

*Parasha Shoftim*

## How Can the Torah Issue the Death Penalty?



**Dear Rebbetzin Chana Bracha,**

I can't believe the backward and barbaric punishments described in the Torah. I understand certain behaviors are prohibited, such as murder, theft, adultery and idol-worship. But, living in the modern civilized world, where corporal punishment is outlawed, I find capital punishment described in *Parashat Shoftim* abhorrent. How can it be humane to take the lives of other people? Doesn't the Torah emphasize repentance? Why don't these sinners get a chance to work on themselves and change? Why must they be publicly stoned in such a cruel and brutal way?

**Malka Freeman** (name changed)

**Dear Malka,**

I totally understand how you are feeling, I, too, have a hard time with some of the punishments described in the Torah. I agree that Free Will and Repentance are the main tenants of Judaism, and whenever possible, we should give the sinner a chance to mend his ways. So, how can we come to terms with capital punishment ordained by the Torah? How can we understand it in a way that is not cruel to the sinner and still leaves room for his repentance?

### Capital Punishment in the Western World

You mention that capital punishment is outlawed in modern civilized countries. Actually, capital punishment is still a matter of active controversy in various countries and states. The United States is one of the Western nations in which it has not been completely outlawed. Only some states have bans on capital punishment, while others still use it today. Even for Western countries that have abolished the death sentence, this is still a recent phenomenon..

Abolition of the death penalty occurred in Canada in 1976 (except for some military offences, with complete abolition in 1998), in France in 1981, and in Australia in 1973 (although the state of Western Australia retained the penalty until 1984). The Nuremberg executions, which took place on October 16, 1946, are well known. Ten prominent members of the political and military leadership of Nazi Germany were executed by hanging. Most Western minded people do not feel that it was inhumane to execute these villains. This is because the moral depravity, wickedness and cruelty of the Nazi murderers is clear to all of us. Most of us do not doubt that murderers certainly forfeit their right to live. The remaining offences for which the death penalty is prescribed in the Torah may not be as clear to us today. However, if we believe that the Torah is Divine, then we must also believe that each requirement of the death penalty in the Torah applies only to people who have similarly forfeited their right to live. Since, we are influenced by today's tolerant Western society, it may be hard to connect with the seriousness of certain sins that warrant the death penalty and feel abhorrence for Shabbat desecration and idolworship. The popular sentiment today is that as long as people aren't hurting anyone else, it is no-one's business to interfere with their preferred lifestyle and way of worship.

## Differentiating between Divine and Human Law

Without the Torah directives, I would never agree to capital punishment. Who are we, simple humans, to issue a death sentence on a fellow human being? Who are we to decide which kind of sins are serious enough to deserve the death penalty? Who are we to ensure we didn't make a mistake, which could have such irreversible consequences? It is only because I believe that the Torah is from G-d, that I can trust that whatever is written in it is Eternal, Divine truth, even though some parts are more difficult for me to accept, such as the death penalty described in *Parashat Shoftim*:

**ספר דברים פרק י"ז (ב) כ"ג** וְיִמָּצָא בְקִרְבְּךָ בְּאֶחָד שְׁעָרֶיךָ אֲשֶׁר הָשֵׁם אֱלֹהֶיךָ נָתַן לְךָ אִישׁ אוֹ אִשָּׁה אֲשֶׁר יַעֲשֶׂה אֶת הָרַע בְּעֵינֵי הָשֵׁם אֱלֹהֶיךָ לַעֲבֹר בְּרִיתוֹ: (ג) וַיֵּלֶךְ וַיַּעֲבֹד אֱלֹהִים אֲחֵרִים וַיִּשְׁתַּחֲוּ לָהֶם וַלְשֹׁמֵשׁ אוֹ לַיָּרֵחַ אוֹ לְכָל צָבָא הַשָּׁמַיִם אֲשֶׁר לֹא צִוִּיתִי: (ד) וְהִגַּד לְךָ וְשָׁמַעְתָּ וְדַרְשַׁתָּ הִיטֵב וְהִנֵּה אָמַת נִכּוֹן הַדָּבָר נִעֲשֶׂתָה הַתּוֹעֵבָה הַזֹּאת בְּיִשְׂרָאֵל: (ה) וְהוֹצֵאתָ אֶת הָאִישׁ הַהוּא אוֹ אֶת הָאִשָּׁה הַהוּא אֲשֶׁר עָשׂוּ אֶת הַדָּבָר הָרַע הַזֶּה אֶל שְׁעָרֶיךָ אֶת הָאִישׁ אוֹ אֶת הָאִשָּׁה וְסָקַלְתֶּם בְּאֲבָנִים וּמָתוּ: (ו) עַל פִּי שְׁנַיִם עֵדִים אוֹ שְׁלֹשָׁה עֵדִים יוּמָת הַמֵּת לֹא יוּמָת עַל פִּי עֵד אֶחָד:

“If there will be found among you, in one of your cities that Hashem, your G-d is giving you, a man or woman who does evil in the eyes of Hashem, your God, to transgress His covenant – Going to worship other gods and bowing down to them, or to the sun, the moon, or any of the host of the heavens, which I have not commanded. If you have been informed or have heard of it, then you shall make a thorough inquiry, if it is true, the fact is established; this abomination was perpetrated in Israel. Then you shall take that man or that woman who has committed this evil thing, out to your cities, and you shall stone them man or the woman, to death. A person shall be put to death only on the testimony of two or more witnesses; he must not be put to death on the testimony of a single witness” (*Devarim 17:2-6*).

## Talmudic Restrictions on Capital Punishment

The Talmud expands upon this Torah section restricting the death penalty greatly and makes it nearly impossible for any crime to meet the standards needed to impose the death penalty. It rules that two witnesses are required to testify not only that they witnessed the act for which the criminal has been charged but that they also warned him beforehand that if he carried out the act, he would be executed. Then, he had to accept the warning, stating his willingness to commit the act despite his awareness of its consequences. The criminal's own confession is not accepted as evidence. Circumstantial evidence is also not admitted. Moreover, the death penalty could only be inflicted, after a trial, by a Sanhedrin composed of twenty-three judges (*Mishnah, Sanhedrin* e punishment. In fact, “A Sanhedrin that puts a man to death once in seven years is called murderous. Rabbi Eliezer ben Azariah says: even once in seventy years. Rabbi Akiva and Rabbi Tarfon say: had we been in the Sanhedrin, none would ever have been put to death... (*Mishnah, Makkot 1:10*). In any event, it is illegal for a secular Jewish court to impose the death penalty, even for murder, until the re-establishment of the Sanhedrin. Even when this happens (May it be soon!), can you imagine anyone who would commit a murder in the presence of two witnesses, after these had solemnly warned him that if he persists they will testify against him to have him executed for his crime?

### Certain Sins for Which Only Death Atones

The Torah indicates that some crimes are worthy of death in order to emphasize their importance. Yet, "G-d loves even sinners, so much that He sees to it that this harsh judgment doesn't get carried out" ([Rabbi Benjamin Blech](#)). Every Torah law, given by a good and loving G-d, is ultimately for the benefit of everyone involved; not only for the society, which needs protection, but even for the perpetrators themselves. In the extremely rare cases where capital punishment was carried out, it would be only with the best interest of the executed person in mind. The Torah always gives a chance for repentance whenever possible. However, there are certain sins for which only death atones. This includes desecration of G-d's name, idol-worship, murder and adultery. Thus, the death penalty wasn't intended to exact vengeance. Its function as a deterrent was also not its ultimate purpose. Rather, the person's death brought atonement for the sin he committed, and – in conjunction with teshuvah (repentance) – guaranteed the soul's rehabilitation.

### Prisoners Request to Exchange Life sentence with Death Sentence

Long term imprisonment can be more cruel and devastating to criminals than the death penalty. It was reported in BBC news, 31 May 2007, that hundreds of prisoners serving life sentences in Italy requested to bring back the death penalty. Italy has almost 1,300 prisoners serving life terms, of whom 200 have served more than 20 years. Some of the country's longest serving prisoners want the death penalty re-introduced. The letter they sent to President Giorgio Napolitano came from a convicted mobster, Carmelo Musumeci, a 52-year-old who has been in prison for 17 years. It was co-signed by 310 of his fellow lifers. Musumeci said he was tired of dying a little bit every day. We want to die just once, he said, and "we are asking for our life sentence to be changed to a death sentence." It was a candid letter written by a man who, from within his cell, has tried hard to change his life. He has passed his high school exams and now has a degree in law. But his sentence, he says, has transformed the light into shadows. He told the president his future was the same as his past, killing the present and removing every hope.

This explains why the Torah never imposed imprisonment as a punitive means. It seems that most inmates would prefer corporal and even capital punishment to a life time sentence. Considering the importance of Free Will in the Torah, one must ask, is depriving a person of his fundamental right to the most basic human need and aspiration – freedom – less cruel than capital punishment?