



# JAPAN'S DEATH PENALTY SYSTEM: AN ANALYSIS ON THE POSSIBILITIES OF SUSPENDING OR ABOLISHING THE SYSTEM

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*The place of the death penalty in modern Japanese society is a question that has been elevated in domestic importance recently, particularly as international pressure has become ever more focused on Japan given that they will be the Olympic hosts for 2020. This paper seeks to explore domestic opinion over the existence of capital punishment in state law and whether or not there is scope for the sentence to be removed or suspended given that a majority of democratic nations no longer have this system in place.*

## Introduction

From April 20-27, 2020, the 14th United Nations Congress on Crime Prevention and Criminal Justice, also known as the Kyoto Congress, is scheduled to be held in Kyoto. In the 2020 Kyoto Congress, government officials, legal experts, policy-makers, academics, and civil society groups around the world, will gather and discuss legal and criminal issues from international perspectives.<sup>1</sup>

In preparation for the Kyoto Congress, the Japan Federation of Bar Associations (JFBA) drafted an “opinion on matters to be included in the Kyoto Declaration at the 14th United Nations Congress on Crime Prevention and Criminal Justice”, on April 18, 2019. In the opinion, JFBA urged that the “death penalty system should be abolished as soon as possible in the international community” and that the “implementation of the death penalty should be suspended until the death penalty system has been abolished.”<sup>2</sup>

Internationally, more and more countries have abolished the death penalty system or at least suspended the implementation of the system. As of 2018, 142 countries abolished or suspended the death penalty, while 56 countries still continue to uphold the system. However, the system has remained in Japan, which has been sharply

criticized by certain civil society groups, particularly Amnesty International who called it a “shameful stain on human rights record of Olympic hosts”.<sup>3</sup> Thus, domestic and international human rights activists have insisted that the death penalty system should be abolished in Japan.

## Public Opinion on the Death Penalty System

The question therefore arises; why does Japan retain the death penalty system despite ongoing international criticism? According to an opinion poll among Japanese citizens conducted by the Cabinet Office in November 2019, only 9.0 percent of participants advocated for the removal of the death penalty, while 80.8 percent of respondents answered that they believed the system necessary. The public opinion survey has been conducted by the Cabinet Office every five years, and surprisingly, more than 80 percent respondents have consistently opposed the removal of the death penalty since 2004.<sup>4</sup>

In the same survey, 50.7 percent of those opposed to the death penalty explained that the system should be abolished because it is “not possible to undo a wrong conviction.” Others advocating for its removal argued that criminals; “should live and be made to atone for their crime”;



“violent crime does not increase even if the death penalty is abolished”; “even if it is a punishment, it is barbaric”; “it is unforgivable to kill people, even if it is done by the state”; and that, “it is possible for criminals to be rehabilitated.”<sup>5</sup>

On the contrary, 56.6 percent of those supporting the existence of the death penalty replied that the system is necessary because of the “feelings of the victims and victim’s family.” Others endorsing the system explained that; “life should be compensated for with life”; “if the criminals live, they will commit the same crime again”; and that “violent crime will increase” unless the death penalty system exists.<sup>6</sup> In short, this public opinion poll shows that the majority of respondents supported the necessity of the death penalty in Japan, and have taken it for granted.

### **Political, Legal, and Constitutional Factors of the Death Penalty System**

Politically speaking, the Japanese government, especially the Ministry of Justice, has taken the position that the death penalty should not be abolished in Japan. This is the reason why the Japanese government has chosen not to sign the Second Optional Protocol to the International Covenant on Civil and Political Rights, adopted in the United Nations General Assembly in December 1989, which entered into effect in July 1991.<sup>7</sup> The Japanese government voted against the protocol in the United Nations General Assembly and the stance of the government has been consistent with the majority of the Japanese public as well as legal and constitutional frameworks.

Legally, Article 199 of the Penal Code of Japan justifies the death penalty to punish “homicide”, stipulating that; “a person who kills another shall be punished by the death penalty or imprisonment with work for life or for a definite term of not less than five years.”<sup>8</sup> Furthermore, the Supreme Court of Japan judged that the death penalty is lawful and constitutional and that the system should not be regarded as “infliction of torture” nor as a “cruel punishment”, which are forbidden by Article 36 of the Japanese Constitution.<sup>9</sup> In Japan, the Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act and the whole judicial power is vested in the Supreme Court and in such inferior courts. The judges of the courts are independent and bound only by the Constitution and the laws.<sup>10</sup> Hence, once the Supreme

Court made a judgement on the death penalty, it cannot be altered by the influence of political intervention.

Nevertheless, it is important for Japanese citizens and members of the Diet to discuss and consider such reforms as the introduction of a life sentence system without parole, the possibility of abolishing the death penalty system, or suspending its implementation. This is important for both the national interest and in the international current. As a matter of fact, the 2019 opinion poll revealed that 35.1 percent all interviewees replied that they would support the removal of the death penalty system if it was replaced with the introduction of a life imprisonment system without parole, whereas 52.0 percent insisted on the continued necessity of the death penalty system regardless of a more severe life imprisonment sentence.<sup>11</sup>

### **Scope for Abolishing the Death Penalty System**

The international community has clearly stated its call for Japan to reconsider the death penalty system. The United Nations has continuously requested for Japan to at least suspend the implementation of the death penalty (officially in 2010, 2012, 2014, and 2016). On March 01, 2019, British Parliamentarian Alistair Carmichael, a Liberal Democrat politician, visited the Japanese National Diet and conducted a lecture for Japanese lawmakers to reconsider Japan’s death penalty system. Likewise, the Australian government began showing its hesitation to negotiate with Japan for the “reciprocal access agreement” between the Japanese Self-Defense Forces and the Australian Defense Forces on account of the death penalty system in Japan.<sup>12</sup>

In addition to the Kyoto Congress, the Tokyo Olympic and Paralympic Games will be held from July 24 to August 09 in Japan this year (subject to the development of the Coronavirus outbreak). Notably, the Olympic Charter stipulates the significance of “human dignity” and “human rights” which should be respected by all participating countries.<sup>13</sup> In the spirit of the Olympics, therefore, now would be a good time for Japan to facilitate an official discussion on the possibility of abolishing and suspending the death penalty system from a perspective of meeting international democratic standards.



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## Endnotes

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