the discretion of the judge. As the abolishment of the death penalty is relatively new compared to the United Kingdom, hence the reason why this study focuses more on comparison. Indirectly, it will lead to the Malaysian law on what to learn from the United Kingdom's law.

METHODOLOGY

This research adopts the qualitative methodology. Qualitative research is a type of research that helps to generate hypotheses as well as further investigate and understand quantitative data. Qualitative research gathers participants' experiences, perceptions, and behaviour. The findings of this research will be based on primary and secondary data.

Primary data is an original data collected for a specific research purpose by the researcher himself. For this research, the primary data are collected using the qualitative data through the semi-structured interviews with a minimum of six respondents will be involved and the respondents will be selected through purposive sampling.

As mentioned above, the respondents in this research are selected through purposive sampling with the selection of stakeholders that are most likely to yield appropriate and useful information that is needed for our study. Therefore, respondents are selected based on their occupational role and active participation within the criminal justice legal framework governing the right to life in Malaysia. The selected respondents and interviewed are a Deputy Public Prosecutor (DPP), a magistrate, and two experienced lawyers who among them are responsible for representing the state in criminal cases and also ensuring a comprehensive and balanced examination of criminal cases from multiple legal jurisdictions.

Secondary data is the data already collected or produced by others and it is just the analysis and interpretation of the primary data. Secondary sources come in several formats such as published datasets, reports and can also be sourced from websites and libraries. Since the secondary data method mainly uses data that has been gathered and analyzed by other researchers, this allows other researchers to have a wider spectrum of data to be included in their research. The researcher may use government records, academic journals, statistics databases, and other sources when conducting secondary research. The literature on the legislations governing the abolishment of the death penalty in Malaysia and the United Kingdom will be the critical review for this research.

The most common sources used in legal research are primary and secondary sources. Primary resources encompass elements like constitutions, judicial decisions, statutes and administrative rules and regulations. In addition to restating the law, secondary resources may provide commentary, analysis and explanations. The primary sources used in this research are the Penal Code Act 574, Abolition of Mandatory Death Penalty Act 2023 and Homicide Act 1957. On the other hand, the secondary sources used include journal articles, website articles, websites and online resource databases such as Google Scholar, LexisNexis and Hein Online.

LITERATURE REVIEW

Legal Position in the United Kingdom

The United Kingdom has fully abolished the death penalty, following a gradual legal and societal transformation influenced by historical context, public attitudes, and international human rights standards.

The Homicide Act originally regulated murder cases, and in 1965, the death penalty for murder was suspended for five years through a private member's bill by Sydney Silverman. This suspension became permanent in 1969, with Section 7 stating that no one shall be sentenced to death for murder outside of specified exceptions.

The Murder (Abolition of the Death Penalty) Act 1965 was introduced to formally abolish capital punishment for murder, initially on a trial basis. It received Royal Assent on 8 November 1965 and took effect the next day. In 1998, the UK extended this abolition to all offenses, thereby completing the legal process of eliminating the death penalty nationwide.

This abolition did not occur abruptly, but rather through a series of processes and stages that were deemed appropriate by the UK government. Section 103 of the Children Act¹, enacted in the early twentieth century, prohibited the execution of children under the age of 16. The minimum age for the death penalty was raised to 18, this was to limit part of the scope of the death sentence, and the same was true in the Infanticide Act², making the killing of a newborn by its mother no longer a deadly offense. The Homicide Act³ is the most significant restriction on the application of the death sentence during the twentieth century.

¹ Children Act 1908. [1908]

² Infanticide Act of 1922. [1922]

³ Homicide Act 1957. [1957]

Public outrage over three executions throughout the 1950s, that of Timothy Evans in 1950, Derek Bentley in 1953, and Ruth Ellis in 1955 was a major contributing factor in the United Kingdom's ultimate decision to abolish the death penalty.⁴

Post-Amendment for the Abolition of Death Penalty Act

Section 7 of the Homicide Act 1957 limited the application of the death penalty by excluding most murder cases from capital punishment. This marked a major legal shift from the earlier Offences Against the Person Act 1861, which mandated the death sentence for all murder convictions. The last executions in the UK occurred on 13 August 1964, when Peter Anthony Allen and Gwynne Owen Evans were hanged for the murder of John Alan West. Other final executions across the UK included:

- Scotland: Henry John Burnett (1963)
- Northern Ireland: Robert McGladdery (1961)
- Wales: Vivian Teed (1958)

The last person sentenced to death was William Holden in 1973, whose sentence was commuted to life imprisonment. His conviction was quashed in 2012 due to unlawful interrogation.

The Timothy Evans case remained central in debates about the death penalty. In 1965, the Brabin Inquiry was launched, concluding Evans was likely innocent of his daughter's murder but possibly guilty of his wife's. However, in 1966, Home Secretary Roy Jenkins recommended a royal pardon, acknowledging the doubt surrounding Evans' guilt. In 2003, the Home Office compensated Evans' family, and Lord Brennan QC officially recognized the conviction and execution as a miscarriage of justice.

The UK's stance against the death penalty reflects a firm commitment to human rights, emphasizing that capital punishment undermines human dignity, lacks clear deterrent value, and risks irreversible errors. As a result, the UK maintains a principled and permanent opposition to the death penalty in all circumstances.

The challenges and impact

The challenges faced by the United Kingdom in enforcing the abolition of the death penalty are the fear of rising crime rates. This is because there was a concern that abolishing the death penalty would lead to an increase in violent crimes which particularly highlighted on murder. When the United Kingdom abolished the death penalty for murder in 1965 and the rate of murder at that time was approximately 6.8 per million population. However, by 2001, it had doubled to 16.6 per million.⁵ However, the analysis made by the Death Penalty Information Centre found that abolishing the death penalty had no measurable effect on overall murder rates.⁶

Hence, the United Kingdom maintains the abolishment of the death penalty up to this day because of the human rights of the people, where it has been seen as an inhumane punishment, especially when it is applied to cases with potential errors or miscarriages of justice. Besides that, due to high-profile cases of wrongful convictions that highlighted the risk of executing innocent individuals, the United Kingdom sought to avoid irreversible mistakes by eliminating capital punishment.⁷

⁴ Hoyt, A. (2018). *Timothy Evans and banning the death penalty*. Today I Found Out. Retrieved from <https://www.todayifoundout.com/index.php/2018/03/timothy-evans-banning-death-penalty/>

⁵ House of Commons Library. (2011). *Capital punishment*. Retrieved July 1, 2024, from <https://researchbriefings.files.parliament.uk/documents/SN03805/SN03805.pdf>

⁶ Death Penalty Information Center. (2019). *Study: International data shows declining murder rates after abolition of death penalty*. Retrieved July 1, 2024, from <https://deathpenaltyinfo.org/news/study-international-data-shows-declining-murder-rates-after-abolition-of-death-penalty>

⁷ Full Fact. (2018). *Has the murder rate doubled since hanging was abolished?*. Retrieved July 1, 2024, from <https://fullfact.org/news/has-murder-rate-doubled-hanging-was-abolished/>

In addition, the United Kingdom's abolition of its death penalty early in 1965 had a huge impact on other countries. It has set an example for other countries and has contributed to the global trend towards abolition.

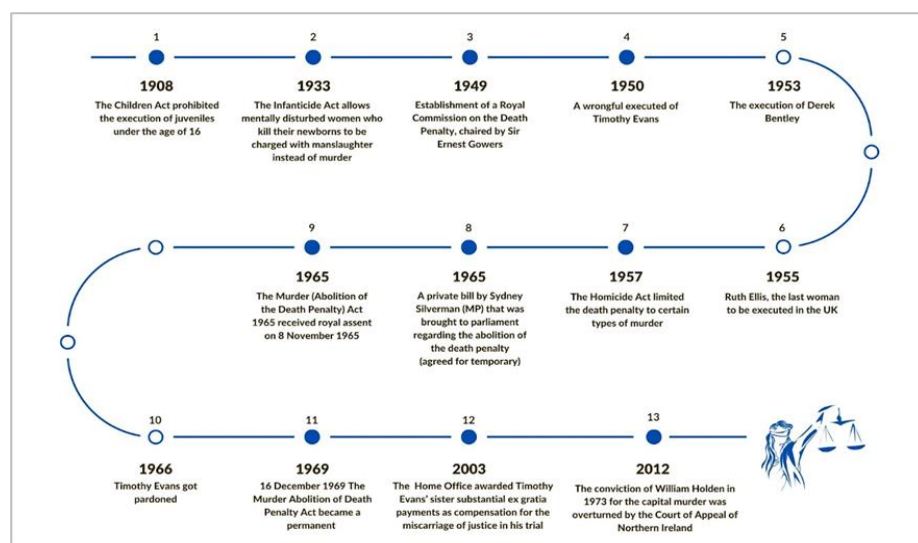


Image 1: A chronological summary of the abolition of the death penalty in the United Kingdom by timeline.

Legal Position in Malaysia

The Penal Code is a Malaysian statute that codifies most crimes. According to the Penal Code Act, previously, murder was punishable by the mandatory death penalty under Section 302⁸. The word 'mandatory' means the accused will be sentenced to death without any alternative punishment.

The Abolition of Mandatory Death Penalty Act 2023 was passed by the Dewan Rakyat and Dewan Negara in April, respectively.⁹ The legislation received Royal Assent in June 2023 and was published in the Gazette in June 2023 and came into effect in July 2023. The Revision of Sentence of Death and Imprisonment for Natural Life came into force in September 2023. The legislative purpose is to abolish the mandatory death penalty and replace it with life imprisonment and whipping.¹⁰

Before the Abolition of Mandatory Death Penalty Act 2023 came into effect, Malaysia had a mandatory death penalty for 33 offences, including drug trafficking, murder, treason, and terrorism. Under the revised law, which applies retroactively, the 11 offences that previously carried the death penalty may instead be punished with life imprisonment, a jail term of between 30 and 40 years, with whipping of not less than 12 strokes.¹¹ The new jail term replaces all previous provisions that call for imprisonment for the duration of the offender's natural life.¹² Life imprisonment sentences, defined by Malaysian law as a fixed term of 30 years, will be retained, including murder.¹³ Some amendments to the statutes are illustrated in the table below.

⁸ Hussain, M. (2018). *Criminal law in Malaysia: A comprehensive guide*. Kuala Lumpur: LexisNexis

⁹ Amnesty International Malaysia. (2023, November 15). *Landmark decisions in resentencing process grants a second chance at life* [Media Quote]. Retrieved from <https://www.amnesty.my/2023/11/15/landmark-decisions-in-resentencing-process-grants-a-second-chance-at-life/#:~:text=15%20November%202023&text=%E2%80%9CWe%20welcome%20the%20decisions%20by,a%20second%20chance%20to%20life.>

¹⁰ Hilmy, I. (2023). Law on revision of death sentences and life imprisonment comes into force on Sept 12. *The Star*. Retrieved 2024, from <https://www.thestar.com.my/news/nation/2023/09/11/law-on-revision-of-death-sentences-and-life-imprisonment-comes-into-force-on-sept-12>

¹¹ Abolition of Mandatory Death Penalty Act 2023

¹² Leong, M. (2023). *Review of Sentence of Death and Imprisonment for Natural Life Bill may take a year*. New Straits Times. Retrieved from <https://www.nst.com.my/news/nation/2023/09/954303/review-sentence-death-and-imprisonment-natural-life-bill-may-take-year>

¹³ *Reforms of mandatory death penalty in Malaysia: What do the bills say?* (2023). Amnesty International. Retrieved from https://www.amnesty.my/wp-content/uploads/2023/03/Amnesty-International-Analysis-of-the-Bills-to-Abolish-The-Mandatory-Death-Penalty-in-Malaysia_March-2023-3.pdf

Table 1: The Differences of The Punishment after Abolishment of the Death Penalty

PENAL CODE		
SECTION	PREVIOUS SENTENCE	NEW SENTENCE
121A Offences against the YDPA (King), Ruler of States	Shall be punished with death and shall also be liable to fine	Shall be punished with death or imprisonment for a term of not less than 30 years but not exceeding 40 years, and if not sentenced to death, shall also be punished with whipping of not less than 12 strokes
130C(1)(a), 130I, 130N, 130O, 130QA, 130ZB, 374A Offences relating to terrorism	Shall be punished if the act results in death, with death	
302 Punishment for murder	Shall be punished with death	

Source: Authors' analysis

In a nutshell, the Abolition of Mandatory Death Penalty Act 2023 seeks to replace the mandatory death penalty with an optional one, giving judges the discretion to impose or not to impose a death sentence. The amendments allow the court to sentence the accused to death or imprisonment plus whipping.

Pre-Amendment for the Abolition of Death Penalty Act

The practice of capital punishment in Malaysia is a British colonial legacy that is rooted in colonial ideologies of law and punishment. In 1957, Malaya, as it was known during colonial times, proclaimed independence, and Singapore, which was previously a part of Malaya, followed suit in 1965.¹⁴ Both nations have maintained their common law traditions subsequent to their independence. The Malaysian Penal Code 1936 is based on the Indian Penal Code 1861, which was implemented during the British colonization of India and the Straits Settlements, which includes Malaya and Singapore.¹⁵ Murder, specified in Section 302 of the Penal Code, and treason, specified in Sections 121 and 121A of the Penal Code¹⁶, are among the severe offences to which the mandatory death penalty is applicable. Additional offences that are subject to the compulsory death sentence include drug trafficking under Section 39B of the Dangerous Drugs Act 1952¹⁷ and offences involving firearms under Sections 3, 3A, and 7 of the Firearms (Increased Penalties) Act 1971.¹⁸ The discretionary death penalty is imposed on a variety of other offences in the Penal Code, including gang robbery, weapons trafficking, and rape or attempted rape.

During the 1970s, capital punishment became widespread because of extensive state initiatives that aimed to combat drug-related issues. In 1975, the Malaysian Parliament enacted legislation that mandated the use of capital punishment for drug-trafficking offences.¹⁹ This decision was made in accordance with the government's efforts to completely eradicate drug addiction throughout the Malaysian nation. The Dangerous Drugs Act of 1952 completed amendments, and the Dangerous Drugs (Amendment) Act of 1975 introduced the provision of presuming trafficking under Section 37(d). This resulted in the issue of the 'double presumption', where the accused is automatically assumed to be guilty of trafficking if they are found to be in possession of a specific amount of drugs.²⁰

¹⁴ Harper, T. N., & Miller, J. D. (2009). *The history of Southeast Asia: Colonial times to independence*. Oxford University Press.

¹⁵ Chan W and Wright B (2016) *Codification, Macaulay and the Indian Penal Code*. Taylor and Francis. <https://doi.org/10.4324/9781315572499>

¹⁶ Malaysian Penal Code Act 574. [2023]

¹⁷ Dangerous Drugs Act 1952. [1952]

¹⁸ Firearms (Increased Penalties) Act 1971. [1971]

¹⁹ Harring, S. L. (1991). Death, drugs, and development: Malaysia's mandatory death penalty for traffickers and the international war on drugs. *Columbia Journal of Transnational Law*, 29(2), 365–406

²⁰ Amnesty International. (2019). *Fatally flawed: Why Malaysia must abolish the death penalty*. Retrieved from <https://www.amnesty.org/en/documents/act50/1078/2019/en/>

According to a report in 2011, a total of 441 individuals were executed by hanging between 1960 and the time of the report.²¹ It seems that many of these executions were carried out for drug-related crimes. In 2002, a total of four individuals were executed, with two being convicted of murder and two for drug trafficking. In 2006, four individuals were hanged for the crime of waging war against the King. In 2008, one person was executed for murder, followed by two individuals in 2009 for drug trafficking, and one person in 2010 for murder. However, since then, no executions have taken place, despite 108 individuals being sentenced to death in 2011, the majority of whom were convicted of drug-related offences. As of September 2012, there were 924 individuals awaiting execution on 'death row' in Malaysia, with 648 of them having received sentences for drug trafficking.²² Table 2 below indicates the rising number of total death sentences and total death sentences for drug offenses affecting locals and foreigners.

Table 2: Statistics of total death sentences.

MALAYSIA

Laws in effect: Dangerous Drugs Act 1952, Act 234¹³⁸

Year	Total Death Sentences	Death Sentences for Drug Offences	Total Executions
2011	At least 108 ¹³⁹	At least 83 (22 foreigners) ¹⁴⁰	0
2010	At least 114 ¹⁴¹	63 (at least 20 foreigners) ¹⁴²	At least 1 ¹⁴³
2009	At least 68 ¹⁴⁴	50 (at least 19 foreigners)	+ ¹⁴⁵
Mandatory death penalty for drug offences: Yes			

Source: The Death Penalty for Drug Offences: Global Overview 2012. Tipping the Scales for Abolition (https://www.hri.global/files/2012/11/27/HRI_-_2012_Death_Penalty_Report_-_FINAL.pdf)

Malaysia has an intense anti-death penalty campaign spearheaded by the Malaysian Bar Council and the Human Rights Commission of Malaysia (SUHAKAM), with backing from Lawyers for Liberty, Amnesty International Malaysia, the Civil Rights Committee of the Kuala Lumpur and Selangor Chinese Assembly Hall, Malaysians Against the Death Penalty and Torture (MADPET), as well as The National Human Rights Society of Malaysia (HAKAM).²³

In 2006, the Malaysian Bar advocated for the complete elimination of the death sentence in Malaysia. The majority of 105 members supported this demand, with only two opposing and 21 abstaining.²⁴ In March 2012, the Malaysian Bar once again unanimously called for the abolition of the death penalty. In its 2010 annual report, the Human Rights Commission of Malaysia (SUHAKAM) also expressed its support for abolition. In a previous year, Malaysia's delegate in Geneva informed the UN Human Rights Council that his nation was contemplating substituting the death penalty with life imprisonment.²⁵ Furthermore, in 2011, the Malaysian government established the International Centre for Law and Legal Studies (I-CeLLs), which includes renowned European specialists in international law on its executive council. The project will prioritize addressing the ongoing usage of capital punishment in Malaysia.

²¹ Free Malaysia Today. (2011). Time to abolish the death sentence. Quoted in Amnesty International. (2012). *Death Sentences and Executions 2011* (p. 23). Retrieved from <https://www.deathpenaltyproject.org/wp-content/uploads/2018/02/Malaysia-report.pdf>

²² Harm Reduction International. (2012). *The death penalty for drug offences: Global overview 2012*. Retrieved from https://www.hri.global/files/2012/11/27/HRI_-_2012_Death_Penalty_Report_-_FINAL.pdf

²³ Hood, R. (2012). *The death penalty: A worldwide perspective*. European Union. <https://doi.org/10.2861/71032>. Retrieved from [https://www.europarl.europa.eu/RegData/etudes/note/join/2012/457068/EXPO-DROI_NT\(2012\)457068_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2012/457068/EXPO-DROI_NT(2012)457068_EN.pdf)

²⁴ Hashim, O. (2009). Human Rights Council adopts outcomes of Universal Periodic Review on Malaysia. *Human Rights Council*. Retrieved from <https://www.ohchr.org/en/press-releases/2009/10/human-rights-council-adopts-outcomes-universal-periodic-review-malaysia-and>

²⁵ FN 46

Nazri Aziz, who was an ex-Minister in the Prime Minister's Office responsible for legal and parliamentary affairs, has expressed his approval of all these initiatives. He is reported to have stated in August 2010 that "*If it is wrong to take someone's life, then the government should not do it either.*"²⁶ However, he believes that abolition is impossible to attain without the public's support.²⁷ He convened an inter-parliamentary roundtable in June 2011 to seek a resolution that would abolish the mandatory death penalty and implement an immediate moratorium on executions. The appeals to the Singaporean government to grant clemency to Yong Vui Kong, a young Malaysian, are clear indications that the Malaysian public is concerned about the mandatory death penalty. In Singapore, the death penalty is the mandatory punishment for trafficking 15 grams or more of heroin, as it is in Malaysia.²⁸ Yong was facing execution after being mandatorily sentenced to death for operating as a courier of 47 grams of heroin brought into the country.

The Singapore government, after conducting a more thorough examination of the *Yong Vui Kong V Public Prosecutor* case²⁹, decided to amend the law even though the mandatory death penalty for this offence was upheld by the Singapore Court of Appeal.³⁰ The amendment, which was implemented in 2012, limited the imposition of a mandatory death penalty for murder to cases in which there is an intention to kill rather than to cause injury. The mandatory death penalty for drug trafficking has been abolished in cases where the individual charged can demonstrate that they were merely a courier and that the prosecutor has issued a certificate indicating that the convicted individual has "substantially assisted" the state in disrupting trafficking activities and was acting under the influence of a mental illness that would mitigate their responsibility.³¹

Efforts by Malaysia to Abolish the Death Penalty

Based on the parliamentary Hansard from 3rd April 2023, Mr Ramkarpal Singh A/L Karpal Singh, the Deputy Minister in the Prime Minister's Department of Law and Institutional Reform, highlighted the importance of mandatory sentencing as a means of deterring serious crimes in Malaysia.³² However, he acknowledged that there is no empirical evidence supporting the claim that the death penalty is the most effective deterrent. The objective of abolishing mandatory sentences is to uphold the fundamental right to life and promote fairness, with a particular emphasis on rehabilitating convicts to facilitate their successful reintegration into society. According to data from the Malaysian Prison Department in 2019, there were no instances of pardoned death row inmates reoffending. Since 2012, the government has been conducting research on the elimination of compulsory death penalties, beginning with Section 39B of the Dangerous Drugs Act 1952.

The judgment was strengthened by the formation of the Special Committee for the Study of Alternative Sentences to the Mandatory Death Penalty on 20th August 2019. This committee, led by former Chief Justice Tun Richard Malanjum, has members who are professionals in the fields of law and criminology. The committee proposed that the discretionary death sentence be applied to offences resulting in death, while for non-lethal crimes, the death penalty should not be enforced. Instead, alternative punishments such as caning should be considered. These proposals are in accordance with the idea of proportionality, which guarantees that sanctions are appropriate and proportional to the crimes committed. In addition, the committee put out alternative sentencing for 11 offences that currently need a mandatory death penalty, as well as for 23 offences that currently allow for a discretionary death penalty. They also made other recommendations to enhance Malaysia's criminal justice system.

²⁶ FN 51

²⁷ Bin, M., Devi, S., Chethiyar, M., & Chethiyar, S. (2021). Malaysia's public opinion on death penalty. *Turkish Online Journal of Qualitative Inquiry*, 12, 11227-11241. Retrieved from https://www.researchgate.net/publication/363363747_Malaysia's_Public_Opinion_on_Death_Penalty

²⁸ Murat, N. (2011). Time to give death penalty the noose. *Malaysiakini*. Retrieved from <https://www.malaysiakini.com/letters/159870>

²⁹ [2010] SGCA 20, [2010] 3 S.L.R

³⁰ Sufian, P. A. (2023). Mandatory death penalty: Long road to reform across five govts. *Malaysiakini*. Retrieved from <https://www.malaysiakini.com/news/661247>

³¹ Death Penalty Project. (2018). *The Death Penalty in Malaysia*. Retrieved from <https://www.deathpenaltyproject.org/wp-content/uploads/2018/02/Malaysia-report.pdf>

³² Dewan Rakyat. (2023). Rang Undang-Undang Pemansuhan Hukuman Mati Mandatori 2023 [Hansard], pg. 61. Retrieved from <https://www.parlimen.gov.my/files/hindex/pdf/DR-03042023.pdf#page=0&zoom=100&search=rang%20undang%20mandatori%20mati%202023%20april>

The Abolition of Mandatory Death Penalty Act 2023 [Act 846] became effective on 4th July 2023, while the Death Penalty and Life Imprisonment Review (Temporary Jurisdiction of the Federal Court) Act 2023 [Act 847] became effective on 12th September 2023. An amount of around RM12 million has been designated for this objective, which includes the provision of legal assistance services. YBGK (Legal Help Foundation) will offer legal help for cases involving natural life sentences, while court-appointed lawyers will handle cases involving the death penalty. The deadline for submitting applications to review death penalty and life imprisonment cases is three months from the date when Act 847 comes into effect. Based on information provided by the Malaysian Prison Department, a total of 1,020 inmates are expected to receive advantages as a result of the implementation of Act 847. As of 31st October 2023, 924 applications for review have been presented to the courts. This includes 807 reviews related to death penalty cases and 117 reviews related to life imprisonment cases. The initial hearing for a sentence review pursuant to Act 847 is scheduled to take place on 14th November at the Federal Court in Putrajaya.

The landmark case of *Bachan Singh vs. State of Punjab (1980)*³³ has been a significant reference in Malaysian courts for judgments concerning the death penalty. This case addressed the constitutional validity of the death penalty under Section 302 of the Indian Penal Code (IPC) and the sentencing procedure under Section 354(3) of the Code of Criminal Procedure (CrPC), 1973. Referred to a Constitution Bench of the Supreme Court of India, the case was pivotal in determining whether the imposition of the death penalty is constitutionally valid and under what circumstances it can be justified.

In Malaysia, many lawyers have utilized the principles established in *Bachan Singh vs. State of Punjab (1980)* to argue cases involving the death penalty. The emphasis on "rarest of rare" and "special reasons" has provided a robust framework for legal arguments in Malaysian courts. By referring to this landmark case, Malaysian lawyers have advocated for a more restrained and judicious application of the death penalty, ensuring that it is reserved only for the most heinous and extraordinary cases. This alignment with *Bachan Singh's* guidelines reflects a broader commitment to upholding human rights and constitutional safeguards within the Malaysian judicial system. The influence of this case underscores the interconnectedness of legal principles across jurisdictions and the ongoing dialogue between different legal systems in shaping a fair and just approach to capital punishment.

Post-Amendment for the Abolition of Death Penalty Act

This section provides examples of cases decided after the act came into force to illustrate how the new act came into force.

In the case of *Sathiaraj a/l Kundaiah v Public Prosecutor*³⁴, the appellant appealed against his conviction and sentence for the murder of an 85-year-old Chinese female. The Court of Appeal heard the case on 3rd April 2024 and delivered its judgment, addressing key legal issues surrounding the appellant's defence of drug intoxication and the trial judge's findings regarding his state of mind at the time of the offense. The appellant's primary ground for appeal was his defence of drug intoxication under section 85 of the Penal Code. He argued that his consumption of drugs before the crime rendered him incapable of forming the necessary intention or knowledge to commit the offense. The appellant contended that the evidence of his drug consumption, coupled with the opinions of relatives, should have been sufficient to establish a defence of intoxication.

However, the trial judge rejected the appellant's defence of drug intoxication, finding that the evidence did not support a plausible defence of intoxication against the preponderance of evidence indicating that the appellant was conscious of his actions at the time of the offense. The judge emphasized that the appellant's conduct on the day of the crime did not suggest a state of intoxication to the degree that he did not know his actions were wrong. Furthermore, the trial judge noted that the appellant's behaviour before, during, and after the incident indicated a level of awareness and consciousness that contradicted the claim of intoxication-induced insanity. The judge highlighted various actions taken by the appellant, such as entering the victim's house to steal,

³³ Supreme Court of India. (1980). *Bachan Singh vs State Of Punjab*. Indian Kanoon. Retrieved from <https://indiankanoon.org/doc/1235094/>

³⁴ [2024] MLJU 744

binding and gagging the victim, and later pawning stolen items, as evidence of his awareness and intent. The Court of Appeal justified the conviction and sentence of the appellant for the murder charge based on several key factors and legal considerations. The court upheld the trial judge's decision to reject the appellant's defence of drug intoxication, emphasizing the appellant's consciousness of his actions and the absence of evidence impairing his ability to form intent. The court also considered the legislative framework governing murder offenses and sentencing, ultimately affirming the death penalty imposed on the appellant for the murder charge.

Therefore, considering the Court of Appeal's decision, the accused in the case of *Sathiaraj a/l Kundaiah v Public Prosecutor* was sentenced to death for the murder charge. The court upheld the conviction and death sentence imposed by the lower court, dismissing the appellant's appeal and determining that the nature of the offense and the appellant's actions warranted the imposition of the death penalty.

Next, in the case of *Mohd Azhud bin Ibrahim v Pendakwa Raya*³⁵, Mohd Azhud bin Ibrahim was involved in a case where he was accused of causing the death of another individual. The case revolved around the events that took place on 10th August 2018, leading to the death of the victim. Throughout the legal proceedings, various pieces of evidence were presented to establish Azhud's involvement in the incident.

One crucial aspect of the case was the mental state of Azhud at the time of the incident. Two reports dated 29th September 2022, indicated that Azhud did not suffer from any mental disorder and was deemed to be of sound mind during the events in question. The reports concluded that Azhud was aware of the nature and consequences of his actions, indicating that he was capable of understanding that his actions were unlawful. This assessment played a significant role in determining Azhud's culpability in the case. Despite Azhud's defense claiming that he did not have the intention to kill the victim, the court emphasized that such a determination was a factual issue to be decided by the court, not solely based on expert opinions. The court highlighted the substantial evidence pointing towards Azhud's responsibility for the victim's injuries, including his admission to hitting the victim. Additionally, Azhud's actions after the incident, such as attempting to bury the victim's body, further implicated him in the crime.

The court also considered circumstantial evidence, evaluating the strength of each piece of evidence and its collective impact on the case. The judge concluded that there was sufficient evidence to demonstrate that Azhud was the individual responsible for the victim's injuries leading to death. This assessment was crucial in establishing Azhud's guilt in the case and rejecting any doubts raised by his defense team. Azhud's defense presented his version of events, stating that he had acted in self-defense when the victim attempted to harm him. According to Azhud, the altercation arose from a previous dispute where the victim had entered his home without permission. Azhud claimed that he struck the victim to protect himself from harm. However, the court found inconsistencies in Azhud's account, especially regarding his actions following the incident, which raised doubts about the credibility of his defense.

Ultimately, the court upheld the prosecution's case, ruling that Azhud was the perpetrator of the crime based on the evidence presented. The court's decision was supported by the abundance of circumstantial evidence pointing towards Azhud's guilt, including his actions, statements, and the nature of the injuries inflicted on the victim. The court's thorough evaluation of the case led to the rejection of Azhud's appeal and the affirmation of his conviction.

In the case of Mohd Azhud bin Ibrahim, the accused was initially sentenced to death by hanging by the High Court in Ipoh. However, upon appeal to the Court of Appeal, the judges decided to set aside the death penalty and instead imposed a sentence of 30 years' imprisonment. Additionally, Azhud was also ordered to receive 12 strokes of the cane as part of his punishment. This decision was made in accordance with the Abolition of Mandatory Death Penalty Act 2023, which allowed for the substitution of the death penalty with alternative forms of punishment, such as lengthy imprisonment terms.

³⁵ [2024] MLJU 1115

Next, in the case of *Mohammad Sohffian bin Abu Hassan v Public Prosecutor*.³⁶ The appellant, Mohammad Sohffian bin Abu Hassan, was charged with the murder of his wife, Siti Nadrah Abdullah, on 21st May 2017, at about 3:15 pm, at their residence in Kampong Kakai, Serian, Sarawak. The appellant was accused of causing the death of his wife by shooting her in the neck during a heated quarrel that ensued after he suspected her of having an affair with another man. The prosecution presented twenty-four witnesses to testify against the appellant, and after the trial, the Judicial Commissioner found Mohammad Sohffian bin Abu Hassan guilty of the charge of murder under section 302 of the Penal Code. As a result, he was sentenced to suffer the death penalty.

However, with the enactment of the Abolition of Mandatory Death Penalty Act 2023 (Act 846) on 4th July 2023, the Court of Appeal had the discretion to consider mitigating and aggravating factors in determining the appropriate sentence. In this case, the Court unanimously agreed that there were mitigating factors that did not warrant the imposition of the death penalty. The Court acknowledged that the accused and the deceased were a married couple who were facing serious marital issues that ultimately led to the tragic murder. While domestic violence is a grave matter that cannot be condoned, the Court believed that capital punishment should be reserved for the most severe cases. In this instance, the Court did not consider the circumstances to fall within that category.

Therefore, the Court decided to commute the death sentence imposed on Mohammad Sohffian bin Abu Hassan to 33 years of imprisonment from the date of his arrest. Additionally, he was to receive 12 strokes of whipping as part of his punishment. The Court deemed this sentence to be more appropriate and proportionate to the offense committed by the appellant. The decision to substitute the death penalty with a lengthy term of imprisonment and corporal punishment was based on the Court's assessment of the mitigating factors present in the case. The Court recognized the complexities of the marital relationship between the accused and the deceased, as well as the escalation of conflicts that culminated in the tragic event.

In the above-mentioned case, all the accused were charged with committing the offence of murder. From the decision, it can be reflected that in the first case, the judge opted to maintain the death sentence while in the remaining case, the judge opted the imprisonment combine with whipping.

FINDINGS AND DISCUSSION

The Enforceability of Criminal Law in Abolishing the Death Penalty for Murder remains a contentious issue both in Malaysia and the United Kingdom. This study delves into the complexities and challenges of abolishing capital punishment, focusing on the legal, constitutional, and human rights implications. To gather comprehensive insights, this research involved interviews with three key stakeholders: two experienced lawyers and one Deputy Public Prosecutor (DPP). These interviews provided professional perspectives on the current legal stance on capital punishment and the potential reforms necessary for its abolition in Malaysia.

One of the primary questions addressed in this study is the current legal stance on capital punishment in Malaysia and the reforms needed. Respondents were asked to consider whether abolishing the death penalty aligns with Malaysia's constitutional rights and principles or if it conflicts with them. This inquiry is crucial in determining the legal feasibility and alignment of such a reform with the nation's foundational legal framework.

Another important aspect explored is how Malaysia's use of the death penalty aligns with international human rights standards and treaties it has ratified. The study examines the human rights implications of maintaining or abolishing the death penalty for murder, providing a comprehensive understanding of Malaysia's position in the global human rights context. This analysis includes evaluating whether the death penalty serves as an effective deterrent to murder compared to other punishments and the potential impact its abolition might have on crime and homicide rates in Malaysia.

³⁶ [2024] MLJU 1016

Judicial discretion plays a significant role in the application of the death penalty in Malaysia. The research investigates how this discretion currently affects capital punishment and the potential changes in prosecutorial and judicial practices if the death penalty were abolished. Furthermore, the study explores perceptions of alternative sentences to the death penalty for murder in terms of their effectiveness and the legal system's ability to ensure these alternatives deliver justice for victims while maintaining public safety.

Finally, the study delves into the potential challenges in the legal and logistical process of abolishing the death penalty and suggests strategies to address these challenges for a smooth transition. The insights gathered from the interviews and questionnaire responses provide a nuanced understanding of the enforceability of criminal law in the context of abolishing the death penalty for murder in Malaysia and the United Kingdom.

Findings

Respondent One

Our first respondent is a practising lawyer. Based on an interview with a lawyer we had discussed several critical points about death penalty cases in Malaysia. Capital punishment in Malaysia is mandated for various offenses, including murder, drug trafficking, firearms, treason, terrorism primarily guided by Penal Code, Dangerous Drugs Act, Firearms Act and others. In 2023, the government announced that Malaysia has abolished the mandatory death penalty act which substitutes with life imprisonment for 30 - 40 years.

The respondent has highlighted that the International Human Rights committee prohibits the death penalty. He stated that, the human rights committee stipulated that death sentencing must look in various factors such as the condition's of the offender whether he is young, old, rich or poor. Other than that, he shared that we need to consider whether the murder has been done in a group or alone. Or even how the offender did the murder, whether only by one stab or more. Our respondent has stressed on the arbitrary nature which is based on individual discretion rather than a fair application of the law.

Next, the respondent suggested that Malaysia should be focusing on rehabilitation rather than deterrence. Research on the death penalty's deterrent effect is inconclusive that leans towards its ineffectiveness in reducing crime rates significantly. However, he did share a few cases which are Indian cases, *Bachan Singh vs. State of Punjab (1980)* and *Machhi Singh and Others vs State of Punjab (1983)*. This is because Malaysia has referred to the Indian Penal Code when the government wanted to amend the abolishing of the mandatory death penalty. He also shared that in the Indian Cases, it relates to how the judges would like to give sentencing in a country by determining the seriousness, the nature and the mitigating factor of the crimes.

Furthermore, Malaysia judges have limited discretion in capital cases. This is due to mandatory death sentences for certain crimes. The respondent stated that Malaysia judges did not have a particular guideline or a book to follow. The judgment is solely based on case to case basis and also their own discretion. Other than that, abolishing the mandatory death penalty would enhance judicial discretion, allowing for more nuanced sentencing. This could lead to fairer sentencing and potentially reduce wrongful convictions and disparities in sentencing.

Our respondent also adds that, as a Muslim, the Islamic perspective also should be considered in regards to the death penalty. This is because in Islam, their crimes are divided into 3 types which are Hudud, Qisas and Ta'zir. Hudud is a crime against God which the punishment is fixed in the Quran and Hadiths. Qisas is a crime against an individual which is the punishment in equal retaliation in the Quran and Hadiths. In terms of Qisas, our respondents give examples like an eye for an eye and a person to a person. Lastly, Ta'zir is a crime that the punishment is not specified in the Quran and Hadiths but the punishment is based on the government itself.

In conclusion, based on the interview with the lawyer, several points regarding the death penalty in Malaysia were discussed. The lawyer reference landmark cases like *Bachan Singh vs. State of Punjab (1980)* and *Machhi Singh and Others vs State of Punjab (1983)* emphasizing the judiciary's role in sentencing and the complexities involved in. According to him, judges should not be overly lenient or excessively punitive considering the facts like nature of the offense and the circumstances of the offender. He also highlighted the

lack of guidelines for judges, stressing the importance of discretion and case by case evaluation. Other than that, from Islamic perspective it has different types of penalties such as Hudud, Qisas and Ta'zir. He explained the alignment with religious principles, while also acknowledging contemporary legal interpretations of abolishing the death penalty. This interview has underscored the nuanced approach needed in judicial decisions, balancing legal framework with ethical considerations.

Respondent Two

A second lawyer, he said that there was no difference in terms of effect after the mandatory abolishment of the death penalty. The effectiveness of this mandatory abolishment is totally based on the offenses itself. Hence, according to him it has been very effective for drug cases because he believed that there are people who are desperate for a living and had to sell them in order for them to live. He never agreed with the death penalty punishment for drug cases in the first place. However, his point of view on murder is, it is not quite effective for murder but he agreed on the mandatory abolition of the death penalty in terms of murder. Whether there should be a capital punishment on murder, he said yes there should be.

Justice for victim families. On the question of whether is it fair for them when the court only gives the punishment as a life imprisonment. He argues that judges will always look at why and how it was committed because it is going to be the rarest of rare cases. It will still be up to the judge and give the most appropriate punishment towards the murderer. He also said that if a person wanted to murder another he will so if there is a removal of abolishing the death penalty for murder does not bring a huge effect towards committing a murder.

There is an option for murderer punishment which is life imprisonment for 30-40 years, however our concern is on how would it keep the public safe if the murderer commits another crime after being discharged from prison. His point of view is that it will be totally up to a specific person because there is no guarantee that he will not commit the crime again after being discharged. However, the case must be judged individually based on its facts, and the judges shall give the most appropriate one whether a life imprisonment or a death penalty.

In addition, he also highlighted that there are 80% of murder cases that have changed to life imprisonment. However there are still 20% that the judges still maintain to give a death penalty punishment because the factors are all being considered and it will totally be at the judges discretion. Besides that, the question of does it change the discretion of judges when there is an abolishment of the mandatory death penalty. Hence, he shared his opinion stating that it does not take away the courts discretion however it gives the power to the court because before this they don't have the choice but to sentence a person to death. In conclusion, he agreed on the steps taken by Malaysia whereby they did not fully abolish the death penalty but it has become an option for the judges to give their most suitable punishment which deems to fit the most between life imprisonment or the death penalty towards the offender.

Respondent Three

The respondent, a magistrate supports and agrees with the views expressed by the world regarding human rights by abolishing the death penalty implemented in Malaysia. This is because for him, the death penalty has been abolished in many developed countries and Malaysia's step is in line with that desire and a reasonable step.

In his view as someone involved in the legal world, he feels that there is actually nothing different with the crime rate after the abolition of the death penalty. Despite the existence of the death penalty even if criminals still exist to commit this crime because of him, some of these individuals commit crimes without even thinking about the implications, even though Malaysia's crime rate with developed countries such as Singapore which implements the death penalty for the offense of drug trafficking is actually not due to fear of punishment but more of law enforcement itself. Simply put, the abolition or not of the suspended death penalty does not affect anything in terms of crime rates and this measure can be referenced with data at present and before its abolition.

In Malaysia, the abolition of the death penalty is not totally abolished but it is more at the discretion of the judge himself. This is a very good method because for him, the judge is given the freedom to sentence according to the facts of the case and also the results of his findings. So, by putting the judge's discretion in implementing capital punishment this is a reasonable step because it opens up a very wide space for the concept of law and not only imposes a punishment that is considered "draconian".

In addition he gave an analogy in the case of drugs, although this is a case study of murder, but the easiest example to understand is if a person becomes a drug mule, or distributes small amounts, the punishment is the same as a large drug dealer, even if the damage ratio is different but the punishment is the same. It's the same as murder, it's possible to get the facts wrong so that it gets suspended and it's no different than a serial killer who does plan to kill. So, this abolition gives discretionary to the judge to decide. In ensuring that "public safety" is guaranteed, it closely related to it is the enforcement of the law and the enforcement itself. It is a subjective aspect that needs to be seen from many angles in terms of the geography of the country, the local community and others not only looking at the repeal of mandatory suspension.

Lastly, he responds towards the challenge in abolishing the death penalty. He said if you look at the current situation it is definitely the overcrowding of the prison. But this also becomes inaccurate to state that it is a challenge because the final offender who will be hanged will also be in prison for a long time and necessarily contribute to the density of the prison, the meaning here is that if we do not abolish it even once, the situation itself will make the prison even more crowded from day to day. Perhaps what is more accurate is the challenge to make the people understand that this abolition is not a total abolition of the death penalty, but rather gives discretion to the judge to impose any punishment that is deemed appropriate, he cited an example where the attorney general at the time described if it was made as a mandatory punishment then it would be heavy and unfair for those who committed an offense that is not commensurate for example a drug mule victim or a victim of circumstances.

Respondent Four

Based on the interview with the Deputy Public Prosecutor (DPP) of Penang, she has expressed some views pertaining to the abolishment of the death penalty in Malaysia. The new law that has been gazetted is like a new benchmark for the abolishment of the death penalty. This is because, the government makes a progressive move from a criminal justice system that is rooted in deterrent and retributive justice to "restorative and rehabilitative justice. Without the death penalty, the focus can shift towards rehabilitation and restorative justice. Offenders have the opportunity for rehabilitation, and the justice system can emphasize healing and reconciliation for victims and their families.

She stated that Malaysia's use of the death penalty has sparked significant debate regarding its alignment with international human rights standards and treaties that the country has ratified. Malaysia has not ratified the ICCPR, but its principles still exert moral and political influence. Article 6 of the ICCPR recognizes the right to life and stipulates that countries which have not abolished the death penalty should only impose it for the "most serious crimes." The trend in international human rights law, influenced by the ICCPR, is towards restricting and eventually abolishing the death penalty. Besides, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which has been ratified by Malaysia, prohibits torture and other cruel, inhuman, or degrading treatment or punishment. The implementation of the death penalty, especially if carried out in a manner involving prolonged suffering or psychological torture, can be seen as contrary to the spirit of the CAT.

She also explains that, from a human rights perspective, abolishing the death penalty helps prevent wrongful executions—such as those that occurred in the United Kingdom, which ultimately prompted the country to abolish capital punishment. Abolition removes the risk of imposing an irreversible sentence on an innocent person, thereby aligning with the principles of justice and human rights. Moreover, eliminating the death penalty reduces the risk of cruel and inhuman treatment often associated with executions and life on death row, promoting a more humane criminal justice system.

She further emphasized that judicial discretion plays a vital role in how the death penalty is applied in Malaysia. Judges are empowered to decide whether to impose capital punishment based on the specific circumstances of each case. While Malaysian law prescribes the death penalty for certain serious offenses such as murder, drug trafficking, and terrorism, judges can consider both mitigating and aggravating factors when determining the appropriate sentence. This discretion allows for individualized sentencing that takes into account the unique details of each case and the accused's background.

The abolition of the death penalty would significantly impact prosecutorial practices. Without the option of a mandatory death sentence, prosecutors would have to adjust their strategies. For example, they may be more inclined to negotiate lesser charges to avoid the harshest penalties, or in contrast, may pursue capital charges more assertively in serious cases. Abolition would also reinforce the importance of considering mitigating factors during sentencing, ensuring that judicial discretion is exercised with fairness and compassion. Ultimately, this approach supports a justice system that values context, balances accountability with mercy, and promotes more humane outcomes.

Lastly, in response to the question of alternative sentences to the death penalty for murder, such as life imprisonment without the possibility of parole, she notes that these alternatives are viewed from multiple perspectives, namely moral, ethical, social, and practical. From a human rights perspective, such sentences are generally considered more acceptable than the death penalty. Life imprisonment upholds the individual's inherent dignity and right to life, in line with international human rights standards. Many believe that it is morally wrong for the state to take a life, regardless of the offense committed.

Life imprisonment without parole is seen as a more humane and ethically sound punishment. It allows for the possibility of rehabilitation and personal growth, even if the individual remains in prison for life. She also highlights that, in the interest of ensuring justice for victims and maintaining public safety, clear and transparent communication about the sentencing process and the reasons behind alternative punishments is crucial. This transparency can help victims and the public understand the rationale behind the sentencing decisions, fostering trust in the justice system and reducing perceptions of injustice.

CONCLUSION & RECOMMENDATION

In conclusion, this paper examines the complexities and challenges associated with the abolition of capital punishment in these two jurisdictions. The study highlights the historical context, legal frameworks, and societal factors that have influenced their respective paths toward or away from the death penalty. The United Kingdom, having abolished the death penalty for murder permanently in 1969 following a temporary suspension in 1965, serves as a benchmark for Malaysia, which only recently took significant steps by passing the Abolition of Mandatory Death Penalty Act 2023. The main difference is while UK eliminate death sentence totally, Malaysia still maintain it but reform it from mandatory to discretionary.

The study identifies several challenges in enforcing the abolishment of the death penalty. In the UK, the main challenge is the crime rate after the abolition, while in Malaysia, the main challenge is the overcrowded prisons and disparity in exercising discretion.

The findings from interviews with legal professionals in Malaysia provide nuanced perspectives on the effectiveness of the new legislation, the role of judicial discretion, and the importance of considering alternative punishments and restorative justice principles.

Based on the respondents' feedback, it can be concluded that all of them unanimously support judicial discretion as a fairer and more appropriate alternative to mandatory sentencing. They highlighted rehabilitation, human rights, and justice system reform as the main reasons for the abolition. While opinions on murder cases varied, there was general agreement on the need to reduce reliance on capital punishment. Overall, the abolition is seen as a progressive legal development, though challenges remain in terms of public understanding and practical implementation.

A few recommendations can be retrieved from the interviews conducted. There is a need for clear sentencing guidelines to reduce arbitrary decisions and to incorporate Islamic legal principles where appropriate. Additionally, there is a need for public education to address misconceptions about the abolition, stronger law enforcement, transparent sentencing practices, and adapted prosecutorial strategies that consider mitigating and aggravating factors to ensure a more balanced and humane justice system.

In conclusion, the effective abolition of the mandatory death penalty in Malaysia demands a comprehensive and uncompromising approach. This includes not only thorough reform of the legal framework but also the urgent need to address public perception, strengthen the judicial process, and improve prison infrastructure. These measures are essential to ensure that Malaysia's criminal justice system upholds the principles of fairness and aligns with established international human rights standards.

Ethical Approval

Data for this research is collected and approved by the UiTMLaw Research Ethics Committee.

Conflict of Interest

The authors have declared that there are no conflicts of interest related to this article.

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