

“Death Penalty Law and the Politics of Justice” — Interview with Suhad Bishara



At a moment when legal language seems incapable of concealing the essence of what is unfolding, the Israeli Knesset has passed a law permitting the execution of Palestinian prisoners a move that redefines the relationship between law and power and pushes it toward a sharper and more perilous trajectory.

Legislative text is no longer merely an instrument for regulating punishment; it has become a framework through which the very meaning and limits of justice are reshaped, in a context charged with politics and conflict.

Within this context, Adalah – The Legal Center for Arab Minority Rights in Israel, in collaboration with human rights organizations and Knesset members, has filed an urgent petition before the Supreme Court in an effort to halt the law’s implementation.

These efforts are led by Suhad Bishara, Director of the Legal Department at the center, placing the issue at the heart of a legal debate that extends beyond the text itself to its implications for fundamental rights foremost among them the right to life and the right to a fair trial.

This interview seeks to unpack the dimensions and implications of the law, and

to examine what it reveals about transformations within the structure of the legal system at a moment when legal considerations intersect with broader human questions.

As the petition proceeds and its outcome remains uncertain, an open legal battle is taking shape one that places this legislation under international scrutiny and ties its consequences to a broader context concerning the status of justice in a world facing mounting tests.

To what extent does the Supreme Court of Justice have real authority to overturn a law passed by the Knesset, especially if it is presented within a security framework?

Procedurally, the Supreme Court does have the authority to review the constitutionality of laws and potentially strike them down, as it is the highest judicial body in this domain. However, the exercise of this authority does not occur in a purely legal vacuum; political and security considerations often intersect with legal principles.

That said, we believe the petition rests on strong legal and constitutional foundations, reinforced by principles of international law. The law in question is exceptional, both within the domestic legal context and internationally.

Domestically, it is intended to be applied in the occupied Palestinian territories, which constitutes a dangerous precedent. We have previously seen legislation enacted to retroactively legalize certain settlements in the West Bank, only for the Court to later deem it unconstitutional and annul it.

This law represents a new attempt by the Knesset to directly impose its legislation on the West Bank and on Palestinians, raising a fundamental issue of jurisdiction. Under international law, Israel is not sovereign over the territories occupied since 1967, and therefore the Knesset lacks the authority to legislate for them.

This issue is further reinforced by the rules of international humanitarian law governing occupied territories, as well as by repeated resolutions from international bodies affirming the status of the West Bank as occupied territory and the inapplicability of Israeli law there. This constitutes one of the central grounds for challenging the law.

On the constitutional level, the law starkly contradicts the global trend rejecting the death penalty. For decades, most countries worldwide have moved toward abolition. United Nations recommendations affirm that capital punishment is inhumane and call for refraining from enacting new legislation that entrenches it. The international human rights system, including European conventions, has

solidified this direction, with most European states having fully abolished the death penalty.

Even countries that have not formally abolished it have refrained in practice from carrying out executions, rendering it effectively obsolete. In contrast, the number of countries that still implement it remains very limited, making them exceptions on the global stage.

At its core, this law constitutes a direct violation of the right to life a fundamental and absolute right that admits no derogation. This gives the law an exceptional and dangerous character, both judicially and within the broader human rights framework, strengthening the grounds for its challenge and annulment.

What is the strongest legal basis for challenging the law permitting the execution of prisoners?

The Supreme Court’s authority in this context lies in examining the constitutionality of the law under Israel’s Basic Laws, and it may ultimately determine that the law is unconstitutional. At a minimum, it could rule that the law does not apply to the occupied Palestinian territories due to the Knesset’s lack of jurisdiction.

Accordingly, several scenarios emerge: the Court could deem the law constitutional in principle but inapplicable in occupied territories; or it could rule the law entirely unconstitutional, both within Israel and in the West Bank, thereby annulling it altogether which is the desired outcome.

Does the Court have precedents in annulling or limiting laws of a similar security or punitive nature, and to what extent can these precedents be invoked?

Generally, the Court tends to refrain from intervening in decisions framed as security-related, as Israeli authorities often use this designation to advance certain policies. In such cases, the Court proceeds with caution. However, what is notable about this law is that its declared nature is not purely security-based.

This is fundamentally a criminal law. While the acts it addresses are classified under Israeli law as “terrorism,” giving it a security dimension, its core is punitive. It therefore falls outside the traditional scope of security measures in which the Court typically avoids intervention.

The Israeli legislator explicitly states that the law’s purpose is “deterrence.” Yet in our petition, we provided a thorough refutation of this claim, demonstrating that deterrence has not been substantiated neither before the Israeli legislator nor during any stage of the legislative process.

We included expert opinions and research indicating that the death penalty does not serve as an effective deterrent, whether for ordinary crimes or those driven

by ideological motives.

Another fundamental flaw lies in the law’s discriminatory (apartheid-like) dimension. In practice, it applies almost exclusively to Palestinians, whether in the occupied territories or within Israel, reflecting a clear dual legal system.

This can be illustrated through three scenarios:

A Palestinian in the West Bank convicted of premeditated killing classified as “terrorism” would be tried in a military court and could face the death penalty.

An Israeli settler convicted of the same act under identical circumstances would not be tried in a military court, nor subjected to the same law or penalty.

A Palestinian citizen of Israel, if convicted under the expanded definition of terrorism, could also face the death penalty under the proposed amendments.

This explicit disparity entrenches a dual legal regime based on nationality, raising serious constitutional concerns and clearly violating international law principles.

As for precedents, the Court has previously struck down laws, including the “Settlement Regulation Law,” on the basis of clear discrimination between settlers and Palestinians. This precedent is directly relevant. However, the current law is even more severe, as it directly infringes upon the right to life.

What legal scenarios are expected following the petition: annulment, suspension, or limitation of application? Which is most likely?

We are clearly seeking the full annulment of the law. At the initial stage, we requested a temporary injunction to freeze its implementation pending a final decision. The Court has not yet ruled on this request and has instead granted the Knesset and the Attorney General until the end of May to respond.

Following this, the Court may temporarily suspend the law, limit its application particularly by excluding the occupied territories or declare it entirely unconstitutional and annul it.

Does the judiciary constitute a real obstacle to implementing this law, or is its capacity limited?

Since the law does not apply retroactively, it is unlikely to have immediate direct consequences. However, we are closely monitoring developments. If there are indications of its application, we will return to the Court to seek an urgent injunction.

The judiciary remains a significant actor, but its impact depends on its willingness to intervene and the timing of such intervention.

Can European opposition to the death penalty translate into effective pressure?

Many European states have issued clear and explicit positions against the death penalty, reflecting a largely unified stance grounded in its abolition across Europe. This opposition is echoed by international institutions, including UN bodies.

These positions are undoubtedly important and exert political and moral pressure. However, whether they translate into tangible action depends on political will, diplomatic efforts, and broader regional and international dynamics.

What tools could the European Union realistically use to influence this law?

The EU possesses leverage through its bilateral agreements with Israel, which emphasize respect for democratic principles and human rights. However, there remains a gap between political statements and concrete measures, as action requires time, diplomatic effort, and internal consensus among member states.

Can international pressure influence the Court internally?

The Court does not operate in isolation. It is influenced by both domestic developments and international positions. The petition itself highlights international criticism, as the law clearly violates international legal standards.

Public opinion and international stances can therefore play a meaningful role in shaping the broader context within which the Court makes its decisions.

Do these factors collectively have real impact, or are they merely symbolic?

It is difficult to predict the final outcome. However, based on legal precedents and expert analyses particularly regarding the weakness of the deterrence argument there are real opportunities to influence the Court’s decision.

While not guaranteed, these possibilities remain significant. Ultimately, the judicial path remains the primary—and perhaps only—effective avenue to halt or overturn this law.