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ABOLISHING CAPITAL PUNISHMENT FOR ARSON: PROPORTIONALITY, HUMAN RIGHTS, AND THAI JUSTICE REFORM

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Abstract

This qualitative study investigates the abolition of the death penalty for arson-related property crimes in Thailand, evaluating its alignment with contemporary human rights standards and penal theories. Utilizing documentary analysis and in-depth, semi-structured interviews with fourteen correctional executives and legal experts conducted between January and August 2024, the research examines the legal and empirical realities of capital punishment. The findings reveal that imposing the death penalty for non-lethal arson is disproportionate, violates fundamental human dignity, and lacks substantial empirical evidence of effectively deterring crime when compared to severe custodial sentences. Furthermore, retaining capital punishment for property offenses fundamentally contradicts international human rights instruments, particularly the International Covenant on Civil and Political Rights, which restricts execution solely to the most serious crimes involving intentional killing. Consequently, the study strongly recommends abolishing the death penalty for arson, proposing proportionate alternatives such as life imprisonment or a minimum of twenty years of incarceration, coupled with robust preventive measures. This essential reform securely aligns with Section 77 of the Thai Constitution, promoting transparent, evidence-based, rehabilitative, and restorative criminal justice policies.

Keywords: Capital Punishment, Arson Offenses, Proportionality Principle, Human Dignity, Criminal Justice Reform

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Introduction

Thailand has retained the death penalty in its legal system since ancient times. Imposing punishment is a prerogative of the state's governing authority and is intended to sanction offenders. The death penalty is believed to be the most severe form of punishment, aimed at imposing the ultimate consequence of death upon the convicted individual. Different methods of execution have been used throughout history, and many have changed over time. In ancient times before 1935, methods of execution included decapitation in public, drowning, and beating using a sandalwood club (Watakakosol et al., 2019). Subsequently, from 1935 to 2003, the firing squad was used, and from 2003 until the present, lethal injection has been used (Yuttitham et al., 2024). In the last decade, Thailand's death penalty practice for the same criminal offense has been applied following similar principles of deterrence as in many countries, including crimes such as rape, murder, drugs, drug offenses, and certain property offenses. This is attributed to the belief that the death penalty protects society sustainably by killing, reducing violence, and deterring crime (Petsiri, 2021; Watakakosol et al., 2019). A critical criticism of the death penalty, however, is that it has failed to reduce crime; the crimes committed have been on the rise each year, not decreasing (Chokprachakchat et al., 2017). Because capital punishment has had little or no effect on stopping or addressing the persistence and expansion of crime, it has not been a meaningful consequence. Though there has been periodic reporting of arrests and executions for different crimes (such as drug-related crimes; Petsiri, 2021), these methods have not dissuaded or killed the offenders. Official statistics from the Royal Thai Police reveal a steady rise in drug-related arrests, including for repeat offenses (Office of the Narcotics Control Board, 2021).

Despite historical reliance on capital punishment, contemporary trends suggest that such extreme measures fail to effectively deter or correct criminal behavior (Bala, 2025). The efficacy of the death penalty as a deterrent, particularly when compared to lengthy custodial incarceration, remains highly questionable as crime rates and complexities continue to escalate. This discrepancy is especially pronounced in property-related offenses such as arson. While arson undeniably inflicts significant economic and societal harm (Labree et al., 2010), imposing the death penalty when no loss of life occurs is increasingly viewed as a disproportionate and excessive state response. Capital punishment in non-lethal scenarios fundamentally conflicts with international human rights norms, which guarantee the right to life and intrinsic human dignity (Petsiri, 2021; Chokprachakchat et al., 2017). Defined by international standards—including the Universal Declaration of Human Rights—as an irreversible and inherently inhumane act, execution for property crimes clearly violates constitutional decency and penal proportionality (Intarapanya & Klinsuwan, 2024). Consequently, reforming Thailand's penal code to abolish the death penalty for arson is an urgent imperative. By replacing capital punishment with proportionate rehabilitative sanctions, the state can align its legal framework with democratic governance, international human rights commitments, and sustainable justice (Meeboonsalang, 2014).

Consequently, the imposition of the death penalty for property-related arson is unduly harsh and disproportionate, fundamentally violating basic human rights, particularly the right to life. Driven by this critical problem, this study rigorously pursues four interrelated objectives: to comprehensively review the historical development of the death penalty in property arson crimes, to explore the concepts of human rights and human dignity concerning capital punishment under international law, to critically investigate and compare these jurisprudential concepts with foreign jurisdictions—specifically the United States, the French Republic, and Japan—and finally, to propose suitable, proportionate modifications to the penal sanctions for property-related arson crimes.

Literature Review

Capital Punishment and Contemporary Scholarship

Recent research on capital punishment illustrates a consistent worldwide divide between abolitionists and retentionists as the two sides of the death penalty. Asia is one of the regions where the death penalty is still prevalent. Comparative studies show global trends favor abolition, yet many Asian countries retain capital punishment because of historical values, political interests, and perceived crime-control needs (Muhamad et al., 2024). However, empirical studies have found that in many Asian societies the death penalty is justified as required to deter crime and serve the cause of public safety (Setiodjati & Hamidi, 2025). However, criminological research began to cast doubt on the deterrent potential of the death penalty. A summary of statistical and criminological research also finds little evidence that the death penalty substantially reduces crime rates in comparison with a less severe punishment such as life imprisonment (Putera et al., 2024). This growing literature has shifted scholarly focus toward broader normative discussions of justice, proportionality, and the state's exercise of power.

The Death Penalty and Human Rights Attitudes and Understanding

A large amount of current policy studies conceptualize the death penalty as a human rights issue, especially in relation to the right to life and to be protected from cruel, inhuman, or degrading punishment. Legal research indicates that in the international human rights context, and in particular in the constitutional rights protection mechanisms of various Asian countries, there is increasing emphasis on the constraining role of capital punishment (Syahputra et al., 2024). "In both academic and policy analysis, procedural concerns — wrongful convictions, unfair trials, and discrimination — are among the key objections," the researchers write. Recent human rights studies in Asia also highlight the danger of executing a nation's innocents. For example, studies in Malaysia suggest that wrongful conviction risks are central concerns in modern abolitionist approaches and argue that we move away from a morality focus in favor of a pragmatic concern with judicial fallibility (Muhamad et al., 2024). Regional legal studies similarly regularly reveal tensions between domestic legal norms encouraging the death penalty and international human rights practice espousing abolition.

Punishment Theoretical Underpinnings

The death penalty controversy is grounded in rival theories of punishment. Retributive theory justifies capital punishment as a matter of moral proportionality: if the crime was serious enough, the punishment should be severe enough. In comparison, utilitarian and deterrence theories assess capital punishment mainly in terms of social utility and its effectiveness in preventing crime. Recent theoretical insights suggest that hybrid strategies combine retributive, deterrent, and human rights aspects, as the role of these three pillars continues to expand. Contemporary criminological literature indicates that punitive practices in Asia often reflect a pragmatic fusion of retributive justice and utilitarian crime control, especially in cases involving national security or public morality (Setiodjati & Hamidi, 2025). Nonetheless, critical scholars argue that such justifications face growing normative challenges from new human rights norms.

Context: Capital Punishment in Asia

Studies specifically focusing on Asia show that there are particular political, legal, and cultural factors shaping the continuance of the death penalty. Analytical legal studies suggest that in many Asian countries, capital punishment remains legitimate as a tool of social or legal order and crime prevention, in particular, in connection with narcotic offending and national security threats (Syahputra et al., 2024). Meanwhile, regional studies also record incremental reforms, such as narrowing the scope of capital offenses, ratifying procedural safeguards, and strengthening judicial control. These changes indicate an evolving, gradual landscape of retention and reform, rather than a phase of abolition.

Research Gap

Although a large body of contemporary literature on capital punishment exists from legal, criminological, and human rights perspectives, several gaps remain. First, most studies on capital punishment focus only on normative human rights perspectives or a deterrent, crime-focused criminological view of punishment, often neglecting the other two aspects. Second, many regional studies in Asia focus on individual countries and fail to integrate legal, theoretical, and human rights dimensions in a comparative or interdisciplinary manner. Further, empirical evidence on how theoretical justifications for punishment interact with human rights discussions in specific socio-legal contexts in Asia remains limited. Integrated research on capital punishment is urgently needed, using an extensive, multi-dimensional approach that includes punishment theory, human rights principles, and the region's socio-legal context. This study aims to help bridge this gap by offering a holistic critique of the death penalty at the intersection of punishment theory and human rights discourse in the Asian arena.

Research Methods

This study uses a qualitative, documentary research method based on primary sources. It systematically gathers and analyzes legal and academic materials on punishment in arson cases, exploring avenues for abolishing the death penalty. The analytical framework draws on key legal and theoretical foundations, including principles of human rights, civil rights, human dignity, and the rule of law, along with theories of punishment, criminology and penology, law and economics, and abolitionist understandings of the death penalty. The research also compares legal definitions and sentencing schemes for the death penalty with respect to arson offenses, and judges' decisions on cases involving arson in the United States, France, and Japan. Participants were purposively and snowball-sampled to ensure representation across the targeted stakeholders. In all, 14 key informants were interviewed, including 7 prison directors and correctional officers with over five years of experience leading and expertise in capital punishment, and 7 academic experts with prominent publications on the death penalty.

Data collection took place between January and August 2024, using researcher-driven, semi-structured interview guides and in-depth interviews conducted by Renjith et al. (2021) lasting around 60-90 minutes. This method follows a qualitative research tradition of working flexibly and in an open-ended manner with directly concerned participants, as described by Boyce & Neale (2006). Conversations on the death penalty (capital punishment), abolition, the theoretical underpinnings of abolition, and arson-related property offenses were covered in the interviews. To improve overall validity, the researchers triangulated interview data with documentary analysis of government reports and other related legal documents from the Office of the Council of State database and reputable online sources to test reliability and empirically validate the data.

Ethics: The Institutional Review Board (IRB) at Suratthani Rajabhat University approved this study. All participants gave voluntary informed consent and anonymity was protected; pseudonyms were used to report findings. With participants' permission, interview information was audio-recorded and stored securely. The study maintained confidentiality and protected sensitive information to mitigate potential risks to participants. The study also followed the principle of non-maleficence, allowing participants to withdraw at any time without negative impact (Moriña, 2021).

Research Results

The Imposition of the Death Penalty in an International Context

The death penalty, as an integral part of the legal system, serves as an important mechanism for regulating and guiding human behavior. When an offense is committed, punishment is considered necessary, as human beings are inherently social and must coexist within society.

Therefore, it is essential to establish clear boundaries of duties and responsibilities to prevent violations of rights and freedoms. Authorities, societal leaders, or the state determine punishments, which must be prescribed by law that specifies which actions constitute offenses and the penalties that apply. Punishments range from the least to the most severe, including forfeiture of property, fines, detention, imprisonment, and the death penalty. Capital punishment represents the most severe form of punishment, and historically, many offenders were subjected to execution. As citizens increasingly experienced injustice, oppression, and coercion, they began advocating for their rights. In response, states recognized these concerns and sought to protect human rights, leading to the development of international law as a universal standard. Member states that ratify such agreements are obligated to comply with them in protecting human rights. One key instrument is the Universal Declaration of Human Rights (1948), which aims to promote respect for rights and freedoms for all humankind and ensure universal recognition and compliance. Following its adoption, many countries began abolishing the death penalty and introducing alternative punishments such as imprisonment and rehabilitation. Consequently, modern approaches to capital punishment increasingly incorporate human rights principles to align with international standards. However, some countries still retain the death penalty for the most serious offenses and may apply it when deemed necessary.

Another important instrument is the International Covenant on Civil and Political Rights (1966), which recognizes that human rights derive from inherent human dignity. Under this covenant, states must promote and protect civil, political, economic, social, and cultural rights, including the right to self-determination. Notably, states that have not abolished the death penalty may impose it only for the most serious crimes and pursuant to final judicial judgments. Additionally, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) opposes punishment methods involving torture or inhumane treatment that degrade human dignity. The international community increasingly treats the death penalty as a human rights issue, particularly under the Second Optional Protocol to the ICCPR, which aims at its abolition. Although many countries still prescribe capital punishment, international standards limit its use to serious crimes. In practice, however, even when imposed for severe offenses such as premeditated murder, it has not effectively reduced crime. This is because capital punishment primarily serves a retributive function that does not align with modern justice principles. Consequently, the death penalty is increasingly rejected internationally, as it conflicts with human rights standards and due process. Human rights organizations, religious groups, and civil society have therefore intensified campaigns to abolish it. Most countries that have abolished the death penalty are economically and socially developed nations capable of controlling crime through effective legal systems without resorting to execution. Although Thailand retains capital punishment in law, executions are rare in practice, resulting in a situation similar to countries that have effectively abolished it.

The Death Penalty in Thailand

Punishment is a legal mechanism that regulates social coexistence. Each society determines punishment methods based on its values, beliefs, and social needs. The death penalty is regarded as the most severe punishment, intended to remove offenders from society. In Thailand, capital punishment has existed for a long time, and execution methods have evolved across different historical periods. Although the Constitution does not explicitly guarantee it, the death penalty is prescribed under several laws, including the Criminal Code and other statutes such as the Narcotics Act and the Prevention and Suppression of Human Trafficking Act. The death penalty continues to be applied in severe cases that significantly impact society, including murder, arson resulting in death, and serious drug-related offenses. However, evidence indicates it has not effectively deterred crime, as many offenders act impulsively without considering the legal consequences. Moreover, growing awareness of human rights

has shifted public attitudes, increasing support for alternative punishments that emphasize prevention, rehabilitation, and proportionality. Therefore, Thailand should consider adopting alternative sanctions to prepare for potential abolition while ensuring effective crime control.

The Death Penalty for Property Crimes Involving Arson in Thailand

The death penalty for arson-related property crimes was introduced during Thailand's modernization period under Field Marshal Sarit Thanarat. At the time, extensive executive powers enabled strict control over security threats, including executing arson offenders. Currently, the Criminal Code still prescribes capital punishment for certain arson offenses. However, international standards restrict the death penalty to crimes involving intentional loss of life. Imposing capital punishment for property crimes involving arson is therefore disproportionate, as it does not correspond to the severity of harm. Modern penal theory increasingly emphasizes rehabilitation as more beneficial to society than retribution. Furthermore, punishment alone cannot effectively prevent crime. Laws should serve preventive objectives rather than purely retributive ones. Accordingly, the death penalty should not be prescribed for arson-related property offenses.

Appropriate Punishments for Property Crimes Involving Arson

Capital punishment has not effectively reduced arson-related property crimes and conflicts with international human rights principles. Because Thailand has ratified the ICCPR, it is obligated to ensure that the death penalty is limited to the most serious crimes. Appropriate punishments should therefore emphasize proportionality, human dignity, and democratic governance principles. These include restitution, compensation, community service, and long-term imprisonment proportionate to harm. Such approaches allow offenders to rehabilitate, compensate victims, and reintegrate offenders into society, thereby promoting sustainable justice outcomes.

Constitutional Analysis and Section 77 Compliance

An evaluation of capital punishment for arson through the lens of Section 77 of the Constitution of the Kingdom of Thailand reveals fundamental incompatibilities with modern constitutional mandates and international conventions. Section 77 explicitly requires that all criminal laws embody necessity, strict proportionality, and regulatory efficiency. The empirical evidence demonstrates that retaining the death penalty for property violations fails the necessity condition, as its deterrent effect does not conclusively surpass that of severe alternative sentences, such as life imprisonment, which already carry significant social stigma. Furthermore, the penalty is inherently disproportionate; comparative jurisprudence consistently restricts capital punishment exclusively to intentional homicide, precluding its application in non-lethal property crimes. Retaining this irrevocable punishment also directly contradicts contemporary penological shifts toward rehabilitation, reintegration, and restorative justice. Ultimately, abolishing the death penalty for arson-related offenses would harmonize Thailand's penal framework with universal human rights standards, satisfy constitutional requirements for rational, evidence-based lawmaking, and foster a more equitable criminal justice system without compromising public safety.

Qualitative Insights from Correctional and Legal Experts

Qualitative insights gathered from in-depth interviews with correctional executives and legal experts were systematically synthesized to elucidate the empirical realities of the death penalty. Initially, participants unanimously recognized that the international community increasingly views capital punishment as a profound human rights issue, strongly aligning with the Second Optional Protocol to the ICCPR, which advocates for progressive abolition. Experts concurred that international benchmarks strictly limit capital punishment to the 'most serious crimes,' exclusively defined as intentional killing, noting that contemporary international law views the death penalty not as a natural sanction, but as an exceptional measure. Furthermore, interviewees dismissed the empirical deterrent value of capital executions, asserting that there

is no compelling evidence that executions prevent serious crime more effectively than life imprisonment; rather, social conditions and effective law enforcement exert a far greater societal impact.

Regarding the specific context of Thailand, informants acknowledged that while the death penalty remains a legal measure for offenses causing significant social damage, it is woefully inadequate in preventing recidivism, primarily because most serious offenders act impulsively and do not weigh legal consequences at the time of the crime. Consequently, practitioners increasingly support alternative sanctions that emphasize prevention, strict proportionality, and robust rehabilitation. When addressing property crimes involving arson, respondents were definitive in their stance: applying capital punishment is disproportionately severe and directly defies modern criminal justice concepts of proportionality. Instead, experts advocated for sanctions deeply grounded in human dignity, suggesting that a rehabilitative and restorative approach—incorporating restitution, community service, and lengthy incarceration—better protects society than irrevocable punishment. Finally, assessing these realities through the lens of Section 77 of the Thai Constitution, participants highlighted the necessity for rigorous regulatory impact assessments in rational lawmaking. They observed that Section 77 serves as a vital constitutional safeguard, ensuring that legal implementations are strictly evidence-based, transparently monitored, and held fully accountable for their proportionate effectiveness.

Conclusion and Discussion

The findings of this study conclusively indicate that applying the death penalty to arson-related property offenses fundamentally violates contemporary international criminal justice norms, most notably the principle of proportionality, when such acts do not involve the deliberate loss of life. Modern penal policies and comparative criminal jurisprudence increasingly recognize capital punishment in non-lethal cases as a disproportionate sanction that drastically exceeds legitimate penological objectives. This aligns with global legal scholarship, which emphasizes a decisive trend toward restricting the death penalty exclusively to the "most serious crimes"—universally defined as intentional killing—rendering its broader application incompatible with fundamental human dignity and the absolute right to life (Garland, 2021; Islam, 2024; Johnson & Zimring, 2019). Furthermore, empirical literature provides no compelling evidence that capital punishment deters crime more effectively than long-term incarceration (Radelet & Borg, 2000). As prevailing criminal justice systems transition toward restorative justice, rehabilitation, and reintegration, Thailand's retention of the death penalty for property crimes remains a notable anomaly within the diverse Asian legal landscape. Ultimately, this study strongly advocates for the comprehensive abolition of the death penalty for all non-lethal offenses. Embracing this vital Thai justice reform will ensure compliance with international human rights standards, institutionalize sentencing proportionality, reflect progressive regional legal evolution, and substantially advance Sustainable Development Goal 16 by fostering a more equitable, rule-of-law-based society.

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