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DEATH PENALTY IN SG

FACTS & FIGURES

The Syed Suhail Case: What happened?

Syed Suhail bin Syed Zin was arrested in 2011 and charged with having no less than 38.84g of heroin.¹ He was sentenced to death in 2016. Syed had originally been scheduled to hang in February this year, but his execution was suddenly postponed the night before. Syed was then scheduled to be hanged on 18 September 2020.

Pro bono lawyer M Ravi filed an appeal for his case on 17 September and his execution has been put on hold. Syed's appeal was heard on 22 September 2020 and the Court of Appeal has ordered further arguments for a subsequent hearing to be fixed after 6 October 2020.

STATISTICS ON THE DEATH PENALTY

35

countries worldwide punish drug trafficking by death according to Harm Reduction International.²

17

executions (estimated) were carried out in Singapore from 2018-2019, of which 13 were drug-related and 4 for murder.³

25

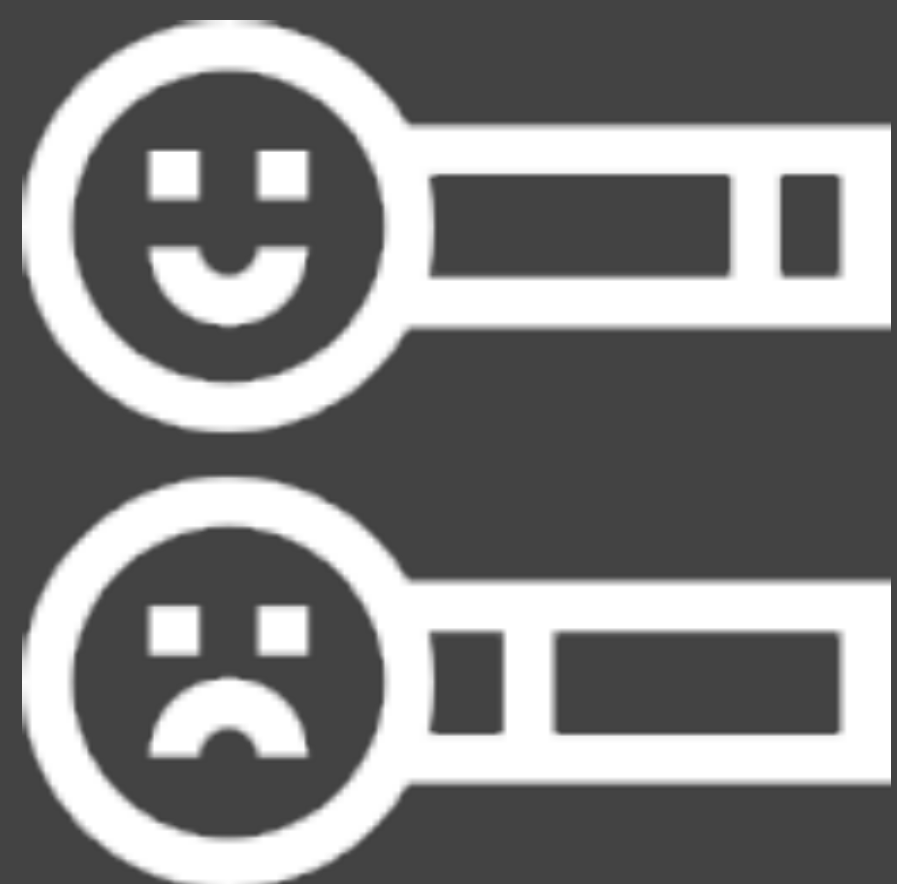
criminal offences in Singapore subject the offender to the death penalty. These offences are found in nine different statutes. For some offences, the death penalty is the only or mandatory sentence, while the judge may be given a choice in other offences.

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restrictions prevent the death penalty from being passed by a judge: if the person is below 18 years old when the offence was committed or if the person is pregnant at the time of conviction.⁴

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of all executions in Singapore have been for drug trafficking from 2007 to 2017.



In a 2016 survey on public opinion on the death penalty in Singapore involving 1,500 participants, Chan et al noted general apathy towards it, with 5% feeling very concerned and 40% feeling very not concerned.⁵

DEATH PENALTY & THE WAR ON DRUGS

The MDA was enacted in 1973 and was amended in 1975 to introduce the **mandatory death penalty**. According to then Minister for Home Affairs, Mr Chua Sian Chin, this was to address the growing drug problem which could become a “dangerous national security problem” that threatened the very “survival” of Singapore.⁶

After M Ravi launched multiple unsuccessful constitutional challenges against the mandatory death penalty, the Government introduced a moratorium on executions in 2012. The MDA was also amended such that the death penalty was no longer mandatory if the accused had only played the role of a courier (i.e. his only role was to transport the drugs) and satisfies either of two specific conditions :

1

The accused cooperated with the Central Narcotics Bureau (CNB) in a substantive way and the Public Prosecutor issues a “Certificate of Cooperation” to the accused;

2

The accused has a mental disability which substantially impaired his appreciation of the gravity of the act.

GUILTY UNTIL PROVEN INNOCENT?

Under the MDA, statutory presumptions shift the burden of proof on the accused person to prove that he did not possess or traffic drugs. This raises questions as to whether someone might be wrongfully sentenced to death on the basis of these presumptions.



Presumption of trafficking: A person in possession of certain quantities of a controlled drug is presumed to have had that drug in possession for the purpose of trafficking unless it is proved otherwise.

Presumption of possession: A person in possession or control of anything containing a controlled drug is presumed to have had that drug in his possession unless proven otherwise. For example, if someone had put drugs into your bag at the airport, the burden lies with you to prove that the drugs did not belong to you.



Presumption of knowledge: A person who is presumed to have had a controlled drug in his possession is also presumed to have known the nature of that drug unless the contrary is proved. For example, if someone asked you to carry a bag of pills that he claims are sleeping pills into Singapore but the pills are in fact Ecstasy pills, you are presumed to have known that those were drugs unless you can prove otherwise.

IS HANGING CONSTITUTIONAL?

The mandatory death penalty has been challenged many times before the Court of Appeal. However, it has been upheld as a constitutional practice in Singapore.

- In *Yong Vui Kong v Public Prosecutor (2010)*, The Court of Appeal held that the mandatory death penalty **does not violate the right to life** under Article 9(1) which allows a person's life to be deprived "in accordance with law" because Singapore law does not prohibit inhuman punishment.
- In the same case, the Court held that the existence of over 30 other countries which retained the mandatory death penalty for drug-related and other serious offences meant that the prohibition of the MDP as an inhuman punishment **has not been established as a rule of customary international law.**

DEATH AS A MATTER OF DISCRETION

Under the Constitution, the prosecutorial power vests in the Attorney-General (AG) who decides whether and what to prosecute a person with. In relation to drug trafficking offences, this means that the **AG can decide whether to charge a person with an offence that attracts the death penalty**. The AG can also decide whether to issue a Certificate of Cooperation, which will allow an accused person to escape the gallows.



For example, in Ramalingam Ravinthran v Attorney-General, two men were arrested for trafficking cannabis in a sports bag. However, while one of them was charged with trafficking a smaller amount that did not attract the death penalty, the other (Ramalingam) was.

The Court of Appeal upheld Ramalingam's death sentence after he failed to produce evidence of the alleged unconstitutionality of the prosecutorial decision that treated him differently from the other man. The court added that only when prima facie evidence is adduced by the accused would the Attorney-General be required to justify his prosecutorial decision.

The Court also explained that the Attorney-General's prosecutorial decisions is presumed to be constitutional or lawful until proven otherwise by the accused person. This presumption stems from the separation of powers doctrine as well as the constitutional standing of the Attorney-General's office.

EFFECTIVENESS AS CRIME DETERRENT?

According to Minister for Home Affairs K Shanmugam, the deterrent effect of the death penalty has played an important part in “keeping the drug menace under control”.



However, studies have **called into question the effectiveness** of the death penalty as a deterrent against drug offences. For instance, an empirical study by Zimring et al (2010)⁷ in the Journal of Empirical Legal Studies did not find proof of the death penalty’s effectiveness as a deterrent in Singapore.

According to a study by Chan et al (2018)⁵, only 7% of Singaporeans ranked a “greater number of executions” as the most effective in reducing drug trafficking compared to 77% who ranked it last. Most Singaporeans preferred measures such as “better moral education of young people” and “more effective policing”.

Ultimately, more studies are required in the local context, such as the effectiveness of the death penalty compared to other punishments such as long-term imprisonment. It also remains to be seen whether the **correlation** that the Government has described is in fact a **causal relationship** between the death penalty and drug offences.



FOOD FOR THOUGHT

- Do you think the death penalty is effective in deterring crime? Why or why not?
- Is effectiveness the only criteria we should consider in thinking about the death penalty? What other factors should we consider?
- What alternatives to the death penalty would you prefer, if any? How might they be different?
- Is there a racial or class dimension to punishment?
- How are debates about the death penalty relevant to the criminal justice system as a whole?

"The criminal justice system is not static, but dynamic. It has changed dramatically over the years to cope with the needs and expectations of an evolving society and I have no doubt that it will continue to do so."

– Justice Steven Chong⁸

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CAPE, or the Community for Advocacy & Political Education – a student organisation based in Yale-NUS College – was founded in 2017 by students from Yale-NUS College and the Law Faculty of the National University of Singapore (NUS). An independent and non-partisan community, we aim to build capacity for political literacy and constructive participation in Singapore’s civic democracy.



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