

# Religions and the Death Penalty

Amnesty International has no position on questions of religious beliefs. However, its members and supporters are drawn from people who hold a wide variety of religious beliefs, including all the major world faiths. The following are summaries of arguments, or arguments by named individuals, that have been put forward to us to support the case for restriction and abolition of the death penalty.

*All religions uphold the sanctity of life and seek to restrict the use of violence. Within each faith there are different traditions. Where capital punishment has been allowed, it has been subject to strict control and to enforce respect for human life. Increasingly many religious people feel that for the state to sanction the taking of life reduces respect for the dignity and sacredness of life.*

Revd. Marcus Braybrooke, World Congress of Faiths

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The following report details abolitionist arguments within these respective religions:

- **Buddhism**
- **Christianity**
- **Hinduism**
- **Islam**
- **Judaism**

## Buddhism

Buddhism was founded by a Hindu warrior prince from North Central India in about 500 BC (as reckoned by Western time). The prince became a Buddha "meaning an enlightened one" - after leaving his family and trying for years with various teachers to find a way towards "enlightenment". This eventually came to him as he sat in meditation beneath a tree. He is not regarded as a god, although his image is worshipped and used as an object for meditation. Buddha is the supreme teacher; Buddhism does not have a concept of god, in the same sense as in theistic religions.

Buddhism teaches that all human beings have the potential to achieve or arrive at enlightenment by their own moral and spiritual efforts. Buddhists hold that life is characterised by suffering and that we are bound in an eternal cycle of life, death and rebirth into another life of suffering. Only by living a morally and spiritually proper human life can one escape the eternal wheel of suffering and instead of being reborn, enter the state of "Nirvana", enlightenment, where suffering is ended.

The link between one life and the next is "karma", the result of one life's deeds which determines whether the next life is located higher or lower in the scale of living beings and thus potentially nearer to or further from achieving the enlightened state. To be born human, towards to top of the scale, is the result of good deeds, of moral behaviour in previous existences.

Good deeds and thoughts have their own reward - taking you nearer to the goal of Nirvana - and likewise wrongful behaviour and thoughts result in their own punishment - that of binding the wrongdoer more firmly to the wheel of suffering and rebirth. Karma, both good and bad, is inevitable. There is no need of a God to judge or to punish, or to prescribe punishment or to give authority to men to punish.

Buddhist teaching, as handed down orally and then contained in various revered texts (notably the "Dhammapada"), stresses the way a human being should live in order to strive for and attain the goal of enlightenment. By contrast with other religions, the "law" of the Buddha is more like "advice" for the individual's earthly and spiritual journey, for the way to generate good karma and, in a sense, avoid the punishment which necessarily follows wrong doing or wrongful thoughts and passions.

The central idea of the Buddha's teaching is a scheme of moral and spiritual improvement, the Noble Eightfold Path, which describes what is Right View, Resolve, Speech, Action, Livelihood, Effort, Concentration and Contemplation. Right Action is set out in a number of precepts which necessarily follows wrongdoing of wrongful thoughts and passions. The first of these is to abstain from taking life. The Buddha's path is equally clear on the attitudes that will help or hinder one's progress. The injunctions on Right View and Right Resolve make it clear that there cannot be any question of acting in a spirit of revenge, of hatred or with a desire for retribution. These concepts are quite alien to Buddhist thinking on crime and punishment. Indeed, Buddhism regards all strong desires, cravings and passions as both the root cause of suffering and obstacles to enlightenment. Actions and attitudes should be characterised by compassion.

Of course Buddhist societies do have to have some codes of punishment to be administered by human beings towards their fellow human beings for the crimes they have committed in this life, if only to protect society from further criminal activity. The Buddha's teachings, by focusing on the individual (and the rules of behaviour for monks and nuns) do not comment on how society and the community is to be protected. But if punishments are to be administered in accordance with the teachings, this should be done in a spirit of compassion, aimed at helping the criminals along their path of life by correcting them, giving them a chance to do good deeds to earn merit (good karma) that would compensate for the bad karma they have earned by their crime.

Moreover those administering the punishment should not do anything to earn themselves bad karma and should observe the teachings on Right Livelihood (which would argue against being an executioner) and above all observe the first precept of Right Action - to abstain from taking life.

The Sri Lankan Foundation Human Rights Centre writes:

*The Right to life is recognised in the very first Precept (of the Five Precepts, namely Pancasila) that the Buddhist layman is expected to observe. Buddhism both in the realm of religion as well as philosophy, begins with an insight into a fundamental consideration that all life has a desire to safeguard itself and to make itself comfortable and happy. This is the ethical assumption on which the Buddhist concept of human rights is founded. The Dhammapada for instance, categorically asserts that "all beings desire happiness" and that "life is dear to every living being". It tenders advice that "having taken one's own self for comparison (with other human beings) one should neither harm nor kill". It will be noted, then that Buddhist thought extends the right to life to the animal kingdom as well. In Buddhist religious life, the philosophy of maitri and avihimsa, universal love and non-violence, derives its validity from this position. Furthermore, as Buddhism looks at it, a living being's progress in the "upward way" to perfection ought not to be interfered with by not allowing its life to run its full course on earth. This has been succinctly expressed in "The Light of Asia" by Sir Edwin Arnold when he penned the words: "Kill not for pity's sake, lest ye slay The meanest thing upon its upward way."*

Since, the Buddhist context, the taking of life of even the meanest thing cannot be condoned, capital punishment is repugnant to Buddhism. Punishment should be reformatory, not punitive. All forms of retaliation are ruled out, for, as the Dhammapada says, "Hatred does not cease by hated; hatred ceases only by love; this is the eternal law". (Dh. 1.5.)

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## Christianity

Christians believe that Jesus Christ was the incarnation of God and that what he taught about how we should live is therefore the will of God. Christ did not lay down laws and punishments in a ready codified form, but his teachings on what constituted wrongdoing and how an individual ought to respond to it are recounted in The New Testament of the Bible and can be deduced from his moral teachings and incidents in his life. His teachings are primarily on spiritual conduct and daily living, made against the background of already existing laws on crime and punishment found in his own Jewish origins.

The emphasis of all his teachings is on living our enemies as yourself, forgiving those who offend you. In Matthew 5:38-39, Christ explicitly contrasts his teaching with one of the traditional biblical teachings:

*"Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth: But I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other one also."*

One incident is that in which Christ intervenes in the stoning of a woman found guilty of adultery and said that only those who were themselves not guilty of any sin should administer the punishment.

Christ taught that everyone is a part of God's creation, sometimes referred to as 'a child of God', and some argue that however dreadful the crime, they cannot cease to be a 'child of God', filled with human life and dignity which is God's gift and thus of infinite value. It is not for human beings to destroy part of God's gift: only God gives life and only God should have the power to take away life.

Other Christians have argued that Christian states have the right to impose the death penalty. Martin Luther argued: "God has delegated His authority of punishing evildoers to civil magistrates", and that Christians therefore had a right to "serve as princes of judges, render decisions and pass sentences .. punish evildoers with the sword". However, members of the Lutheran Church have pointed out that although the state may have been delegated this power it is not command and the state is not obliged to use it. In fact, they argue, other teachings of Christianity show that the state should not use its powers to take life, and that the commandment in the Old Testament "Though shalt not kill" applies to societies and governments as well as individuals.

Perhaps the strongest argument in Christian theology against the death penalty lies in the notion of redemption. Christianity professes that human beings are free either to follow the path of Christ or to stray from it and that those who stray are sinners. But great stress is laid on the ability and duty of sinners to repent, to change their behaviour once they have been forgiven, and on the need for reconciliation between those sinned against and the sinner. After true repentance, a fresh start can be made in life. The death penalty, it has been argued, denies a "sinner" or truly repentant criminal the chance to make the fresh start promised by Christ. This notion of everyone's potential for rehabilitation or 'redemption' is central to Christianity because Christians believe that Christ's crucifixion and resurrection gave the world redemption. In the words of Bishop Kruse of Germany: "If we as Christians do not believe that a person can change and be allowed to make a new beginning, then we would deny the very power of the Gospels, the message of Jesus".

## Hinduism

Hindus believe in the idea of one Supreme Spirit, this is everywhere, including in themselves and every creature, formless and everlasting. The teachings are not ascribed to one primary teacher but are derived from ancient Sanskrit scriptures, principally the "Upanishads", spiritual treatises (the earliest of which dates from about 800 BC). Codes of behaviour for living a good human life are derived from the great epics, which were written later, notably the Bhagavad Gita which forms part of the great epic, the "Mahabharata". Sanskrit literature also contains explicit rules of behaviour of the "Laws of Manu". Hindus do not believe that the revelation of the will of the Supreme Spirit has come to an end and is contained only in scriptures from the past. Hindu sages through the ages even included the 20th century have added to this body of teaching. Hinduism is not a congregational religion and everyone is free to see and worship the Supreme Spirit in any form or in any way they choose. In Hinduism it is behaviour which is considered important, not what you say you do or do not believe.

The idea of correct behaviour, of living properly, of social order, law and morality, is summed up in the concept of "dharma". Every human being is expected to follow the dharma to the best of their ability; that is, to perform their duties to their family, community and society as a whole. Thus the emphasis is on duty, rather than rights, because if everyone performs their duties towards others, all needs will be met and all the benefits and protections which can be described as rights will come to you as others fulfil their duty. But someone who breaks or refuses to follow the dharma sets themselves outside the criminal as well as the religious law. Consequently if duties are no longer owed to the criminal or sinner and if the religious concept of rights, such as the right to life, is not part of the Hindu moral code, what should be done with someone who has committed a terrible crime, like murder? Is the death penalty allowed and prescribed?

Ancient Hindu civilization had a highly developed system of religious, civil and criminal law. The "Dharmasasbras" and "Arthasastras" are the most detailed commentaries on these laws. The Dharmasasbras describes many crimes and their punishments and calls for the death penalty, even for crimes not resulting in death of another human being. But there are aspects of Hindu teaching which can be invoked to prevent the use of the death penalty.

First of all the Mahabharata itself contains passages arguing against the use of the death penalty in all cases. This is a relevant example:

The Mahabharata argues against the use of the death penalty is a dialogue between King Dyumatsena and his son Prince Satyavan (Chapter 257 of the Santiparva). In this scene a number of men had been brought out for execution at the command of the King. Prince Satyavan then says "Sometimes virtue assumes the form of sin and sin assumes the form of virtue. It is not possible that the destruction of individuals can ever be virtuous". King Dyumatsena replies: "If the spring of those who should be killed be virtuous, if robbers be spared, Satyavan, all distinction between virtue and vice will disappear". Satyavan responds: "Without destroying the body of the offender, the king should punish him as ordained by the scriptures. The king should not act otherwise, neglecting to reflect upon the character of the offence and upon the science of morality. By killing the wrongdoer the King kills a large number of his innocent men. Behold by killing a single robber, his wife, mother, father and children, all are killed. When injured by wicked persons, the king should therefore think seriously on the question of punishment. Sometimes a wicked person is seen to imbibe good conduct from a pious man. It is seen that good children spring from wicked persons. The wicked should not therefore be exterminated. The extermination of the wicked is not in consonance with the eternal law."

The Hindu notion of punishment is not based on revenge. Rather, punishment in the Hindu scheme of things should be aimed at restoring the proper social order, restoring the dharma and protecting the innocent. The punishment has to be administered in accordance with other important Hindu values. It must not be a punishment that would itself be a further offence or unjust. The Dharmasasbras describes the duties which must be observed in administering

punishment. It is stressed that the innocent should not be punished. Punishment should be impartial and the nature of the punishment should not be decided in anger if it is to be just. The gravity of the punishment must be carefully considered, taking into account the capacity of the criminal to undergo the hardship, their age, their level of education and possibly the fact that they may be the family breadwinner.

A further factor inhibiting the use of the death penalty, though it is not explicitly described in the Dharmasasbras, is the duty to act in a spirit of ahimsa. Punishment, like all action, must be in accord with this concept. "Ahimsa", which was particularly stressed by Mahatma Gandhi, means non-violence, the belief that it is wrong to hurt any living being.

Finally, Hindu teaching has always stressed the idea of expiation of guilt. As a rule, criminals are not only liable to punishment, but they have to expiate their guilt too if they are to be restored to society and continue in their own path of dharma. Without proper expiation of guilt, punishment is only half the remedy. Expiation is a sort of self-cure from crime and sin based on repentance and resolve not to repeat the crime. It is primarily a mental or psychological process, available only of course to those with faith in the scriptures. But it is also a social rite. The important aspect for the question of death penalty is that proper expiation can be used to modify the seriousness of the punishment it is to accompany. It has been argued that the availability of expiation renders the most severe punishment, the death penalty, unnecessary, excessive, and that indeed it must, if the death penalty itself is not to be the cause of further offence against dharma. Thus the "Mahabharata" (see above) says "the extermination of the root (of existence) (namely of man) is not to be countenanced; that by no means constitutes the eternal dharma. Indeed proper expiation can be made without killing."

This ancient counsel against the death penalty finds its echo through the ages down to the twentieth century.

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## Islam

Muslims believe that the tenets of Islamic faith were revealed to the prophet Muhammed who was born in 570 AD (as reckoned by the Western calendar) in what is now Saudi Arabia. There are five fundamental "pillars" of the religion. The first is the belief that "there is no god but God (Allah)" and that "Muhammed is the Apostle of God". The second "pillar" is prayer; the third, almsgiving for the needy; the fourth, fasting at the prescribed times; and the fifth, pilgrimage. The basic religious duties and the duties towards others in society are both, equally, pillars of the faith. The individual in the Muslim community owes duties to family, friends and strangers (not just the poor and sick and those in need of alms). If everyone performs their duties properly, all needs will be met, and benefits and protections, which can also be described as "rights", will be provided. Islamic law is concerned with laws about how the family and society should function to the mutual benefit of all. In addition, the individual owes a duty to care for all other creations of God. Islamic law also prescribes what should happen to anyone who breaks the law which binds the community together, or neglects or abandons their duties. Thus Islamic law is at the same time a code for punishment as well as for protection of the individual. Both are religious duties but it is important to note that none of the punishments prescribed, including the death penalty, are themselves pillars of the faith.

According to Muslim belief "The Qur'an" is the divine communication from God to man as revealed to the prophet Muhammed. The Qur'an is chief among the four sources of law recognised by classical theory of Islamic law. These four sources are not themselves the law but the basis on which understanding of God's command can be achieved. In addition to the Qur'an there are "the Sunna" - sayings and conduct of the Prophet; "the Qiyas" - rules of reasoning to be used when applying the Sunna or Qur'an to a particular legal problem; and "Ijma" - the consensus of opinion of Islamic legal scholars. Following the death of Muhammed, Islam spread over an enormous geographic area and saw the development of differing interpretations of the law and what it meant in practice. In the ninth and tenth centuries AD, Muslim jurists attempted to limit the extent of the diversity of interpretations but distinct schools of thought and sects developed in what later became different countries. Today, this diversity of schools of interpretation, together with differing responses in the post-colonial era, has meant that penal codes of countries where Islam is the predominant religion have taken different views of the death penalty, when and how it can be applied and what flexibility can be permitted to those with the authority to impose it.

Islamic law prescribes the death penalty as one of a number of possible "punishments". But there is not unanimity about when or if the death penalty must be applied. The application of the death penalty is in fact not automatic upon conviction in Islam and so the question for Muslims is when and how it should be applied. There is debate within Muslim legal circles and within some Muslim societies about the use and non-application of the death penalty.

All of the possible convictions and death sentences must comply with strict conditions, which themselves make the death penalty an exceptional punishment. For example, a person cannot be found guilty of adultery unless there are four witnesses to the act.

The Qur'an says that deliberate murder (or wounding) can be dealt with either by executing (or wounding) the culprit, or by payment of "blood money" to the relatives of the victim. The relatives can insist on the culprit being put to death. However, the Qur'an stresses the value of pardon and mercy. There are six offences for which a precise punishment is stipulated in the Qur'an and Sunna. For two of these offences - armed robbery and rejection of Islam ("apostasy") - the death penalty is given as one of a number of possible punishments. For armed robbery the alternatives are cross-amputations or exile or the death penalty or a combination of these, but the verses of the Qur'an laying down these punishments close by saying "Save those who repent before ye overpower them. For know that Allah is Forgiving, Merciful". The same possibility of being spared by repentance applies to someone found guilty of apostasy. The death penalty is only to be imposed if the offender has not repented when the period laid down for repentance has lapsed.

The death penalty is also one of a number of optional punishments for a large number of offences. Although almost all schools of thought agree it should only be used for an exceptional case, they do not agree as to what constitutes this. The judge has the power to decide which of these optional punishments to impose but their aim should be to prevent criminals from repeating offences and to reform them, which suggests that the death penalty should not be applied. The sources of Islamic law make repeated references to God as forgiving and merciful and so for the need for forgiveness and compassion in administration of the law. To be merciful and compassionate is more in keeping with the spirit of faith, is more pious, than to seek revenge. Islam also teaches that clemency is to be preferred if there is any doubt about a person's guilt. Islam teaches that every human being is part of God's creation and that therefore the integrity of each human being is to be respected as sacred. The Qur'an says: "Do not kill the soul that God has made sacred save for a just cause". This might be cited as an argument in favour of the death penalty, but others point out that since the definition of just cause may be questioned and hence open to human error, and possibly misuse, then, if there is any room for doubt, it would be more true to faith to show mercy and compassion.

Interpreting the sources of the law in such a way that its provisions are not always taken literally is not without precedent. The Qur'an permits slavery, but no Islamic country today feels therefore bound to uphold slavery. The Arab Lawyers Union and the Union of Arab Jurists as well as the World Muslim Congress have publicly signed a joint non-governmental organisations' appeal for the abolition of the death penalty to the 6th United Nations Congress on the Prevention of Crime and Treatment of Offenders.

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## Judaism

Jews believe in one God who has revealed his will and laws to humankind through prophets whose ancestry of the prophets and of the Jewish people, the laws and words of the prophets are all contained in the Bible.

There are some passages in the Bible which refer indirectly to the death penalty. "whoever shed the blood of man, by man shall his blood be shed" (Genesis 9:6) and ".. but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot" (Deut. 19.21). However, in Genesis, God's anger at Cain for the murder of his brother Abel, is not met with the death penalty. God not only spares Cain, but provides him with a mark of protection to warn anyone not to kill him. Scholars have also argued that the purpose of the Genesis and Deuteronomy passages above has to prevent the escalation of violence in retaliation for personal injury by strictly limiting the amount of revenge that could be taken.

The Ten Commandments which are handed to the prophet Moses and form the basis of subsequent Jewish law include the sixth Commandment, "*Thou shalt not kill*".

Nevertheless, the Jewish torah, the Jewish law laid down in a number of chapters of the Bible, explicitly prescribes the death penalty for certain offences. However, Jewish law is not only contained in the Torah - but in the oral tradition of religious teachers, rabbis, who are authorised to interpret the law. The Sternberg Centre of Judaism writes:

*"In spite of the positive command to impose the supreme penalty, Judaism in its later development, known as Rabbinic Judaism, devised methods by which such punitive measures could and should be avoided. The laws of evidence were so minutely calculated that it became virtually impossible to impose the death penalty. In order to obtain a conviction the testimony of at least two witnesses had to be obtained (Deut.XVII.6), but the method of examination of witnesses was so punctilious that the slightest discrepancy in their evidence was sufficient to annul the charges against the defendant. Whereas the courts of today assume a man is innocent unless he is proved guilty, the courts of ancient Israel assumed a man to be guilty and had to seek to prove him innocent.*

*So reluctant was the judicial system to impose the death penalty that it was ultimately erased from the statute book. Rabbinic literature records that this occurred 40 years before the destruction of the Temple, i.e. in the year 30 C.E. The concept which led to so drastic a step is summarised in the Mishna (compiled in the late 2nd century C.E.) by his assertion "He who destroys one life is as though he destroys a whole world".*

Rabbi Isaak Herzog, writing in 1932 points out that in Jewish law no Jewish court may inflict the death penalty unless the Temple is standing and the sacrificial cult restored: "Even if all the tremendous practical obstacles which prevent the rebuilding of the Temple were removed, the sacrificial cult could only be restored under prophetic directions, and this presupposes a supernatural, divine manifestation. Until that will have taken place, no Jewish court could inflict the death penalty even for the crime of homicide." (The Main Institutions of Jewish Law, 2nd edition, Vol 1, note 3 pp xxi-xxiv, London 1965).

A British scholar, Rabbi Louis Jacobs, writing in 1973, refers to a passage in the "Mishna" (which, with the 'Talmud' represent the two most authoritative sources of rabbinic law, originally oral but now codified). In this passage (Mishna Makkot 1:10 (circa 200 C.E.)), Rabbi Tarfon and Akiva argue in favour of the abolition of the death penalty.

Jacobs writes: "They evidently believed that the Biblical law was intended as a solemn warning as to the extreme seriousness of the crime but that the courts were justified in circumventing the law, so that it becomes a dead letter. A good illustration of this method of procedure is the

Rabbinic treatment of the Biblical law regarding the stubborn and rebellious son (Deut. 21:18-21) who was to be stoned to death and the city that turned to idolatry which was to be razed and whose inhabitants were to be destroyed (Deut. 13:13-19). The Talmud (Sanhedrin 71a) declares that these punishments were never actually carried out nor are ever likely to be carried out and are recorded in the Torah for one purpose only, that we might study them and benefit from doing so. It is typical of Rabbinic law and thought that the written text of the Bible is not followed slavishly, but is interpreted and reinterpreted by Jewish scholars and teachers in order to preserve its dynamism".