

Cruel and Unusual Punishment:
Comparative Perspective in International
Conventions, the United States and Iran

By

Sanaz Alasti
LL.B, LL.M, S.J.D.

Vandeplas Publishing
United States of America

Table of Contents

<i>Introduction</i>	<i>1</i>
<i>Chapter 1</i>	<i>7</i>
<i>Origins of Cruel and Unusual Punishment</i>	<i>7</i>
I The Concept of Cruel and Unusual Punishment	7
1 Prohibition of Cruel and Unusual Punishment under International Law	7
A International Instruments.....	7
B Customary International Law	13
C Peremptory norms	15
2 Prohibition of Cruel and Unusual Punishment under National Laws	18
A United States	18
B Iran	26
II Definition	30
1 Terminology.....	30
A From Torture to Cruel and Unusual Punishment	30
B Relationship between Cruel and Unusual Punishment	36
2 What Constitute Cruel and Unusual Punishment.....	38
A Modes of Punishment.....	38
B Essential Elements	39
III Harshness v. Mildness	41
1 Socio-historical Perspective.....	41
2 Harshness and Penological Objectives.....	44
<i>Chapter 2</i>	<i>47</i>
<i>Death Penalty</i>	<i>47</i>
I History	47
1 History of Death Penalty in the United States from Colonial Times to Twentieth Century.....	47
A The Colonial Period (1597-1740).....	47
B The Revolutionary times (1718-1797)	48
C Death Penalty in the New Nation (1777-1857).....	49
D Civil War Era (1856-1876)	50
E Death Penalty in Victorian America (1870-1901).....	50
F Progressive era (1898-1938)	51
G Mid-century (1941-1959).....	52
H In to the Modern Era	52
2 History of Death Penalty in Iran from the Ancient Times to Revolutionary Restatement of Capital Punishments	56
A Capital punishment in the ancient era	56
B Capital punishment in the Islamic era	56
C Capital Punishment under the Pahlavi Monarchy (1925-1979)	57

- D Capital Punishment Post -Islamic Revolution (1979) 57
- II Cruel and Unusual Per Se..... 62**
 - 1 Arbitrary Infliction..... 62
 - 2 Pain Infliction..... 63
 - 3 Legislative and Judicial Approval..... 64
- III International Aspect..... 71**
 - 1 The Right to Life under International Law 72
 - A The Universal Declaration of Human Rights 72
 - B The International Covenant on Civil and Political Rights..... 73
 - C The Second Optional Protocol to the International Covenant on Civil and Political Rights..... 75
 - D Convention Against Torture..... 77
 - E The American Convention on Human Rights 77
 - F The European Convention for the Protection of Human Rights..... 79
 - G The Universal Islamic Declaration of Rights 80
 - H United Nations Resolutions..... 81
 - 2 Death Penalty and International Law in U.S. Courts 84
 - 3 Fundamental Conflict between Theocracy and Principles of Human Rights..... 87
 - A Cultural Relativism in International Law 88
 - B Can Islamic Law Evolve? 90
- Chapter 3..... 95**
- Execution Methods 95**
- I Biblical Times to Modern Era 95**
 - 1 History of Execution Methods 97
 - 2 Legislative Endorsement of the Execution Methods in the United States and Iran 98
 - A Hanging..... 99
 - B Crucifixion 103
 - C Stoning 103
 - D Shooting 103
 - E Electrocution 105
 - F Lethal gas 106
 - G Lethal injection..... 108
- II Stoning, Harshness and Abolition 110**
 - 1 Definition 111
 - A Definition of stoning in Islam 111
 - B Definition of stoning in Judaism 116
 - 2 Stoning crimes 118
 - A In Islam 118
 - B In Judaism 119
 - 3 Evidentiary & Execution Procedure..... 121
 - A In Islam 121
 - B In Judaism 122
 - 4 Stoning Location..... 126
 - 5 Reversal of Punishment 127

A	In Islam	127
B	In Judaism	128
6	Stoning and contemporary standards of societies	128
7	Abolition of stoning or moratorium	131
III	Challenging the Various Methods of Inflicting the Death Penalty	137
1	Considerable Factors.....	138
A	Duration of Procedure.....	138
B	The Pain Involved in the Execution Method.....	138
C	The Reliability & mutilation caused by Execution Method.....	139
D	The Degrading Preparation Involved in the Method.....	140
2	Socio-Humanity Perspective.....	140
A	Unacceptable to Society	140
B	Public Executions.....	141
C	International Human Rights Perspective.....	144
	Chapter 4.....	147
	<i>Cruel and Unusual due to the Doctrine of Proportionality</i>	<i>147</i>
I	When the Death Penalty is Appropriate?.....	147
1	The Death Penalty as Excessive.....	147
2	Proportionality Doctrine & 8 th Amendment in the United States.....	150
3	Proportionality Doctrine v. Islamic Laws in Iran.....	154
A	Hodoud Offenses.....	154
B	Qisas (Retaliation).....	156
C	Taazir (Discretionary Punishments).....	157
II	Juvenile Death Penalty.....	158
1	The Efficacy of Death Penalty for Juvenile Crimes & Violation of International Law	162
A	Penology View.....	162
B	International View.....	166
2	The Story of Juvenile Death Penalty Abolition in the United States	172
A	Legal Background	173
B	Diminished Responsibility	177
C	Facts behind the Juvenile Death Penalty in the United States.....	181
3	Juvenile Death Penalty in Iran	184
A	Legal Background.....	185
B	Rational behind the Juvenile Death Penalty in Iran	187
III	Miscellaneous Conditions & Proportionality.....	190
1	Mandatory Death Sentences.....	190
2	Mentally Retarded Offenders.....	193
3	Challenging the Imprisonment as Excessive.....	196
4	Cruel and Unusual due to the Status of Offender.....	202
	Chapter 5.....	209
	<i>Corporal Punishment</i>	<i>209</i>
I	History	210

1	History of Corporal Punishment in the United States from Colonial Times to Twentieth Century.....	210
A	Corporal Punishment in Early America (1597-1740).....	211
B	Corporal Punishment in Revolutionary Times (1718-1797).....	212
C	Corporal Punishment in the New Nation (1777-1857).....	213
D	Corporal Punishment in the Civil War Era (1856-1876).....	213
E	Corporal Punishment in the Young Nation.....	214
2	History of Corporal Punishment in Iran from the Ancient Times to the Revolutionary Restatement of Corporal Punishment.....	215
A	Corporal Punishment in the Ancient Era.....	215
B	Corporal punishment in the Islamic Era.....	216
C	Corporal Punishment under the Pahlavi Monarchy (1925-1979).....	216
D	Corporal Punishment after Islamic Revolution (1979).....	217
3	Contemporary Corporal Punishment.....	219
II	From Different Methods to International Restrictions.....	223
1	Corporal Punishment Methods in the United States & Iran.....	223
A	Whipping.....	223
B	Branding.....	225
C	Mutilation.....	225
D	Ducking Stool.....	227
E	Stocks & the Pillory.....	228
2	International Aspect.....	229
A	Treaties & International cases.....	229
B	Amnesty International.....	231
C	Applying International Norms in Domestic Courts.....	232
III	Cruel & Unusual Analysis.....	239
1	Cruel & Unusual Per se.....	239
2	Pain Infliction.....	241
3	Legislative Story.....	242
4	Judicial Story.....	247
IV	Cruel & Unusual Due to the Doctrine of Proportionality.....	253
1	Proportionality Analysis.....	253
2	When is Whipping Appropriate?.....	256
3	Punishment Objectives v. Contemporary Standards.....	257
A	Contemporary Standards of Decency.....	257
B	Penological Objectives.....	259
	Conclusion.....	266
	Table of Cases.....	271
	Table of Charts & Figures.....	275
	Bibliography.....	277