

CRIME AND CAPITAL PUNISHMENT IN JAPAN: HOW DOES THE JAPANESE SOCIETY RESPOND?

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A crime in most countries is an act committed in violation of a law forbidding it and for which a court may impose a variety of punishments including imprisonment, death, fine or removal from office.¹ Criminal acts can be divided into two categories, *mala in se* and *mala prohibita*. Some offences such as homicide are considered *mala in se* as they are wrong in themselves and inherently evil. While offences such as drug abuse and gambling are considered *mala prohibita* because society seeks to regulate these particular types of behavior. The status of such offences are determined by opinion, custom or religious standards. The punishment for crimes is imposed according to the severity of the offences and it differs depending on the country.

Capital punishment, also known as the death penalty, is the execution of a person by the state as punishment for a crime. Crimes that can result in a death penalty are known as *capital crimes* or *capital offences*. The term capital originates from Latin *capitalis*, literally "regarding the head." (Latin *caput*).² In other words, it is the direct killing of someone, who has been convicted of a crime by the state authority that orders the execution according to the provision of a law allowing capital punishment and who is always under arrest when he is killed.

Capital punishment was used in almost every part of the globe, but over the last few decades many countries have abolished it. According to Amnesty International, 60 countries still maintain the death penalty in both law and practice, while 91 countries have completely abolished it. 11 countries retain it only for crimes committed in exceptional circumstances such as crimes committed in time of war, and 35 countries maintain laws permitting the use of death penalty for ordinary crimes, but have allowed the death penalty to fall into disuse for at least 10 years.³

Japan is the only industrial democracy other than the United States (37 of 50 states) and Singapore that has the death penalty. There are 128 countries, including European Union members, that have either abolished capital punishment, allow it only under special circumstances or have not carried it out in at least a decade.⁴ Indeed almost all European and many Pacific Area states (including Australia, New Zealand and Timor) and Canada have abolished capital punishment. In Latin America, most states have completely abolished the use of capital punishment. While some other countries, such as Brazil, allow for capital punishment only in exceptional situations such as treason committed during wartime. Most of the Caribbean and Asian countries, like Japan and India, and African states such as Botswana and Zambia retain it, but South Africa which is the most developed African nation does not have the death penalty. In China, human trafficking and serious cases of corruption are also punished by the death penalty. Russia and Israel have banned such state killings.

The chart below shows that some countries have the death penalty and life sentence with or without parole.

Country	Death penalty	Life sentence with and without parole
United States of America	Exists in 37 of 50 states	48 states have life without parole
China	Exists	Life without parole exists
South Korea	Exists but with moratorium	Parole possible after 10 years
Britain	Abolished	Minimum term set by courts, which can sentence without parole
France	Abolished	Parole possible after 18 years. Courts can sentence without parole
Germany	Abolished	Parole possible after 15 years. Life without parole now ruled unconstitutional

Source: Lawmakers want “real” life terms, Editorial, *The Daily Yomiuri*, June 6, 2008.

The writer was prompted to focus attention on this subject after having read and seen in the media the increase in the number of crimes in Japan during the past few years. This paper will attempt to define the meaning of crime and capital punishment, briefly outline the Japanese law on capital punishment and discuss some of the prominent cases in Japan where death sentences had been pronounced. It will also deal with the arguments for and against capital punishment and the changes that may be foreseen after the introduction of the lay judge system in May 2009.

Japanese Law on Capital Punishment

Capital punishment is legal in Japan, with the only crimes for which this is the statutory punishment being homicide and treason. The Penal Code stipulates that the death penalty must be executed by hanging. In the years shortly after the Meiji Restoration, other forms of executions existed such as beheading, but the form of execution was limited to hanging with the revision of the now defunct Penal Code in 1882, or the 15th year of Meiji. A French legal advisor to the Meiji government, Gustave-Emile Boissonade, who helped with the law revision characterized hanging as “humane” compared to other forms of capital punishment. In 1955, the Supreme Court said in a ruling referring to the death penalty by hanging, “In comparison to other forms of death penalty employed by other countries such as beheading, firing squad, electrocution and execution by gas, hanging cannot be considered cruel from a humanitarian point of view.”⁵

Between 1946 and 1993, the Japanese courts sentenced 766 people to death, including a small number from the People's Republic of China, South Korea and Malaysia, 608 of whom were executed. Ten or more people were regularly executed annually in the period from the end of World War II to 1976. Since then the number has dropped with an average of 1.4 executions carried out in the years to 1992.⁶ In recent cases, the death penalty has typically been applied only to those guilty of several murders or in cases which combined murder with rape and robbery.⁷

Although the Japanese Penal Code provides capital punishment for 17 offences, it does not offer any criteria to guide the judge in deciding what punishment to impose. For instance, penalty for homicide could be execution, life imprisonment or a prison term of not less than three years which may be suspended. Thus luck or potentially discriminatory factors can determine what kind of punishment the defendant will receive.⁸

Murderers, as well as arsonists and robbers whose actions result in death, are subject to capital punishment. Kidnappers and hijackers who kill hostages also face the death penalty. But it is certain that capital punishment is the only sentence that rules out the possibility of release on parole.

The Japanese Penal Code further states that a person sentenced to life may be paroled after serving a minimum of ten years, on condition he or she "demonstrates signs of substantial reformation." But a life sentence interpreted literally means a convict, unless pardoned, must remain in prison until death with no entitlement to release by parole.

Japan has a death penalty that can be invoked by the Minister of Justice for murder, arson and crimes against humanity.

Crimes committed by minors

Children form the main basis in any society and are considered to be the future leaders of a country. In any society parents are responsible for the upbringing of their children and guide them to be responsible citizens in society. The decreasing ability of parents to raise their children contributes greatly to cruel crimes by adolescents. There is usually a lack of communication or only one way communication between the parent and child.

There have been 39 finalized death sentences for crimes committed by minors since the end of World War II. Many of the cases occurred in the years just after the war, and the number of death sentences levied upon minors had gradually decreased. The first period is from 1945 to about 1960, when serious crimes frequently occurred due to societal and economic upheavals in the nation. During that period, death sentences were handed down even for crimes in which there was only one victim and the crimes were not necessarily premeditated. The second period was from 1960 to about 1975, where death sentences to minors were limited to cases in which crimes were clearly premeditated as those committed by adults. The third period was from 1968 to the present day.

In 1983, a Supreme Court ruling on serial murderer Norio Nagayama, who was 19 at the time of committing the crime. In 1968 in which he shot four people to death in four separate incidents, became the standard criteria for imposing capital punishment. Since the so-called Nagayama standard was established, the spirit of the Juvenile Law, which gives priority to correction over punishment for criminals under 20, has taken root in society. As a result, death sentences for minors have been rare.

The number of murders in Japan in the past decade has been approximately 1,400 cases a year. A few years ago we heard about the cruel way in which a primary school child was killed in Kobe. This followed an earlier incident in the same area, where two primary school girls were attacked, and one was bludgeoned to death. The alleged suspect who was a 14 year old middle school boy confessed that he experimented with ways to kill and that the act made him feel good. Under the Juvenile Law, anyone under 18 years of age is exempt from being sentenced to death. Who is responsible for this decadent behavior? Firstly, parents are responsible for the upbringing and creating a good environment at home. A family is a community in which children learn fundamental

rules. It is up to individual parents to instill discipline from a very young age and help their children to develop a sense of personal value. Therefore, sharing, caring and responsibility are important roles to be played by parents. By the formation of a strong family bond between parent and children, crimes could be nipped in the bud.

This year (2008), the Hiroshima High Court sentenced a 27 year old man to death for strangling and raping a 23 year old woman, then strangling her 11 month daughter in Hikari, Yamaguchi Prefecture in 1999. The Juvenile Law prohibits sentencing to death anyone who was and under the age of 18 at the time of the crime. The defendant was 18 years and one month old at the time he committed the two murders. In the original two trials of the Hikari case, the sentences were handed down primarily on the grounds that it was possible that the defendant's criminal mentality could be rehabilitated through educational programs in prison. However, the Supreme Court in June 2006, ordered a retrial claiming that the reasons given for not sentencing the defendant to death were insufficient. It asked the High Court to determine if there were special circumstances that justified a life sentence instead of a death sentence. In its ruling the High Court sentenced the man to death after deciding that there were no extenuating circumstances and that the crime was cold blooded, cruel and inhuman.⁹ Though the defendant had insisted that he did not intend to kill the mother and daughter nor attack them to rape the woman, the ruling concluded these were mere excuses and untrue. The latest ruling was based on the fact that the possibility of the defendant rehabilitating himself was smaller than previously estimated and this was the primary reason why the death sentence was levied. The trial has become one of the most high profile cases in Japan due to the controversy over handing the death penalty to such a young person. It was the first time since 1983 that the Supreme Court had recommended that a life sentence be replaced with death. The decision had a "great influence" on trial judges says Satoru Shinomiya, a law professor at Waseda University. It has been followed by several other rulings in which appeal courts have granted prosecution request to overturn life sentences in favor of death penalty.

A case similar in nature occurred in 1988, when a couple was killed, with one of them raped in Aichi Prefecture. In this case, the leader of the gang of six members, who raped the woman and then strangled them both, was sentenced to an indefinite prison term in 1996, at the Nagoya High Court, and the ruling was death penalty. Kenji Nagata, associate professor of studies of general criminal affairs at Kansai University and a specialist in judicial punishment standards said, "in some respects the 1998 case can be seen more vicious as the defendant lacked a sense of remorse. But the ruling can be interpreted as implying the death penalty could have been avoided if he had shown enough remorse."¹⁰

In July 2008, a 14 year old boy hijacked a bus in an attempt to cause his parents trouble. In the same year, the motive for a 15 year old girl who stabbed her 46 year old father remains unclear with some commentators saying it was a "whimsical" act. According to the media, the girl's relationship with her father had been good. In fact, on the night before the murder, the girl had gone out shopping with her father and younger brother to buy ingredients to cook dinner. After dinner, the family had even watched television together. So it seemed there was nothing strange in their relationship. According to the recent media report, the reasons attributed for killing was fear that the father may have gotten angry at the girl's poor performance at school. But the actual reasons for killing yet seem to be unknown.

Crimes that tend to threaten or eradicate human lives should not be rationalized by reference to emotional vulnerability. Some blame the media for exposing people to violent entertainment. But the actual crimes are carried out by the hands and minds of

individual. Some children lack social and moral values as they do not have religious beliefs, while others seem to measure everything in terms of money. It is the responsibility of society to stop blaming the media and other influences for such violent crimes and start educating people on how to control their uncontrollable rage.

Arguments for and against capital punishment

Capital punishment is a highly controversial issue with opponents arguing that it has led to irreversible miscarriages of justice, that it violates the criminal's right to life and that life imprisonment without parole works well as a deterrent for murder. Many people are concerned over whether Japan should abolish or retain capital punishment. People who believe in having the death penalty say that rather than moving away from death penalty, many countries in the world are thinking of joining these countries that currently have it. This is because it would make criminals think twice about killing someone if they know that they could get the death penalty if they are caught.

There were 1000 prison inmates and serving life terms at the end of 1999, 1,500 in 2006 and 1670 in 2007, according to statistics compiled by the Justice Ministry. The number has been rising quickly due to an increase in the number of life sentences issued and a decline in the number of persons released on parole, reflecting the recent tendency of courts to impose stricter punishment due to growing public hostility to paroling inmates.¹¹

Japan is noted for its high public support for the death penalty. A rise in the street crime during the 1990s, the sarin gas attack on the Tokyo subway in 1995 and several high profile brutal murders have hardened attitudes amongst the public and the judiciary. In March 1995, a cult known as Aum Shinrikyo released nerve gas in the Tokyo subway killing 12 people and injuring thousands. Citizens demanded that the perpetrators pay with lives and the authorities responded. Of the 50 death sentences issued between 1999 and 2002, nine went to Aum conspirators. The cult's founder Shoko Asahara was also sentenced to death. Thus, a 1999 survey showed that 79.3 percent were in favor. At a 2003 trial, a Tokyo prosecutor was able to present the court a petition with 76,000 signatures as part of his case for a death sentence.¹²

In an incident, a couple (Tsutsumi and Satoko Sakamoto) and their 14-month old son was murdered by senior members of the Aum Supreme Truth cult following instructions issued by Chizuo Matsumoto, the 53-year old founder of the Aum, who is also known as Shoko Asahara. Each body was buried at a separate location and the bodies were found six years after the murder. Before the Sakamoto family was murdered, Satoko's father, Oyama had doubts about capital punishment believing that ideally it would be better to have a society without the system. Oyama even thought that his daughter probably would not think capital punishment was a good system. Satoko's husband also reportedly opposed the death penalty. "I didn't really talk in depth about the death penalty issue with him(Tsutsumi). But after the incident, Oyama is quoted as saying, "It's up to the justice system to decide the punishment for Asahara and his followers who murdered Satoko and her family." "I believe they (the criminals) will be sentenced to death for sure," he went on to say. "But I don't want them killed quick and easy. I want them brought back day after day and made to stand (on the scaffold)..... I want this to happen for several days.... I want this done for Satoko, Tsutsumi and Tatsuhiko."¹³

In 34 polls taken between 1953 and 1999 abolition of capital punishment has never garnered a majority. Letters published in the Japanese newspapers reflect the surprisingly intense feeling behind the polls. "I believe execution is the best punishment for felons, especially murderers," a citizen named Hajime Ishi wrote to the Yomiuri

Shimbun in July 2003. "Controversial as my opinion may be, I would like to see all murderers - regardless of their age and gender and nationality - put to death."

As of 2007, 90 percent of Japanese support the death penalty, according to the Mainichi Shimbun. Supporters say that capital punishment is not frequently applied, and even then only to those who have committed the most extreme of crimes.

Supporters of the death penalty believe that murder is the worst crime in the world. Victims can be innocent children or your relatives. Therefore, the death penalty is justified for murderers as it is a form of retribution, that it deters crime, is less expensive than life imprisonment and is an appropriate form of punishment. Advocates of death penalty like to quote Exodus 21:28 Life for Life, "eye for an eye," "tooth for a tooth." One retribution rather than "hundred for one" was a revolutionary concept at its time. But Gandhi pointed out that an Eye for an Eye leave everyone blind. Japanese Buddhism provides support for capital punishment. "A basic teaching is retribution," says Tomoko Sasaki, a former member of the Diet, an ex-prosecutor and a leading advocate of the death penalty in Liberal Democratic Party. "If someone evil does something bad, he has to atone with his own life. If you take a life, you have to give your life."¹⁴

There is an additional reason for the increasing public support for the death penalty. Street crime has been on the rise in Japan. According to the government, reported crimes registered a postwar high for six consecutive years, between 1996 and 2002 before leveling off in 2003. While the number of murders hasn't risen rapidly, several brutal and highly publicized killings, including a massacre of eight school children in 2001 led the public's growing sense of insecurity.¹⁵

In June 2008, serial killer Tsutomu Miyazaki, 45 who abducted, molested and strangled four young girls in Tokyo and Saitama Prefectures in 1988 and 1989 was hanged with two other inmates. The other two hanged were Yoshio Yamasaki, aged 73 and Shinji Matsuda aged 37. Yamasaki was convicted of murdering two people in a life insurance fraud in Kagawa Prefecture. Matsuda was convicted of killing two people to take over a sex service shop owned by one of the victims in Tokyo in 1995. In all three cases, the inmates committed cruel acts for very selfish reasons. Miyazaki after kidnapping his victims, he strangled them and mutilated and buried some of their corpses. Some reports claimed he ate part of their flesh. Before his capture, he sent a box containing the bones of one of the girls to her house and a letter claiming responsibility signed by a Yuko Yamada. Miyazaki had described his serial murders as a good job and never apologized.¹⁶

In Miyazaki's case, the court ruled that Miyazaki had manifested an extreme personality disorder but he was mentally competent when he committed the crimes and had no mental disorder, that would exempt him from criminal liability. The judge further said that Miyazaki was still aware of the gravity and consequences of his acts and he was therefore accountable for them, sentencing him to death. Miyazaki's case was a national sensation for the brutality of his crimes as well as the bizarre behavior he exhibited.

After Miyazaki's sentence was finalized, Yoshihiro Yasuda, a lawyer and prominent opponent of the death penalty said that the government aspires to have a stronger, more authoritative image by sending killers to the gallows. The Justice Ministry was aiming to create an extremely combative and powerful society, Yasuda said. With capital punishment (the state) is trying to maintain social order.¹⁷

Recently crimes similar to Miyazaki's have occurred. In 2004, Kaoru Kobayashi, 28, kidnapped and killed a young girl in Nara Prefecture. Kobayashi abducted the first grader with the aim of sexually abusing and killing her. Kobayashi e-mailed photos of the girl to her parents. He told investigators "I want people to remember me as a second

Tsutomu Miyazaki.” Kobayashi is now a death row inmate.¹⁸

In the recent incident that took place in Akihabara, where 25 year old Tomohiro Kato had stabbed seven passer-by to death and wounded several others, he had expressed his loneliness. Kato wrote about his social problems on a cell phone Web site. He even confessed to his alleged crimes via the Web site before he committed them. Considering the age of suspects, except for the 25 year old Akihabara attacker, they were adolescent, an age at which people are starting to exercise their freedom and become responsible for their own lives. Prof. Jinsuke Kageyama of Tokyo Institute of Technology, an expert in criminal psychiatry said, “The relationship (of these criminals) to their families are remote. The crimes have something in common, namely that the perpetrators grew up without building stable relationship with peers at school or in their local communities. If we examine these types of crimes, we can see that the damage caused was extremely serious. This was likely the result of a general trend of youth escaping into virtual worlds on the Internet or through watching animation. Because of that the real world becomes ambiguous,” he said.¹⁹

Statistics show that courts have handed down more death sentences in recent years amid mounting calls by victims and other demanding heavier punishment for perpetrators of heinous crimes. The Nagasaki District Court gave the death penalty in May 2008 to a 60 year old gangster for assassinating the former Nagasaki Mayor Ito.²⁰ In fact, courts have finalized the death sentence of 69 convicts between 2004 and 2007 compared with only 15 between 2000 and 2003 according to data released by a group of Diet members opposing capital punishment.

The Cabinet office released a survey on capital punishment in February 2005, showing that 81.4 percent of 2,084 respondents supported the death penalty. It was the first time the figure topped 80 percent. Those opposing capital punishment remained at 6 percent. Some of the respondents who were interviewed after the Miyazaki case was finalized said that it was necessary for death sentences to be carried out promptly to serve as a deterrent to crimes.

On the other hand, those opposing the death penalty argue that it may lead to the execution of the wrongfully convicted and that it discriminates against minority and the poor, and is a violation of human rights.

Nevertheless, the increase in executions in Japan goes against the current world trend. The U.N General Assembly adopted a non-binding resolution in December 2007 calling for member states to put a moratorium on capital punishment. Some lawmakers are calling for the introduction of a life prison term without parole and abolition of the death penalty. Hiroshi Itakura, a criminal law professor at Nihon University Law School in Tokyo conceded that worldwide executions are on the decline. But he said it would be difficult to introduce life prison terms in place of the gallows as long as public opinion favors the ultimate punishment.

A few justice ministers have been against capital punishment, and this has led some proponents of the law to claim that a person against it should not take up the job. Seiken Sugiura, who served as the justice minister for 15 months in 2005 and 2006, stated that his Buddhist faith prohibited him from sanctioning capital punishment, and that no prisoners were put to death during his tenure.²¹

Amnesty International argues that the Japanese justice system tends to place great reliance on confession and it may be obtained under duress. Amnesty International also reports of allegations of abuse of suspects during these interrogations²²

Conclusion

It has been reported that a major change in Japan's sentencing system is urged by

a group of Diet members who want to present a bill later this year(2008), calling for the creation of a new category of sentence - life imprisonment without parole. In Japan, capital punishment is the only sentence that rules out the possibility of release on parole. Although Article 28 of Japan's Penal Code stipulates that a person sentenced to life may be paroled after serving a minimum of ten years, on condition he or she "demonstrates signs of substantial reformation." But interpreted literally it means a convict, unless pardoned, must remain in prison until death with no entitlement to release on parole. This bill, if enacted would represent a key milestone in the nation's judicial punishment system. However, there are doubts whether it would be allowed in view of the lay judge system that is to be introduced from May 2009.

The introduction of the lay judge system was proposed by a government panel for reform of the judiciary on June 12, 2001. The Diet enacted the Lay Judges Law on March 21, 2004. This system is designed to boost public understanding of the nation's legal system. In the new system, six citizens chosen at random will, together with three professional judges, hear initial trials dealing with such serious crimes as murder, burglary leading to injuries, arson and dangerous driving causing death. It is expected that one of every 4,000 citizens will serve as a lay judge every year. A Supreme Court poll whose results were announced on April 1, 2008 shows that 60 percent of respondents accepted the new system, these include those who do not want to serve as lay judges, although they said they would do so as their duty.²³

The lay judge system which starts on May 21, 2009 requires members of the public to be involved in handing down death sentences. This system will mark a drastic change to the nation's criminal trial system, with ordinary citizens' views being reflected in judgments and sentencing. Those who support the maintenance of the death penalty hope that the creation of a new sentence would make it possible for people responsible for heinous crime to be given the more severe new sentence instead of life with parole. Courts finalized the death sentence of 69 convicts between 2004 and 2007, compared with only 15 between 2000 and 2003, according to data released by a group of Diet members opposing capital punishment. Yoshihiro Yasuda, a lawyer and a prominent opponent of the death penalty said, the government aspires to have a stronger, more authoritative image by sending killers to the gallows²⁴ This is supported by the fact that a total of 15 death row inmates were executed on five different occasions in 2008 after waiting an average of four years and one month after their death sentences had been finalized. Between 1998 and 2007, it took about eight years on average before 35 death row inmates were executed after their death sentences had been finalized. The 2008 executions are indicative of the Justice Ministry's preference of making executing waiting periods shorter. Of the 15 executed in 2008, the shortest period between the finalization of the death sentence and the execution was 22 months in the case of Masahiro Takashio, a 55 year old man who murdered a woman and her daughter in Fukushima Prefecture in 2004.²⁵

While those who want the death penalty to be abolished insist that life without parole would stem the tendency of recent years toward a rise in death sentences, and would therefore represent an important step toward the abolition of the death penalty. But again the question arises on how to deal with inmates serving life imprisonment without parole as they might become desperate without the hope of eventual release Is society prepared to spend lots of money to feed and keep prisoners in jail as the number increases? On the other hand, what are the chances that the convicted killers could have been rehabilitated and returned as a member of the society? These factors may create confusion for professional judges and lay judges alike when giving their verdict.

But the question still remains to be answered how the lay judge system would

deal with the increasing crime rate in Japan, especially crimes committed by minors. The increase in crimes will flood the lay judges with confusing information. They may be influenced by media reports about the suspect's upbringing, personal comments from friends and acquaintances and this may detract the presumption of innocence and thus prejudice the lay judges. Although the Supreme Court may insist that lay judges should only view the evidence presented in court to reach a verdict, it may be difficult for ordinary citizens who are not well versed in the law to do so. Thus I believe that lay judges should use common sense, and consider the facts and evidence of the case carefully before giving their verdict. The standard over whether death sentences should be imposed can change depending on social situations. It is important for the lay judges to take into account the viciousness and motivation of the crime, the age of the defendant, the defendant's previous criminal record, the nature of the crime committed, the emotions and sentiments of the bereaved victim's family, and the overall impact on society. This is supported by the statement made by the former Justice Minister Okiharu Yasuoka, who commented on the introduction of the lay judge system as, "A degree of transparency in the current execution system is needed so that lay judges can make clear decisions about sentencing a person to death."²⁶

But the fact still remains that the society as a whole is responsible for the increasing crimes, especially those committed by minors. Parents have the greatest responsibility to raise and guide their children from very young age to be responsible and law abiding adults. Discipline, responsibility, to distinguish between good and bad, and a respect for others feelings should be cultivated at a very young age. The influence of television and other external factors like animation cartoons and comic books tend to influence young minds that have the tendency to experiment with what they have seen or read. Although legislators introduce and implement laws with a view to create peace and harmony in society, crimes will continue or even escalate unless and until they are nipped in the bud.

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