

Death Penalty in Jordan between Abolition and Retention

Ahmed Al-Nuemat & Asma Ghnaimat
Al-Balqa Applied University
Jordan

Abstract

This article addressed death penalty in national legislations; the opinions about the penalty have been divided into two trends: Calling for its abolition due to cruciality as well as the impossibility to return after execution in case of error when judged, whereas the other trend stipulates that this penalty is fair and suits the seriousness of the committed crime, in addition to the criminal who is being too dangerous by committing such crime, and there is no hope to reform him. At the end of the article, we have realised that it was not possible and unacceptable to abolish the death penalty; it was punishable for the most serious crimes because it was commensurate with the harm it had caused, nor could there be an alternative punishment for execution and appropriate to the committed act. But the imposition of punishment must be restricted to the extent of the most serious crimes, not imposed against political offenses, and the maximum guarantees must be followed to limit the error in judgment or execution.

1. Introduction

At present, the world tends towards the abolition of the death penalty. The number of countries that abolished the penalty has increased. However, some of the Arab states continue to enforce it, but the number of offenders sentenced to death is reduced, and the rest of them are seeking to cease such penalty with the exception of Djibouti, which officially abolished the penalty in 1995. It is worth mentioning that Djibouti has not executed since 1977, hence Djibouti is the first Arab state that actually abolished the penalty from its legislation. In 2010, only four Arab states, Algeria, Morocco, Tunisia and Mauritania, have frozen this penalty for fifteen years, while two countries, Comoros and Oman, have frozen it for about ten years, whereas, Kuwait performed its last execution in 2007 while this was the case for Lebanon in 2004, whereas Bahrain after 10 years of penalty freezing, resumed the death penalty in 2006 and 2008.

Nevertheless, Saudi Arabia, Yemen and Iraq significantly impose and execute the penalty to this day. Egypt has witnessed an increase in the cases of executing the penalty; in 1994-1998, Egypt executed 132 death penalties while between 1999 and 2003, 350 death penalties has been executed. Then, the death penalties were reduced to 9 cases through 2004-2008. Libya, a state which applies the penalty, executed 4 persons in 2009.¹ However, Jordan froze the penalty from 2006 to 2014.² This article addresses death penalty in national legislation, as well as conducts research into pro-opposition trends. Through this article, several questions about the punishment will be addressed: What are the arguments of those who call for abolition and those who support retaining them? Can punishment be dispensed at the present time? If the penalty is abolished, is it possible to find an alternative punishment for serious crimes? What guarantees should be taken when executing death penalty?

¹Reshmawi, M. and Al-Saqaf, T., *Anti-Death Penalty in the Arab World. Effective Strategies and Mechanisms Available Procedural Guide* (International Criminal Reform Organization, 2010) Pp.11-13.

² See <http://www.alrainews.net>, accessed on 1st February, 2017.

2. Death penalty in Jordanian legislation

Jordanian legislators have classified penalties into three types: criminal, misdemeanour and offence penalties. The criminal penalty is the most serious misconduct followed by misdemeanour and then the offenses which are referred to as "short-term imprisoning". The death penalty comes under criminal penalties, As article (14) of the penal code stated: " Criminal penalties are: 1. Death penalty 2. Life imprisonment with hard labour 3. Life detention 4. Temporary imprisonment with hard labour 5. Temporary detention." The Jordanian penal code has identified death penalty in the article (17/A) as "the hanging of the convicted person." Accordingly, the legislation did not cancel death penalty but it stipulated specific crimes which are considered the most dangerous to be executed: such as the crimes related to external or internal state security as well as some crimes that are considered as assaulting to the life of an individual, or might be accompanied by the death of one or more persons.³

In the first request, we will deal with the crimes that are sentenced to death in Jordanian legislations. However, the second request will follow up the procedures of death penalty until execution. Due to the significance of such a penalty and its dangerous effect which is represented in the exhaustion of the life of the condemned, the Jordanian legislator is keen on enclosing it with special penal provisions that contribute to reducing and even avoiding the error during judgement or implementation. That will be addressed in the third request.

2.1 Crimes punishable by death in Jordanian legislation

The death penalty is the most important and most influential sanction. It means to assault the life of the condemned. The Jordanian legislator exclusively stated certain crimes in some codes, those articles that stipulated that the death penalty will be addressed through many branches.

2.1.1 Jordanian penal code

Jordanian penal code no. 16 of 1960 and its amendments on the crimes that are sentenced to death are formulated as follows:

2.1.1.1 Of Crimes against External State Security

1- Treason

- A. The crime of holding arms with the enemy against the state according to article (110/1): "Any Jordanian who holds arms with the enemy against the state shall be punished by the death penalty".
- B. Plotting or corresponding with a foreign state to incite it to take a hostile action against the state; they shall be punished by life imprisonment with hard labour. But if the aggression took place the punishment is death as stipulated in article (111) " Any Jordanian who plotted or corresponded with a foreign state to incite it to take a hostile action against the state, or provided the means for such action, he / she shall be punished by life imprisonment with hard labour. If such act led to a consequence, he / she shall be punished by the death penalty".
- C. Plotting, corresponding or help an enemy to defeat the forces of their state. Article (112) stipulated that "Any Jordanian, who plotted or corresponded with the enemy to help the enemy in any manner defeat the state, shall be sentenced to death."
- D. Damages that lead to paralysing the national defence shall be punished by life imprisonment with hard labour. However, if the act was committed during the wartime, when the start of such war was anticipated or if the act led to the death of any person, the death penalty shall be sentenced, as stated in article (113): "1. Any Jordanian who, with the intent to paralyze national defence, damages – by any means - the factories, establishments, aircrafts, tools, ammunitions, food supplies, transportation means, and in general anything that has military use, or prepared to be used by the army or its forces, shall be punished by life imprisonment with hard labour. 2. The death penalty shall be sentenced if the act was committed during wartime, or at a time when the start of such war was anticipated; or if the act led to the death of any person."

³Bani E. H., *Explanation of the Penal Code General Section (Criminal Participation and General Theory of penalties)* (1st edition, Dar Wael for publication, Amman- Jordan, 2002) P. 99.

When the legislator stipulated the death penalty for the above crimes, because they are considered the most dangerous treason and disloyalty acts for the state, even some laws called for high treason crimes.⁴ Those penalties are applied against each Jordanian who commits one of the above crimes as well as foreigners who have a place of residence or actual accommodation in the Hashemite Kingdom of Jordan when they committed one of those crimes, plotted or corresponded means to the fabrication of information and accusations for the state which thereby aroused the other State. The death penalty is applied if such information is sent to hostile states, or if the information led to killing or war.⁵

2- Crimes against international law

Article (120) stipulated that "Any person who, within the Kingdom, without the government's consent, recruited soldiers to fight for a foreign state shall be punished with temporary detention. If such a state was a hostile state, the punishment shall be the death penalty".⁶

2.1.1.2 Of Crimes against Internal State Security

1. Crimes against the Constitution: death penalty is enforced when any of the following crimes is committed:
 - A. Assaulting the life or freedom of His Majesty the King, Her Majesty the Queen, the Crown Prince or one of the thrown regents. Article (135/A) stipulated that "Whoever assaulted the life or freedom of His Majesty the King, he / she shall be punished with the death penalty." In addition, paragraph 3 of article (135) reads: "The same penalties shall apply if the assault was directed to Her Majesty the Queen, or the Crown Prince or one of the thrown regents".
 - B. Unlawfully changing the State's constitution. According to article 136 "Whoever unlawfully works on changing the State's constitution shall be punished by the death penalty".
 - C. Provoking an armed rebellion against the constitutional authorities. Such crimes lead to the death penalty according to article (137/2): "If the rebellion takes place, the inciter and the rest of the rebels shall be punished by the death penalty".
 - D. The conspiracy to commit any crime against the constitution, whereas the conspirator will be punished with the same penalty as the committer. According to article 139: "The conspiracy to commit any of the crimes stated in the articles of this chapter shall be punished with the same penalty stipulated for committing the crime".

It is worth mentioning that Arab legislations are unanimous with reference to the stipulations regarding the death penalty in cases of assaulting the king's or the president's life, or when the assault takes place against the queen, the crown prince or any of the thrown regents due to their relations with the king. Assaulting them will affect the king, as it will influence on the security and stability.⁷ However, aiming to change the constitution is an attempt to change the ruling system or the constitution in an unlawful manner such as by using violence or strength. Anyone who aims to change the constitution is punished by death; that is limited by constitutions because it is considered to be the head of the state's laws. While rebellion is defined as the "Non-compliance of public authorities based on the conduct of state affairs", in this article using weapons refers to strength, but in the case of a civil rebellion the death penalty would not be enforced. In the case of the outbreak of armed insurrection, both the instigator and the disobedient are punished by death.⁸ Article 139 instates the same punishments as articles (135, 136, and 137) with reference to conspiracy towards committing any of those crimes. The legislator is coerced to impose the death penalty, where the death penalty for conspiracy remains an exception. Other crimes in the penal code did not stipulate to punish the conspirator with the same severity as the person who acted, but in that case the legislator punished both the conspirator and the person who acted with the same penalty due to the dangers entailed by those crimes.

⁴Al-Jbour M., *The Crimes Against State Security in Jordan's and Arab's Codes* (1st edition, Amman-Jordan, 1992) P.78.

⁵Al-Manassah U., *Explaining the Law of Security State Court, Structural Analytical Study* (1st edition, Dar Wael for publication, Amman- Jordan) P.67.

⁶Al-Jbour M., note 4 above,P. 135.

⁷Ibid., 225.

⁸Al-Nawayseh A., *The Crimes Against State Security in Jordan's legislation*, (1st edition, Dar Wael for publication and distribution, Amman- Jordan, 2005) P.221.

2. Sedition. Article (142) mentioned acts that aim to raise sedition. The penalty is death if consequences are achieved due to sedition. These acts are:

- A. Provoking civil war or sectarian fighting by arming Jordanians or by encouraging them to hold arms against each other.
- B. Incitement on killing and looting of a place or places.

Article (142) is stipulated: "Any assault that aims to provoke civil war or sectarian fighting through arming Jordanians or through encouraging them to hold arms against each other or through incitement on killing and looting of a place or places shall be punished by life imprisonment with hard labour. If the assault took place he / she shall be punished by the death penalty". The legislator emphasises the penalty due to the aggressions and hatred that will arise among the individuals. As calling those to take arms against each other and impress to provoke civil war will result from such wars robbing, looting, killing and provoking terror, panic and instability in society, especially considering that one people is constituted by several sects and comprises many religions⁹. Such acts are aimed at undermining national unity and creating cracks in the home front of the state.

3. Terrorism

1. The legislator enforces the death penalty for any terroristic acts if these lead to the death of anyone. Article (148/3) stipulates that "Life imprisonment with hard labour shall apply if the act resulted in:

- A. Causing damages, even partially, to a public or private building or an industrial facility or a ship or aircraft or any transportation mean or facility.
- B. Obstructing means of communications and computer systems or violating its networks or obstructing transportation means or causing partial or total damage for such means".

The legislator emphasised the penalty to death according to article (148/4): "The death penalty shall be applied in any of the following cases:

- A. If the act resulted in the death of a person.
- B. If the act caused the total or partial demolishing of a building while a person or more were in such building.
- C. If the act was committed through the use of materials and products that are explosive, igniting, poisonous, blazing, epidemical, bacterial, chemical or radioactive or any similar products."

2. Article (149/2) punishes to death everyone who holds a person hostage in order to extort any official or private entity in any way and results in the death of a person. The article stipulated: "The same penalty stipulated in paragraph 1 of this article shall apply to any person who detains or holds a person hostage in order to extort any official or private entity in any way; or to force such entity to perform a certain act or refrain from it. The penalty shall be life imprisonment with hard labour if such act caused any person harm or death".

2.1.1.3 Crimes against public safety

With regard to Villain Associations, the death penalty is imposed against the groups that commit roping acts if any of the criminals killed a person or committed any tortures or barbarian acts. As stipulated in article (158/3): "Whoever among them commits murder or tortures the victims or uses barbaric acts on them in order to execute one of the felonies stated before, he / she shall be sentenced to death."

2.1.1.4 Crimes against morality and public morality are punishable by the death penalty when committing one of the following crimes:

- 1- Raping a girl under fifteen years of age. Article (292/2) stipulated: "Whoever rapes a girl who did not reach fifteen years of age shall be punished by the death penalty".
- 2- Raping a girl under twelve years of age. According to article (294/3): "Whoever has sexual intercourse with a female – other than his wife who did not reach fifteen years of age shall be considered as having committed the crime stipulated in paragraph (2) of article (292) of this law and punished by the same stipulation in paragraph (2) of article (292) that means death penalty."

⁹Al-Manassah U., note 5 above, P. 82.

In the previous two articles, the legislator emphasises the ugliness and seriousness of the crime against a young girl and the physical and psychological impact of the crime on such girls, and the easiness of committing such crimes by the offender.¹⁰

2.1.1.5 Wilful and premeditated murder. Death penalty will be enforced for any of the following acts:

1. Wilful murder or with premeditation.
2. Murdering to prelude the commission of a felony or in order to facilitate the escape of the inciters.
3. Murdering one of the perpetrator's ancestors.

Article (328) stipulated that: "Wilful murder shall be punished by the death penalty if committed:

1. with premeditation. Then it is called premeditated murder.
2. as a prelude to the commission of a felony or in order to facilitate the escape of the inciters or perpetrators or abettors of such felony or in order to prevent their punishment.
3. Against one of the perpetrator's ancestors"

The legislator emphasised the penalty for the commission of such acts in view of the cruelty and ugliness of the crime. In the case of wilful murder, the criminal calmly planned for the crime and executed it, while in the second case they underestimated the life of a person to commit another crime, however in the third case, murdering one of the perpetrator's ancestors such as the father or mother reflects the seriousness of the crime which denies the prophet Mohammad's guidance to care about them.¹¹ 4- If a mother causes the death of her child who did not reach one year of age. As stipulated in article (331): "If a woman causes the death of her child who did not reach one year of age through an intentional act or omission in a way that she should be punished by the death penalty, but the court is convinced that when she caused the death she did not fully regain her consciousness as a result of her giving birth or breast feeding the child; if such a case exists the court shall replace the death penalty with detention for a period not less than five years".

2.1.1.6 Of Felonies which Constitute General Danger on Public Roads and Transportations

1. Whoever burns a fire resulting in the death of a person. Article 372 stipulated that "If the fire resulted in the death of a human being, the perpetrator shall be punished by the death penalty in the instances stipulated in articles (368 and 369) and by life imprisonment with hard labour in the instances stipulated in articles (370 and 371).
2. Whoever committed a crime destroying the public roads, transportations and industrial works in addition to destruction during sedition or armed disobedience, thus resulting in the death of a person. According to article 381, "The penalties stated in the previous articles shall be increased by half if any person is permanently disfigured; and the penalty shall be the death penalty if the action led to the death of a person".

2.2 Military Penal Code

The code is one of the laws and provisions applied to members of the armed forces for different ranks when committing any of the offenses contained therein. It also applies to prisoners of war and allied armies present on the territory of the Kingdom or under the command of the armed forces. Article 6/a of the military penal code referred to the case of committing a crime as "Is the crime punishable by one of the following penalties:

1. Death
2. Life imprisonment with hard labour.
3. Life imprisonment
4. Temporary imprisonment with hard labour
5. Temporary imprisonment. "

¹⁰Alhudiethy, F. A. and Alzuby, K. H. *Explaining Penal Code the Special Section of Crimes Against Persons*, (1st edition, Dar Athaqafa for publication and distribution, Amman-Jordan, 2009) P.242.

¹¹Nammour, M. S., *Explaining Penal Code the Special Section- part one, Crimes Against Persons*, (1st edition, International Scientific House for Publishing and Distribution and Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan , 2002) P.72.

Death Penalty in Jordan between Abolition and Retention

With respect to the crimes punishable by death, this has been stipulated in the following articles:

1. Article (10/A) related to disobedience and rebellion stipulated that "whoever caused rebellion among armed forces or allied state forces or joined rebellion in those forces or conspired with anyone else to cause it or attempted to convince any person in the mentioned forces to join any rebellion is sentenced to death".
2. Article (13/D) related to the disobedience of commands and military instructions stipulated that: "The penalty is death if disobeying the command when facing the enemy or rebellions or involving the refusal to attack them and resulting in serious harm."
3. Article (36) related to robbery, destruction, and assault on military personnel stipulated that: "Whoever in military operations deprived a wounded, sick or dead soldier shall be punished with temporary imprisonment with hard labour, and sentenced to death if he/she commits violent acts against a wounded or sick military that aggravate his condition with the intention of stripping him".
4. Acts for enemies. Article (337) stipulated that: "Whoever committed the following acts shall be punished to death:
 - A. Whoever delivered the enemy any location, vehicle, military vehicle, fort, site, police station or a point he is charged with guarding or defending it.
 - B. Used any mean to compel any commander or other person to leave any location, vehicle or military vehicle in favour of the enemy.
 - C. Threw his weapon, ammunition or equipment in an infamous manner in front of the enemy, rebels or attackers.
 - D. Provided the enemy with arms, ammunition, means of communication or supplies, or provided shelter to an enemy who is not a prisoner.
 - E. Helped the enemy to achieve their targets.
 - F. During the war, any action is committed that jeopardises the success of the operations by the armed forces or any force of an allied State."
5. Article (38/A) with respect to providing aid to the enemy during wartime stipulated that: "shall be punished to death whoever helped during the war aiming to help the enemy or harm the armed forces or allied forces to commit one of the following crimes:
 - A. Disclosed a secret word, password or signal reply.
 - B. Guided the enemy to the armed forces locations or allied forces or deceived the mentioned forces to pass through an incorrect road.
 - C. Caused panic among the units of the armed forces or carried them on the wrong movements or disrupted the assembly of dispersed soldiers."
6. Article 39 indicates that: "Whoever is delivered to the enemy or in his favour the soldiers whom work under his command or the location he guarding or the military weapon ammunition, maps of military sites or plans of military operations shall be punished to death."
7. Article (41/B) stipulated that: "Whoever commits the crimes stated in paragraph a of this article as the following: Shall be sentenced to death in the cases provided for in articles (1), (10) and (11) thereof". Article (41 (C) provides that: "The penalty of any crime shall be the sentence to death if the act committed led to death". With regard to the cases stated in article 41 (b), which made the death penalty a penalty for the offense, reference is made to the wilful murdering of civilians, and random attack against civilians or civilian or engineering facilities. The penalty shall be the death penalty if it resulted in the death of a person.
8. Article (42) stated: "The instigator and interference in war crimes shall be punished by the same penalty."

2.3 Other special codes

2.3.1 Narcotic drugs and psychotropic substances no. 11 of 1988 as amended in the last law no 45/2006. The following articles stated the death penalty.

1. Article (10) stated: "Shall be sentenced to death whoever commits a crime stated in articles 8 and 9 of this law in one of the following cases:
 - A. If he participated in an international gang dealing with narcotic drugs or psychotropic substances and dealing with them either by smuggling them or in any other way or form or was a partner with such gang at the time of committing the crime or was working for or collaborating with it at that time, or the crime committed by

him is part of the acts of that gang or of an international operation to smuggle or deal with narcotic drugs or psychotropic substances.

- B. If the committed crime in conjunction with another international crime, including the smuggling of weapons, money and counterfeiting, or the crime is part of an international gang that commits international crimes which their business is in among several states or is jointly committed by criminals from more than one state".
- 2- Article (21/C) related to combating the personnel charged with the fight against the crime of narcotic drugs and psychotropic substances, which resulted with the death of one of them, stated that: "The criminal shall be sentenced to death if the stated crime is paragraph (a) of this article to the death of any of the working employees". The legislator emphasised the penalty for the crimes related to the crimes of narcotic drugs and psychotropic substances due to dangerous against society and individuals.

2.3.2 Protection of State Secrets and Documents

Three articles in this law stipulated the death penalty as a punishment for committing certain crimes, the articles are the following:

1. Article (14) stated: Any person who has entered or attempted to enter a restricted place for the purpose of accessing secrets, items, protected documents or information that must remain secret to endure the security of the State." The person "shall be sentenced to temporary hard labour. If such an attempt is made for the benefit of a foreign State, he shall be sentenced to hard labour for life. If the foreign State was an enemy, he shall be sentenced to death."
2. Article (15) stipulates that anyone who "steals classified information shall be subject to hard labour for a minimum of ten years. If the information was obtained for the benefit of a foreign State, the penalty is hard labour for life. If it is an enemy foreign State, the person shall be sentenced to death."
3. Article (16) imposes criminal liability on any person who discloses, without a legitimate reason, any protected information which he obtained through his position in a Department. He shall be sentenced to hard labour for a minimum of ten years. If he discloses the information to a foreign State, the sentence is hard labour for life. If it was an enemy foreign State, he shall be sentenced to death.

Together, the pervious articles stressed the punishment to the death, because the secret or document is delivered to an enemy state, whereas such documents must be maintained safe. At the end of the request, the Jordanian legislator stipulated the death penalty for about fifty crimes despite callings and requests by opponents of the punishment to abolish the penalty. In March 2007, the National Coalition against the Death Penalty was established and several activists and individuals from social society organisations joined. The coalition has organised many seminars and participated in conferences against the death penalty, as it constantly works to gather support to abolish the death penalty.¹²

3. The procedures and restrictions of death penalties in Jordan

Jordanian penal legislations approved the death penalty but in the context of serious crimes affecting the internal or external security of the state, or which threaten the security and stability of society. The severity of the punishment has been subjected to guarantees ensuring, avoiding the error of judgment or execution. At the top of these guarantees is what is stated in the Jordanian Constitution in Article (39): "Death penalty can't be executed without the king's approvals, such judgements will be displayed before the cabinet combined with opinion".

Thus, death penalty is impossible to be executed if its sentence is issued by the civil or military court unless approved and sealed by the king, which is considered as some pervious key guarantee to execute the death penalty.¹³ Article (15/a) of Military Code of Criminal Procedure stated "the following judgements can't be executed unless the king approves: a- Death penalty".

The procedures for imposing death penalty and its implementation in Jordan are the following:

¹²Muna S., *The Death Penalty in the Arab World: Activists, Arguments and Prospects, Global Coalition against the Death Penalty*, See www.amenstymena.org/ar/magazine, accessed 21st February, 2017.

¹³Al-Shawy S. A. and Alwrekat M. A. , *General principles of the Penal Code* (1st edition, Dar Wael for publication, Amman – Jordan, 2011) P.335.

Death Penalty in Jordan between Abolition and Retention

1. First, the death sentence must depend on the basis of a legal provision after the competent court has ascertained that the accused has committed the crime punishable by death and that they also have no circumstances or excuses that may mitigate the punishment.¹⁴
2. The sentenced to death shall appoint an attorney to defend them, if the sentenced refuses or their financial circumstances prevent them from doing so, the court shall appoint an attorney where his wages are paid from the government's treasury for each trial. As stipulated in article 208 of the Code of Criminal Procedure "1- After the attorney general has filed the case to the Court, the president of the court or who represents him form the judges in the court with the crimes the sentenced to death or by life imprisonment with hard labour or life detention to bring the accused then ask him to select an attorney to defend him, if he didn't or his financial circumstances don't help him to do so, the president of the court appoints an attorney 2- The government pays from the treasury for the attorney who was appointed in the previous article the amount of 10 Jordanian Dinars for each session attended, however those wages shall not be less than 200 Jordanian Dinars and more than 500 Jordanian Dinars".
3. When the death sentence is issued, the Public Prosecution must carry out the necessary procedures to appeal, even if the convicted person does not request it. Also, it is obligatory to take such measures within the period prescribed by law.¹⁵ Article 260/3 of the Code of Criminal Procedure stipulated that "Shall be sentenced to death or to a criminal penalty for a period of not less than five years following the appeal, even if the convicted person does not so request."
4. In the case of a death sentence, article (275/2) of the Code of Criminal Procedure has imposed to cassation of judgement of death even if the sentenced did not ask for that. Sentencing to death is cassated by default by law. The article stipulated that: "Death penalty, life imprisonment with hard labour and life detention are under cassation without the request by the sentenced and the president of the court provides those judgements once issued to be submitted to the cassation court for consideration." Article (13/c) of the Grand Criminal Court stated that: " Shall be sentenced to death or to a minimum of five years' penalty for cassation, even if the convicted person does not request it. In this case, the attorney general shall file the case with the Court of Cassation within fifteen days from the date of the judgment".
5. If the court of cassation approved the death sentence, the Head of Public Prosecution shall submit records to the Minister of Justice. This was stated in article (357/1) of the Code of Criminal Procedure: "When a death sentence is issued, the attorney general submits the records to the Minister of Justice attached with a report including a brief of the case beside the evidences that judgement based on and the causes to enforce or replace the death penalty." In his turn, the Minister of Justice submits the records to the cabinet. According to article 357/2, "The Minister of Justice shall submit the case documents with the report to the Prime Minister for transmission to the Council."
6. The council of ministers review the case documents and the report then give their opinion with respect to executing the penalty or replacing it to be submitted to his Majesty the King. Article 357/3 stipulated that: "The council of ministers reviews the mentioned documents and the report of the attorney general and gives the opinion with regard to executing the sentence or replacing it combined with the opinion to be submitted to the King". Accordingly, the opinions of the attorney general and the prime minister are not obligatory in order to execute the punishment. His Majesty the King is the only one who decides the punishment, whether to execute, replace or reduce it.¹⁶ As he gives special pardon according to article (51) of the penal code: "1- His Majesty the King grants a special pardon on the recommendation of the Council of Ministers which has to include the Council's recommendation. 2- A special pardon shall not be issued for those who have not been sentenced with a final ruling. 3- The special pardon is personal; it may be by dropping the penalty or replacing it or reducing it in whole or in part". This right is granted to the King in article (38) of the constitution: "The King has the right to grant a special pardon or remit any sentence, but any general pardon shall be determined by special law".

¹⁴Al-Ani, M. H., Tawalbeh, A. H., *Criminology and Punishment*, (1st edition, Dar Al-Massirah for Publishing, Distribution and Printing, Amman, Jordan, 1998) P.25.

¹⁵Al-Halabi, M. A., *Explanation of Penal Code, General Department*, (1st edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 1997) P.471.

¹⁶Tawfiq, A. A., *Lectures in the general provisions of the Penal Code* (1st edition, Wael Publishing House, Amman, Jordan, 2005) P.204.

7. If the King agrees to execute the punishment, the convicted will be hanged inside the prison or other place provided to be assigned in accordance with the Royal will. According to article (358) of the criminal procedures law: "If His Majesty the King approves the death penalty, the convicted person shall be hanged inside the prison's building or in any other place if such place has been assigned by the Royal Decree. The execution of the death penalty shall not take place during any religious holiday related to the convicted person or during any of the official or community holidays. Pregnant women can only be executed three months after the delivery of the baby."
8. Prior to the execution, the attorney general or his/her assistant shall ask the concerned person if he/she has something to say. Whatever is said by the condemned person shall be noted down by the court's clerk. Article (360) of the criminal procedures law states: "The attorney general or his/her assistant shall ask the concerned person if he/she has something to say. Whatever is said by the condemned person shall be noted down by the court's clerk and signed by the attorney general and the rest of the persons present."
9. Because the execution of the penalty is determined by article 17/1 of the penal code, the judgment shall not be defected if the mean of execution is not mentioned and shall remain valid and the penalty shall be enforced after notifying the Ministry of Interior through a written request by the Head of the Public Prosecution in the presence of the mentioned. In article 359 of the criminal procedures law: "The execution of the death penalty shall be done after notifying the Ministry of Interior through a written request by the Head of the Public Prosecution. The request shall indicate that the death penalty shall be carried out in the presence of the following persons:
 10.
 - A. The attorney general or one of his/her assistants.
 - B. The clerk of the court which issued the judgment.
 - C. The prison's doctor.
 - D. A clergyman representing the sect of the condemned person.
 - E. The prison's director or his/her deputy.
 - F. The Police Chief in the capital or the police director in the governorates.

The court cleric shall draft a report regarding the execution of the penalty. According to the Code of Criminal Procedure, "The court's clerk shall draft a report regarding the execution of the death penalty which has to be signed by the attorney general and the rest of the persons present. The report shall be kept in a special folder by the public prosecutor". After execution, the body will be buried without ceremonies if they do not have hires. According to article (362) of the Code of Criminal Procedure, "The government shall bury the body of the executed person when he/she has no hires that would bury him/her. The burial shall not be accompanied with any ceremony."

The military penal code did not define the method of execution; therefore, hanging is the method used for military personnel. The restrictions for the death penalty are:

1. A pregnant woman shall not be executed per the provisions of article (17/2) of the penal code: "In case the woman who is sentenced to death was proven to be pregnant, the death sentence would be replaced with life with hard labour". However, article (358) of the Code of Criminal Procedure stipulated: "[...] Pregnant women can only be executed three months after the delivery of the baby". The previous article is contradicted. In article (17) of the penal code, the penalty is replaced with life imprisonment with hard labour for pregnant women, because the penal code takes into account the enforcement of the penalty by the competent court.¹⁷ However, others' point of view sees that there is no contradiction between the two articles; article (17/2) of the penal code prescribes to replace the death penalty with hard labour in case the woman who is sentenced to death was proven to be pregnant. While what is prescribed in article (358) of the Code of Criminal Procedure states that the pregnant woman can only be executed three months after the delivery of the baby. This article is applied if the judgement was firmed (approved) and the pregnancy was not proven, because the woman who was sentenced did not disclose her pregnancy or the pregnancy was discovered while she was in prison, then the judgment was issued and approved by royal will to be executed, hence the punishment cannot be replaced.

¹⁷Al-Halabi, M. A., note 15 above, P.471.

Death Penalty in Jordan between Abolition and Retention

The execution will be delayed three months after giving birth.¹⁸ Such adjournment seeks to maintain the fetus' life and to save a guiltless spirit; three months are for the purpose of caring for the newborn who needs his mother noting that it is not enough.

2. Juveniles shall not be executed as the penalty is replaced with other punishments, as per article (4/C). What is the commission received by the driver for serving holders of social discount cards if the trip value was 10 Dirhams and the discount rate was 50%. As per the Juveniles Law "Juvenile shall not be sentenced to death or hard labour". Article (25/A) states that: "If the youngster committed a felony punishable by the death penalty, he shall be sentenced to be placed in the juvenile rehabilitation center for a period not less than eight years and not more than twelve years". The youngster who reached 15 years but not 18 while juvenile is everyone who did not reach 18, but is a teenager who reached the age of 12 but not 15. This is prescribed in article 2 of the juvenile law.
3. The death penalty shall not take place during any religious holiday related to the convicted person or during any of the official or community holidays.

4. Guarantees of the death penalty in Jordan

A significant penalty such as death affects the individual's right to life, as it shall be guaranteed to avoid any mistake with regard to execution, or committing mistakes when sentencing the penalty to avoid murdering an innocent person. Therefore, the United Nations Economic and Social Council recommended the countries which apply the death penalty to ensure special protection for those who face the death penalty as to be restricted with the guarantees of fair trial. It is necessary to take the maximum possible guarantees to be accurate when sentencing death; such guarantees must be provided and committed by Jordan:

1. Guarantees of fair trial and equality in litigation: The procedures and stages which the sentence passes through, the death penalty and the implementation stage were for the civil courts. However, in Jordan, there are special courts beside enforcing the death penalty such as military courts and the state security court. The State Security Court is a special court established in 1957 after the declaration of martial law. However, martial law was abolished and the State Security Court remained and issues judgments against the civilians and military accused, despite the increasing demands to abolish it since it is not subject to judicial authority as it falls under a special law. It is formed by civil judges appointed by the Minister of Justice in addition to military judges appointed by the Chairman of the Joint Chiefs of Staff who also appoint military judges to perform duties of prosecution and the general attorney. The state security court is specialised in the cases that threaten the internal and external security which endanger the public safety provided in the penal code, in addition to narcotic drugs, psychotropic substances and the offenses prescribed in the Protection of State Secrets and Documents code. In addition, the general attorney maintains the right to transfer any case out of its jurisdictions. The procedures of state security court trial are fast, as the court can confidentially hold trials if considered to be appropriate. Also, death sentences are not subjected to appeal but only under cassation before the cassation court within 30 days from the date of the judgment, even if the convicted person did not request this. The formulation and jurisdiction of military courts work in accordance with the military penal codes and the Code of Criminal Procedure with military judges. The Military Courts Formation Act, as stated in article (5), prescribed that the Interim Military Court shall consist of a President and two members. If it is not possible to form military judges, it shall be completed by the same officers of the armed forces.

According to the procedures of military and state security courts, the State Security Court is distinguished by its speed and military nature, while military courts are only military. Thus, Jordanians do not benefit from full equality before the courts; there are those who are tried before the courts of first instance as a criminal or a grand criminal court while other civilians and military personnel are being tried before the State Security Court and military courts subjected to the Military Penal Code.

2. Of the guarantees which must be considered that death penalty shall be imposed against the most critical crimes. However, the Jordanian legislator has expanded in imposing the penalty, although amendments had been made to the penal code in which the death penalty had been replaced by the penalty of hard labour. The international law found a criterion for serious crimes to be adopted by states that did not abolish the death penalty from its laws so as not to expand the imposition of punishment.

¹⁸Tawfiq, A. A., *Lectures in the general provisions of the Penal Code* (1st edition, Wael Publishing House, Amman, Jordan, 2005) P.206.

3. A pregnant woman shall not be sentenced to death or replace the penalty with other one for the favour of the baby who needs the mother's care. The Jordanian penal code stated that the Code of Criminal Procedure stipulated to wait three months from the date of birth to be executed. This is explained by some legislators with regard to the judgement against the pregnant woman that shall be executed if it was final and approved by the king.
4. The death penalty shall only be executed after a sufficient period from its issuance and completion of its proceedings; because new evidence may appear, or this period may calm the souls and reach reconciliation between the victim's family and the offender, which may reduce the death sentence to be replaced by another penalty.

5. Abolition or Retention of the Death Penalty

The death penalty is one of the oldest and severest corporal punishments as it is depriving people from their lives. Therefore, it has been a subject of extensive debate between supporters and opponents. Even the United Nations sent a questionnaire in 1980 to all member countries to identify their opinions toward capital punishment. A total of 40 countries out of 71 supported the punishment, while 16 countries supported the abolishment and 13 countries abolished it from the general crimes, i.e. non-political and non-military.¹⁹

We notice that when states oppose the death penalty, they to be defending the murderer who actually killed a human or more, or caused harm to others. They also forgot the victim's and their relatives' rights. Putting a kind of urbanisation and humanity on the penalty system motivated them to abolish such a penalty,²⁰ with the objective behind the penalty being deterrence and reform, both supported by international human rights organisations and other organisations which were found to combat the death penalty. Thus, their sole objective has become safeguarding the criminal's right to live. Those efforts have led to the abolition of the penalty in several countries including European countries, while other countries retained it, including Islamic and Arab states, despite other countries resuming their enforcement of the penalty after the latter being abolished or ceased. Therefore, the penal system at present has been divided into two trends: the first has retained the death penalty whereas the other one has abolished it. In this part, both trends will be addressed through two separated subjects while the third subject will display the obstacles that face the penalty due to many circumstances and factors which prevent undertaking or sentencing and practicing it in our current time.

5.1 Supporting trend to retaining the death penalty

A significant punishment such as the death penalty eradicates the sentenced from society and ends their life. Philosophers and thinkers who support such penalty added justifications and rules to strengthen the necessity for retaining the penalty. Claimants for retaining the penalty consider maintaining a system and security within society; such penalty is applied against a dangerous segment of the society. Legislators instated the death penalty to deter others as well as to protect victims' and their families' rights in addition to avoiding individual revenge. This subject will be divided into two requests; the first request will talk about the theories and opinions which were voiced in justifying the death penalty, while second request will address arguments and justifications of the penalty supporters.

5.1.1 Supporting Theories and Opinions for the Death Penalty

This trend supported many legislators, writers, thinkers and legal practitioners, who relied on several theories to justify it, including:

1. Jean-Jacques Rousseau added the new legal adjustment of punishment based on social interest. Rousseau accepted and justified the death penalty with the theory of the Social Contract "the relationship between the individual and society is a social contract" where the individual let the society, which provides protection and stability to all, take their revenge.

¹⁹Al-Alawaji M., *Studies in Criminal Science, Political Crimes and Combating Crimes*. Part 2, (1st edition, Nofal Establishment, Beirut –Lebanon) P.638.

²⁰Al-Shathly F. A., *Basics of Criminal Science and Penalty*, (1st edition, Al-Ma'aref Establishment, Alexandria – Egypt, 2000) P.398.

Individuals here accepted, under the contract concluded with the society, the death penalty in advance in cases of murder. Everybody therein maintains the right to take away their life.²¹ According to Rousseau, the contract between the state and the individual rules that the individuals refrain from their rights to punishment in favour of the state, enabling the killing of whoever violates the texts of the contract. In order to safeguard everyone's safety and security, it is as an agreement by the individual to let their lives be taken away if they took away another's life.²² In addition, Rousseau calls to take measures to reform the criminal before punishing them, to be a good individual when they return back to society. However, if the criminal was not able to be reformed and threatens the society, they will be sentenced to death.²³

2. Montesquieu has accepted the death penalty and assured in the book "The origin of norms and laws" that when a human kills another, killing a killer in this case implies reforming the defected truth.
3. In the previous eras, a revolution against the injustice and tyranny of the State and the Church was experienced in order to establish modern criminal ideas which call to reform criminal laws, as well as call for punishment as a defensive measure for society, as it aims to maintain its security and stability. The traditional theory was of the early theories which stipulated that the benefit is the basis of punishment, and each criminal action must be followed by personal punishment against the criminal after holding fair trial. Consequently, the right of the state and punishment legality were raised to maintain the social security and the group's interest. Of the most prominent leaders of that theory are Beccaria, Bentham and Feuerbach in the early of 18th century. This theory called for punishing any criminal for their actions. However, there is no punishment to be enforced for their acts if they do not harm others within the society. The punishment shall not be considered as a tool for revenge, it is only to deter the criminal. This was addressed by Beccaria in his book (On Crimes and Punishments), which condemned torture and the death penalty. He also adopted the ideas of utility according to which punishment is not a revenge, rather it aims to fit the degree of punishment with the scale of the damage caused by the crime, and it is not necessary to increase that scale nor is it required for public benefit, as in the case of the death penalty. Beccaria did not call for a complete abolishment, rather for it to be limited to very serious crimes. In addition retention is to be expected in the case of states that witness chaos and are exposed to losing their freedom or witness threats against their internal or external security. However, Beccaria called for its abolition but approved of the retention of the punishment as deterrence to individuals to prevent them from committing crimes. In this field Beccaria says: "Death is required if the countries were on the edge of losing their freedom or to be ruled by chaos instead of laws. However, in safe and stable countries and ruled by selected authorities by people and according to their will, where money is used to buy enjoyment not power, I believe here in the necessity to kill, unless if that was as a mean to prevent others from committing crimes, in the last case, death penalty can be considered justice and necessary."²⁴
4. Moreover, the death penalty supporters endorse the theory of absolute justice formulated by German philosopher Kant, who does not consider the benefit for society but rather the justice imposed by such penalty which is to reform the harm of the crime. He says with regard to the death penalty: "Take away the life of the murderer".²⁵ When the state imposes penalties, it relies on proving the criminal's fault; hence, the justice punishment is stated provided that the provisions of justice are not exceeded. This approach followed the basis to many amendments which have been made and affected the laws. Subsequently, the number of crimes that have been sentenced to death has been reduced, and the judge has been granted the power to exclude the punishment for compassion. Sometimes, when a murderer killed one person or more, sentencing them to death is the best method to achieve justice.²⁶

²¹Wahab H. A., *In-Depth Studies in Comparative Criminal Jurisprudence*, (1st edition, The Trendy Printing Press, Damascus- Syria, 1983) P.140.

²² Rabah, G., and Auji, M., *The Death Penalty is A Solution or a Problem? An In-Depth and Comparative Study of Theory and Practice*, (1st edition, Nofal Foundation, Beirut, Lebanon, 1987) P.111.

²³Othman K. O., *The Death Penalty in Islamic Law Analytical Study Comparative to the Law*, (1st edition, Al-Resala Publishers, Beirut, Lebanon, 2008) P.89.

²⁴Haj, S., *Death Penalty between Retention and Abolition*, (1st edition, Institute for Arab Development, Beirut, Lebanon, 1988) P. 67.

²⁵Ibid.

²⁶Rabah, G., and Auji, M., note 22 above, P.33.

5. Some thinkers attempted to reconcile and combine Beccaria's and Kant's theories about justice and avoiding the cons of each of them; due to the frozen criminal responsibility entailed by each of them, the punishment is stable because it is based on absolute ideas, namely abstract utility and absolute justice, by fulfilling the purpose of the death penalty is achieving justice and maintaining the social system, i.e. achieving justice within the social benefits requirements. As a result, various factors must be moderated when enforcing the death penalty such as , the criminal's circumstances when they committed the crime, which led to mitigated judicial circumstances and replacing the death penalty with other penalties, as the punishment will not become stable for one crime, but will range between the minimum and maximum limits which are separately estimated according to circumstances of each criminal. Supporters of this trend are Artolan from France, Carminean from Italy, Meyer from Germany and Hose from Belgium. The jurist Guizot sought to reconcile between Kant's and Beccaria's theories; where he called to only abolish the death penalty for political crimes; justifying that with the difficulties to state the allowed and the criminal in those crimes, political crimes cannot be compared with other crimes especially with the presence of power conflicting political parties, where the death sentenced is considered a martyr.²⁷
6. Faure, the French philosopher, a prominent legal practitioner from the last century, stated that the "Death penalty will be abolished when the replacement punishment would be able to defend the society".
7. The significant increase in the number of crimes in Europe in the late of 19th century and early of 20th century led to frequently questioning about the role of the death penalty in limiting the crime waves, particularly, in the period that witnessed Lombroso's writings about human development and evolution. Then, in the light of previous theories and factors, the retention of the penalty is a must as a purifying procedure for humanity. In the first half of 20th century, death penalty was considered important due to the arising idea that called for protecting the social system regardless of the sacrifices.²⁸ Sir Alex Paterson believes that "the experiences proved us, that when the death penalty was replaced, the crimes increased. In addition, the number of executed death penalties is reduced, which is evidence for its good impact".²⁹ Balzac, the writer, has declared in his novel "The Last Day of a Condemned Man" that there are no advantages to calling for abolishing the death penalty because it is the greatest guard for society".³⁰
8. St. Thomas Aquinas, a professor of theology in Paris and Rome, believes that the society maintains the right to protect its existence with all means in order to sustain life. The death penalty is legal when the society is harmed due to criminals remaining alive.³¹ There are individuals in society who are classified as too dangerous, as reforming means cannot be applied to them, their existence threatens the society, so they must be removed. Aquinas believes that the death penalty must only be limited against the most serious crimes in addition to the outcomes of the penalty, namely deterring others. He gave an example about a gang leader who murders whoever disobeys him or dissents from the gang. Such action deters others, and this opinion was supported by Catholic clergies.³²
9. The death penalty was supported by Cesare Lombroso, founder of the Positivist School and the author of Criminal Man where he believes that committing a crime is not optional, rather it is committed under the impact of motivations and causes which lead to losing one's freedom and choices. On the other hand, the criminal must be prevented from being a danger in nature, and if reforming them is impossible, executing them is thought to save the society.³³

This theory looks at the penalty as not constituting an individual revenge or seeking to achieve the benefit or justice. It is for the purpose of defending the society through the following precautionary measures against crimes that the death penalty is considered to be one of them. The criminal in this case is not free to commit the crime and did not act upon their will as they are not responsible for the outcomes.

²⁷ Hajs, S., note 24 above, P. 68.

²⁸ Ahmad A. B., *Lectures in criminal penalties*, (1st edition, Dar Alnahda Alarabia, Cairo- Egypt, 1997) P.195.

²⁹ Rabah, G., *Summary of the Death Penalty Comparative Study on the End of Punishment (i 1)*, (1st edition, Halabi Publications, Beirut, Lebanon, 2008), P. 9.

³⁰ Wahab H. note 21 above, P. 145.

³¹ Al-Kilani, A. Abdul-Qader, *Death Penalty in Islamic Law and Egyptian Law "Comparative Study"*, (1st edition, Knowledge Establishment, Alexandria, 1996)Pp. 233-234.

³² Haj, S. S., note 24 above, P. 90.

³³ Al-Sakka, M., *The Philosophy of the Death Penalty or the Great Punishment "Between Theory and Practice"*, Morocco House for Composition, (1st edition, Translation and Publishing, Rabat, Morocco, 1977) P.80.

5.1.2 Arguments and justifications of the death penalties supporters

The arguments of the death penalty supporters are as follows:

1. The wisdom and legitimacy of punishment: the death penalty was not legislated to take revenge on the criminal; it was imposed as a punishment for committing the crime provided to be equal to the type of crime, thus cancelling the idea of individual revenge.
2. The justice of punishment: each punishment must be equal to the damage resulting from the crime, for example, murdering cannot be punished only by imprisonment regardless of the fact that the period which might be ended by public or private pardon criminals is rarely spent in full.³⁴
3. The importance of the death penalty is recognised as a means of deterrence required by the public interest, as well as for the stability of the State. When people realise that death is the result of their actions, they might be prevented from doing it. Some examples of this include traffic violations. If an individual knows that he is forbidden to stand in front of a certain place, and that he will be subject to the release of an offense as a result of that standing, they will not do so in order to avoid the violation. Similarly, the death penalty is more severe and cruel. In the case of an increase in the number of crimes related to the internal and external security of the state, there is no replacement for the death penalty with another penalty, and this deterrent cannot be influenced without activating the penalty and ceasing it.³⁵
4. Economic viability and lack of penalty costs. It does not cost the state financial burdens, such as those imposed by the penalty of deprivation of liberty, where the state spends considerable amounts of money on the construction and equipment of prisons in addition to managing, guarding, feeding and hosting guests and employing them.³⁶ According to the study conducted in this regard in 2009, Reform and Rehabilitation Centers in Jordan cost the state up to (485 JD) a month, while the state spends about 50 million Jordanian Dinars annually on reform and rehabilitation centres in Jordan.³⁷
5. The role of the penalty in countering serious crimes for some individuals. The seriousness of the crimes, their brutality, cruelty and the damage resulting from them are proof for the criminal seriousness of the perpetrator and the denial of the possibilities of reforming or rehabilitating them. The punishment of hard labour is not sufficient for them, but it is necessary to eradicate the criminal in order to maintain the proper structure of society.³⁸
6. The death penalty satisfies the public feelings and prevents a series of reprisals occurring as a result of the non-reprisal of the perpetrator. Reprisals are the victim's relatives and family taking revenge if the perpetrator was not punished for their crime.³⁹
7. Abolishing the death penalty will put crimes with different degrees of seriousness at the same level, for example, hard labour for life comes after the death penalty. The abolition of the death penalty will make hard labour for life a punishment for murder in addition to other crimes combined with extreme circumstances, which will make criminals commit their crimes without deterrence because they know hard labour for life will be their punishment regardless of the crime committed.⁴⁰
8. Freedom-based sanctions do not necessarily lead to reform or rehabilitation for the offender, but such circumstances combined with imprisonment may result in an exacerbated criminal personality, especially if prolonged.
9. With regard to increasing or reducing the number victims in addition to their relationship with retaining or abolishing the penalty, which cannot be realised with reference to all states, we cannot say that the average of crimes has been reduced by the abolition of the death penalty. Abolishing or retaining the penalty led to a reduction in the number of crimes.

³⁴Abdulmunem S., *Criminology and Punishment*, (1st edition, Halabi Publications, Beirut, Lebanon, 2005) Pp.451-453.

³⁵ Haj, S. S., note 24 above, P.91.

³⁶Al-Shazly, F. A., *Fundamentals of Criminology and Punishment*, (1st edition, Knowledge Establishment, Alexandria, Egypt, 2000) P.402.

³⁷Al-Wariqat, M. A., "The Extent of Validity of the Fine as an Alternative to Short Term Sentence in Jordanian and Comparative Legislation", [2013] *Al-Najah University Journal of Research*, Vol 27, (5), 1045

³⁸Abu Amer, M. Z., Al-Shazly, F. A., *Criminology and Punishment*, (1st edition, Knowledge facility, Alexandria, Egypt) 108

³⁹ Rabah, G., note 29 above, P. 379.

⁴⁰Haj, S., note 24 above, P.100.

Studying those averages cannot be done in a short period of time, in order to study the economic social and cultural circumstances of each country. It is worth mentioning that the countries which abolished or froze the penalty resumed it which is evidence of the necessity to retain it.

5.2 Opposing Trend to Retaining the Death Penalty

According to opponents, the death penalty is extremely cruel and inhuman. In the early 18th century, talks started about abolishing this penalty, whereas the civilisational development of the penal system led to reconsideration about the imposition of the death penalty and the abolition of torture and brutal means. This trend is not limited by law practitioners and jurists, but it has exceeded to be supported by writers, philosophers, scientists, and non-Muslims. Accordingly, the pressure has been increased internationally which led to its abolition from several states. In the first request, we will talk about the opinions and theories to justify the illegality of the punishment, whereas the second request is for talking about the opponents' justifications and arguments in addition to discussing those justifications in detail.

5.2.1 Opposing Theories and Opinions for the Death Penalty

The death penalty was opposed by many representatives of criminal jurisprudence, writers and thinkers, and those theories and opinions:

1. The social defence theory, led by Mark Ansel, which represents the moderate wing of the theory, states that hope must be maintained towards the rehabilitation and reforming the criminal. It is unacceptable to say that there is a stage of despair in reforming and rehabilitating certain criminal.⁴¹ In this regard, Ansel adds that world's requirements are to recognise and believe in human rights, including the right to life. This right is protected by the state by refraining from killing. Punishment has the goal of reforming the criminal and society should not lose hope.⁴²
2. Grammatica, is an Italian lawyer, who called for the repeal of the criminal law with all its traditional ideas, as well as the abolition of harsh punishments, and to be replaced by the social defence system, who is working to reform the accused .⁴³ Grammatica is one of the most prominent supporters of the theory of social defence. He represented the extreme wing of the movement. He gave priority to study the accused and to stand by them. The goal of social defence is to reform the criminal; hence punishment must be abolished for this purpose.
3. Jean-Marcizé in his book "On the crime", argues that civilised progress has not been able to stop murders since the time of Abel's murder, so the murders will not be ended with the imposition of the death penalty.⁴⁴
4. Albert Camus, writer and philosopher, says that the man lives within a society and cannot be compensated in any way at the time of their death, and that each human commits mistakes at any degree, even if it does not reach the level of serious crimes, should the stage of despair in reforming the criminal not be reached. The right to live is a natural right for every single human being, even if they were evil, as they see society when they expel the offender because they are criminals; they believe that society is free from evil, and that criminals are a product of their society; when a society is intact and flawless it will produce good individuals but if the society is bad it will produce poor individuals with a tendency towards crime.⁴⁵

Camou led a campaign against the death penalty, as he described it as an abhorrent massacre, an insult to the individual and his body, a return to barbaric times, and that scientific development did not affect the punishment, which facilitated the transition from ancient times to ours. Camus did not hesitate to submit proposals to the state if it does not abolish the death penalty by implementing them in more scientific ways that are more respectful and less torturous. As he did not despair in calling and demanding the abolition of the penalty, civilisation and progress may prompt officials to abolish the penalty or to no longer enforce it.⁴⁶

⁴¹Ali, Z., *The Death Penalty Between Retention and Abolition*, (the International Islamic Call Society, Tripoli, Libya, 1989), P.38.

⁴²Kordi, O. O., *The Death Penalty in Islamic Law Analytical Study Comparative to the Law*, (1st edition, Al-Resala Publishers, Beirut, Lebanon, 2008) P. 93.

⁴³Ibid., P.90.

⁴⁴Al-Sakka, M., note 33 above, Pp.82-85.

⁴⁵Al-Haj, S., note 24 above, P.111.

⁴⁶Rabah, G., note 26 above,P. 21.

5. Some Christian thinkers believe that criminals mustn't be executed. Reforming them and repentance shall be allowed to them. Cardinal Martin sees that when a person becomes a criminal and practices violence, society must not act in the same way. Maintaining humanity must resist the temptation of vengeful justice. One of the saints of the Church believes that the life is for God's creatures which mustn't be disrupted even if it is for legal reasons. The death penalty eliminates any hope of repentance. The protestant Church has followed this trend and has called for amending the laws to abolish death penalty.⁴⁷
6. Plato called for the necessity of reforming criminals and returning them to the path of the ideal society. He sees that injustice is not the fault of criminals because vices are made out of ignorance and are dispelled by the light of knowledge. Because punishments aim to reform and the criminals are unintentionally committing crimes, the punishment must be through disciplining.⁴⁸ Plato has developed many ideas and teachings about sins and sinners, crimes and criminals, and that behind each deviant act is a judgment against it. All those principles and ideas noted in his book of laws, where the ninth book was devoted to talking about the penal system.⁴⁹
7. Jurist Vulcano believes that the judge must take into consideration the three purposes of the law when judging the case: reforming the criminal's behaviour, preventing them from committing other crimes, reprisals for the victim from the harm caused by the perpetrator of the crime and the punishment to deter others.⁵⁰
8. Professor Boeckelmann, supported by a group of researchers, considered that there was no logical justification for maintaining the death penalty. Justice, thinking and humanity were heading towards the theory of social defence.⁵¹
9. Victor Hugo, the literary emperor of France, opposed the death penalty and wrote a book entitled "Deathly-Sentenced Memoirs", which resonated widely and sparked a sensation that prompted many to demand the abolition of the sentence. The book comes in the form of a novel by a condemned person. Hugo believes that the abolition of the death penalty is his highest goal, since the death penalty was created by Louis XI and a French minister before the French Revolution.⁵²

5.2.2 Death penalty opponents' justifications and arguments

In this request, we will talk about the justification given by the opponents of the punishment for the abolition thereof in the first section, whereas the second section will address the refutation of those justifications provided by the supporters to retain the penalty.

5.2.2.1 Justifications for Abolishing the Death Penalty

Supporters of the death penalty abolition rely on the following justifications and arguments:

1. The illegality of the penalty; because the right for life is granted to individuals and is not granted by society, and thus the society does not maintain the right for depriving it from them; the death penalty really affects the power of society and individuals cannot relinquish it to the State.⁵³
2. Death penalty opponents described the punishment as cruel, harsh, unfair and disproportionate to the stipulated crimes by laws.⁵⁴
3. It is an indivisible punishment; the judge is either sentenced to death or not. It is not like other punishments that vary in length, such as imprisonment, or as the amount of a fine.^{55 56}
4. The error in judgment or in the execution of the death penalty cannot be remedied or reformed: the execution of a death sentence in person and subsequent innocence, the appearance of an error in the judgment or its procedures, or finding that the offender is entitled to amnesty are impossible to remedy after the punishment has

⁴⁷Al-Haj, S., note 24 above, Pp. 123-124.

⁴⁸Al-Sakka, M., note 33 above, P. 80.

⁴⁹Ibid., P. 42.

⁵⁰Ibid., P.79.

⁵¹Ibid., P.88.

⁵²Abdel Hadi, O. T., *The Most Famous Executions Throughout History*, (1st edition, Madbouli Library, Cairo, 1990) P.32.

⁵³Mohammed, A. M., *Criminal Penalty Science (Criminal Punishment between Theory and Practice)*, (1st edition, New University Publishing House, 1995) P. 195.

⁵⁴Al-Ani, M. S. H., Tawalbeh, A. H. M., *Criminology and Punishment*, (1st edition, Dar Al-Massirah for Publishing, Distribution and Printing, Amman, Jordan, 1998) Pp.255-256.

⁵⁵Taha, A. A., *Public Execution of the Death Penalty*, (1st edition, Arab Renaissance House, Cairo, Egypt, 1993) P. 17.

⁵⁶ Abdel Hadi, O. T., note 52 above, P. 20.

been carried out. As happened on the island of Malta in the early eighteenth century, when he confessed under torture to a person who worked as a baker for murder and was sentenced to death, but after the execution of the verdict the victim appeared to be innocent, when the real killer admitted the crime; as a result in each subsequent case, it was necessary to take action to bring a person into the courtroom dressed in black, representing the spirit of the baker and directing a warning to the court before pronouncing the sentence to remind the baker who was unjustly executed.⁵⁷

5. The imposition of the punishment did not achieve the desired goal of reducing crime ratios, as demonstrated by its inability to achieve deterrence, the percentage of crimes did not rise in the countries that abolished it, nor did this happen in the countries that retained the punishment.⁵⁸
6. The death penalty may be used for political purposes; the laws of some states provide for political crimes that may not result in death or serious harm, as well as special courts, making the death penalty a means for liquidating political opponents.⁵⁹
7. The supporters of the abolition of the death penalty also insisted that murder should not be committed with another murder in the name of society. In this case, the society had taken the path of the offender under the pretext of vengeance against those who violated the law and committed a criminal offence. If the death penalty was carried out to eradicate a dangerous individual from society this is measured against a person who is infected with a contagious disease and it is dangerous to prevent him from transmitting the disease to others. Law in this case is preventing the killing and then allows it to the state.⁶⁰
8. Opponents of the death penalty argue that the implementation of the punishment will establish a sadists' segment within the society who enjoy torturing and harming others, such as judges, prosecutors and those who carry out the sentence.⁶¹

5.2.2.2 Refuting the Views and Arguments of the Opponents of the Death Penalty

Death penalty supporters responded to the arguments and justifications of the opponents of the sentence:

1. With regard to the illegality of the sentence: Supporters of the punishment argued that the penal system is a right of the State, not because it is the source of such rights, but because the imposition of such sanctions by the State is necessary to preserve the security of the society and to protect it from imbalances and disturbances in its social system.⁶²
2. As for the severity of the punishment and its unfairness, the opponents of the punishment have forgotten the victim and considered only the person sentenced to death and his right for life, in which the right of the victim is wasted and the atrocity of the crime is committed, which affects innocent people and victims who are not guilty, to be wasted through certain crimes. In addition, the death penalty is imposed for the most serious crimes.
3. With regard to the conflict of punishment with the objective of imposing it in the modern criminal thought of reforming criminals and rehabilitating them. Conversely, the perpetrator of a crime, for example a murderer, does not consider the penalty of hard labour sufficient for what they committed, especially when they committed it in cold blood and with prior planning. The penalties for the deprivation of liberty usually end with a general or special amnesty or even the end of the sentence. This is the victim's right wasting or of their family to retaliate against the offender as a punishment for the crime, there is no way to reform criminals who robbed others' right for life. Punishment also has another purpose: public deterrence. Others do not think of committing crimes, and terrorising others will prevent them from thinking about committing such a crime.⁶³
4. As for the fact that it is an indivisible punishment, it is like the rest of the penalties for the deprivation from freedom; if the judge is convinced that it is proportional to the crime, he imposes it. Conversely, if he does not find it commensurate with the crime, he shall replace it with another penalty.⁶⁴

⁵⁷Hasan, J. *Preliminary Investigation into the Code of Criminal Procedure - Comparative Study, I 2*, (1st edition, Dar Al-Thaqafa for Publishing and Distribution, Amman-Jordan, 2011), P. 306.

⁵⁸Mohammed, A. M., note 53 above, P. 196.

⁵⁹Reshmawi, M. and Al-Saqaf, note 1 above, P.23.

⁶⁰Haj, S., note 24 above, P. 111.

⁶¹Ibid.

⁶²Abu Amer, M. Z., Al-Shazly, F. A., note 38 above, P. 113.

⁶³Taha, A. A, note 55 above, P. 20.

⁶⁴Mohammed, A. M., note 53 above, P. 198.

5. With regard to the impossibility of redressing mistakes when discovered after the execution of death penalty, the penal code is a positive law formulated and developed by human beings, and the area of error exists for both the death penalty and other penalties. Therefore, the death penalty has been provided with guarantees and procedures to ensure that there is no error and to be proved when the sentence is pronounced. The significant development of criminal investigations and the examination of evidence have led to a reduction in the rate of error in all types of sanctions.⁶⁵
6. With respect to their assertion that the death penalty did not affect the mitigation and did not reduce the proportion of crimes; it is up to each country and its circumstances and their own factors. There are countries which abolished and did not increase the proportion of crimes, and if maintained, perhaps the proportion of crimes may decrease, even with the death penalty, whereas other countries have reinstated the sentence following its abolition. The rate of crime is subjected to the many conditions and factors specific to each country, which makes it impossible to properly link it to the abolition or retention of the death penalty.⁶⁶
7. With regard to the exploitation of the death penalty for political purposes, the example in this regard are some Arab countries, especially those that may sometimes weaken the independence of the judiciary in its work;⁶⁷ This can be avoided and overcome by restricting the death penalty and limiting it to extremely serious crimes, as well as ensuring fair trial guarantees.
8. For those who oppose the penalty, the death penalty is a crime in the name of the state or a reprisal from the offender on behalf of the society. The law that prohibits killing has been permitted to itself, and the response is that the death penalty is not revenge for the offender, but equality in punishment for the committed crime. The perpetrator does not extend to anyone else, and this penalty is carried out by the state which maintains the right to impose and implement the sanctions.⁶⁸ This has led to the abolition of the idea of individual retaliation or avenging which was prevalent before the state and the penal systems, resulting in a series of crimes that could extend to other tribes or regions and involve innocent people who were not guilty.
9. The idea of creating a class of sadists as a result of the application of the death penalty is unreasonable. The judge, prosecutors, and even the executioners are employees who perform their job and are bound by the nature of their work.

5.3 Opinion of the Researchers

Through the above, we support the trend of retaining the death penalty; the death penalty cannot be abolished from the penal system. It is a punishment imposed by the Islamic Sharia, so it cannot be replaced for serious crimes, such as wilful killing, accompanied by torture or crimes that harmed the victim; the penalties for the deprivation of freedom are not sufficient or equal to those crimes. The death penalty also satisfies the feelings of the victim's family and is considered as a means to prevent individual revenge and retaliation. Nevertheless, it should not be expanded; rather it should be limited to certain crimes, excluding political offences. The death penalty must also be guaranteed to prevent any mistake in the investigation, trial and enforcements, as well as to ensure fairness and integrity when judged. This punishment must be considered not only in the soul of the culprit, but also in view of the victim's right for life, which the offender has robbed, as well as the amount of damage caused by the crime and the interest of society in maintaining its security and stability.

In addition, saying that the abolition of the death penalty affects the crime rate is immeasurable to all States, or that fear of death may be a deterrent for committing a crime. A study made by legal experts in Europe, the Commonwealth and the United States has found an important conclusion: there is no clear evidence affecting the crime rate following the abolition of the death penalty, whether by increasing or decreasing murders and social life is not affected by the death penalty. Most importantly, comparing the crime rate in countries that have maintained the punishment with the States that have abolished it is comparatively useless in practice. It is wrong to draw a comparison between countries that differ in the nature of their population, economies, customs, traditions and even development; it may be more to logical to draw this comparison at the level of a single country in order to study the rate of the crime before and after abolishing the penalty.

⁶⁵ Abd al-Moneim, S., note 34 above, P.454.

⁶⁶ Al-Atwi, M, (2008), *The Death Penalty and Means of Modern Implementation, Comparative Study between Sharia and Law, (i)*, (1st edition, Al-Azhar Press and Ram Computer Foundation, Amman, Jordan, 2008)P. 38.

⁶⁷ Reshmawi, M. and Al-Saqaf note 1 above, P. 23.

⁶⁸ Abd al-Mun'im, S., note 34 above, P.451.

We also note that the abolition of the penalty for States that have completely abolished it from their legislations has not come immediately, but has taken place across several stages, beginning with the reduction of the use of the sentence, the suspension of the sentence and then the completed abolition from their legislations. For example, in Norway, the last execution took place in 1876, but the abolition of the penalty was officiated in 1952. This was also the case of the European countries in the European Convention on Human Rights and the protocols thereto on the abolition of the death penalty.⁶⁹

It should be reminded that the abolition of the death penalty from the legislation of the Arab countries is unacceptable and contrary to the Islamic religion, knowing that the Islamic law did not expand or exaggerate the imposition of death penalty. Currently, there is increasing, diversity and horror with reference to committing crimes supporting the effectiveness of the death penalty and its great role in deterring others and those who commit a crime. The evidence of this is clear, represented in the return to the implementation of the punishment in Jordan after being frozen for many years.

6. The Obstacles of Applying the Death Penalty in the Modern Era

Despite the great controversy that still existed between the supporters of the death penalty and its opponents, it did not prevail over the other, although the number of countries that have abolished the punishment has increased, and the punishment has faced impediments to the implementation and proper application, which achieves the goal of imposing the sanction and for those countries that continue working with the punishment, including the following:

1. Death penalty is acknowledged by the Islamic Sharia, but Arab and Islamic countries. Their legislation is based on Islamic religion, and did not consider it as prescribed by the Sharia. Instead it is based on the positive laws for penalties, namely Western laws, which became old and out of date and need to be re-considered according to recent circumstances and conditions which might lead to the abolition of the penalty for some crimes and replacing them with other penalties or restricting the application of the penalty. These Arab countries did not apply the penalty as stated in Islamic law, nor could they cancel it because of its violation of Islamic teachings. The proper modern application of the penalty has not been achieved, although most Western laws have abolished the death penalty from their legislation or narrowed the scope of its application.
2. Some judicial systems still suffer from a lack of impartiality, and sometimes lack fair trial. Torture methods may be used to take confessions from the accused. They are also judicial errors, absence of proven evidences, and inequality between the accused, especially when obtaining the help of lawyers; for example, some accused are rich and may have senior lawyers experienced in defending them in serious cases, leading to a failure to prove the charge, and therefore not being sentenced to death. This in some cases may not be afforded by the other accused.
3. Lack of judicial independence. There are courts beside ordinary courts, such as military courts or state security courts, which follow their own procedures and are characterised by speed. The accused or his lawyer may not have sufficient time to defend and prove his innocence, which affects the external or internal security of the State.
4. Several countries have expanded the imposition of the death penalty for crimes that cannot be described as extremely serious, i.e. political crimes. The death penalty has become a sanctuary for dissenting opponents and opponents.
5. The implementation of the death penalty must ensure the minimum possible suffering and pain for the convicted person, not to be offensive to dignity and humanity, and to be implemented in secret and not publicly.
6. International pressures practiced by international and regional organisations and non-governmental organisations, especially those established with a view to abolishing the death penalty, have played a role in the abolition thereof in many States from their legislation and their suspension in other States. These play a role in not providing for punishment in the ICC system, despite considering crimes at the highest level of horrors, severity and cruelty.

⁶⁹Hart, H.L.A., *Punishment and Responsibility – Essays in the Philosophy of Law*, principal of Brasenose college, 1978).83-85

7. To enable the death penalty to play its role in deterring individuals from committing crimes, the sentence must be activated, not only for law suspension, but also for disabling laws. Amnesty must be used in death penalties when a victim's family retrained their right. In this case, the death penalty shall be replaced by another penalty.

7. Conclusion

This article discussed the death penalty in national legislation. We began to talk about the definition of the death penalty. We also talked about the particular application of the penalty in Jordanian legislation, the procedures of its judgment and the guarantees that must be met when judging it. This article examined supporting and opposing trends to the death penalty and the views and justifications of the supporters of both trends. At the end of this article we formulated the following conclusions and recommendations:

1. Disagreement still existed between the supporters of the punishment and the opponents thereof who attempt to exert pressure on both international and regional levels. Although they were successful in some instances: such as the issuance of international and regional treaties on the cancellation of punishment or at least facilitating the preparation for abolition, but several countries returned to apply the punishment after they had abolished it from the legislation, or froze its implementation; Jordan has suspended the sentence in 2006, and then reinstated it in 2014 because of the high number of crimes and revenge being committed in the absence of the execution of the offender.
2. Supporters of the abolition of the death penalty offered several alternatives for the death penalty, the most important being replacing death penalty with the following penalty, which is hard labour; but in this case, the death penalty criminal will be equalised with the hard labour criminal. Hence, the level of seriousness will be the same.
3. There is no doubt that the society needing security and stability enforce it to support imposing punishments, which makes committing crimes more difficult.
4. Regardless of the penalty criticism, the death penalty is required for some crimes with a high level of seriousness and which threaten the State's safety and security, as well as to deter other individuals from committing crimes.

Recommendations

After displaying the previous outcomes drawn upon studying the death penalty in national legislations and regional and international treaties, the following recommendations may activate the punishment's role in public deterrence as they protect it against oppositions and claiming for abolition:

1. The guarantees of fair trial must be adhered to when the sentence is imposed, the equality of the accused in the law applicable to them, and the actions taken against them, in addition to the difference of the judicial body to be tried. The means of enforcement are also supposed to be the same for all the accused in the legislation of the States in which they are dispersed, provided that they do not involve torture against the condemned.
2. With respect to the execution of a pregnant woman who is sentenced to death three months after the date of birth, it would be more appropriate to replace the penalty, taking into account the interests of the baby, since the period of three months is not sufficient for him to be able to dispense from his mother. Two years would be required after birth, as previously passed in the Islamic Sharia.
3. When sentencing to death, it is wise not to carry out the punishment directly; after the death sentence is recognised and approved by His Majesty the King, the implementation will follow after a certain period of time because it may have an impact on calming the souls. The case for conciliation and amnesty, or the overthrow of the right, will lead to the replacement of the death penalty, and often new evidence that did not exist may appear, confessions or testimonies of new witnesses or a change of words affecting the sentence and sometimes leading to the acquittal of the convicted.
4. The freezing of the punishment in Jordan for more than eight years has had an effect on the demise punishment and the lack of hesitation in committing the crime, in addition to increasing the number of crimes. Therefore, the return to the application of the death penalty has the effect of denying individuals and deterring them from committing crimes. In order to achieve the objective of the imposition of punishment; it is preferable to declare any sentence that will result in execution in addition to the declaration when the sentence is executed.
5. It is necessary to activate the role of clerics, psychologists, sociologists and legal experts in raising the awareness of the society about the phenomenon of the crime, and work to study the causes and motives and warning of the consequences and therefore the sanctions imposed on them.

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