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## **CAPITAL PUNISHMENT: TO ABOLISH OR NOT**

### **ABSTRACT**

This article provides a critical examination of the ongoing debate regarding capital punishment, analysing both the arguments in favour of and against its continued application. It explores the historical context, assesses legal and moral viewpoints, and reviews the current status of the death penalty in India and worldwide. Utilizing landmark judicial rulings, statistical data, international human rights standards, and philosophical perspectives, the article underscores the complexities associated with the implementation of the death penalty within a modern justice system. Additionally, it addresses the sociological, economic, and psychological effects of executions. Ultimately, the article advocates for a transition toward more humane alternatives, such as life imprisonment without the possibility of parole, with a focus on rehabilitation and human dignity. The discussion seeks to offer a comprehensive understanding of the question of whether capital punishment should be abolished or maintained in contemporary society.

### **KEYWORDS**

Human Dignity, Death Penalty, Executions, Life Imprisonment

*An Examination of Law, Morality, and Justice in Modern Society*

### **INTRODUCTION**

Capital punishment, commonly referred to as the death penalty, has historically been one of the most contentious and debated topics within the realm of criminal justice. The ongoing debate regarding its abolition or retention continues to provoke intense arguments from both perspectives. This article examines the historical evolution of capital punishment, the ethical and legal arguments supporting and opposing it, the current status of capital punishment in

India and worldwide, and ultimately tackles the critical question: should capital punishment be abolished or maintained?

## **HISTORICAL BACKGROUND**

The death penalty was mandated for a wide range of offenses in ancient civilizations such as Rome, Greece, and Babylon, where capital punishment originated. The Hammurabi Code and Roman Law are examples of codes that mandated execution for offenses ranging from theft to murder. Different methods of execution were utilized throughout time, such as beheading, hanging, and deadly injection. Public executions were commonplace in mediaeval and early modern Europe, where they were viewed as a deterrent.

References to the death penalty can be found in both religious literature and legislative codes from ancient India. The death sentence was a fundamental component of the Indian Penal Code of 1860 during British colonial control. India kept the death sentence after gaining independence, but only in the "rarest of rare cases."

## **ARGUMENTS SUPPORTING CAPITAL PUNISHMENT**

1. **Deterrence:** A key argument advocating for capital punishment is its role as a deterrent. Supporters contend that the fear of execution prevents potential offenders from engaging in serious crimes. They assert that life imprisonment may not provide the same level of deterrence as the death penalty.
2. **Retribution and Justice:** Proponents argue that capital punishment functions as a means of retributive justice, offering a sense of closure and justice to victims and their families. In accordance with the retributive theory of punishment, it is asserted that the criminal should be penalized in proportion to the severity of the offense committed. The death penalty is perceived as a method of delivering justice for particularly heinous and brutal crimes.
3. **Societal Protection:** Capital punishment makes sure that criminals who pose a threat are permanently removed from society. This rules out any chance that the perpetrator will commit additional crimes, whether while incarcerated or following their release. The death penalty ensures public safety, according to some, while life imprisonment without parole nevertheless runs the risk of parole or escape.
4. **Cost Effectiveness:** Because the state is spared the long-term expenses of incarceration, some supporters contend that the death penalty is more economical than life in prison. Because judicial proceedings involving death sentence cases frequently necessitate drawn-out appeals and costly trials, this argument is still debatable.

## **ARGUMENTS AGAINST CAPITAL PUNISHMENT**

1. **The Risk of Wrongful Convictions:** A significant argument opposing capital punishment is the potential for executing innocent people. Judicial mistakes, biases, and insufficient legal representation can result in wrongful convictions. Once an

execution occurs, it cannot be undone, and the ramifications of a wrongful conviction are devastating.

2. **Human Rights and Ethical Considerations:** Critics contend that capital punishment infringes upon the fundamental human right to life. They assert that the state should not possess the authority to take an individual's life, irrespective of the offense committed. International human rights organizations, including Amnesty International, have consistently advocated for the elimination of the death penalty.
3. **Lack of Deterrent Effect:** The effectiveness of the death penalty as a deterrent is also called into question by its opponents. Statistical evidence and studies have demonstrated that life imprisonment is not necessarily any less effective in deterring crime than the death penalty. The fact that many nations with reduced crime rates do not use the death penalty indicates that other elements have a greater impact on lowering crime.
4. **Discrimination and Unequal Application:** The death penalty is frequently criticised for disproportionately targeting economically disadvantaged and marginalised populations. Racial, socioeconomic, and regional differences in its application have raised concerns. The justice system's impartiality and fairness are called into question by this.

## LEGAL STATUS AND LANDMARK CASES IN INDIA

In India, the constitutionality of the death penalty has faced numerous challenges. The pivotal case of **Jagmohan Singh v. State of Uttar Pradesh**<sup>1</sup> affirmed the constitutionality of capital punishment, asserting that it did not infringe upon Articles 14, 19, and 21 of the Constitution. Nevertheless, the Supreme Court in **Bachan Singh v. State of Punjab**<sup>2</sup> established the doctrine of the 'rarest of rare' cases, which significantly limited the application of the death penalty.

The ruling in **Machhi Singh v. State of Punjab**<sup>3</sup> further clarified the 'rarest of rare' doctrine, offering criteria for when the death penalty ought to be applied. More contemporary cases, such as **Shatrughan Chauhan v. Union of India**<sup>4</sup>, have concentrated on the procedural elements of death penalty cases, including delays in execution and the mental health status of the condemned.

## INTERNATIONAL PERSPECTIVE

The global movement toward the abolition of the death penalty is influenced by both international law and a shared moral consensus. According to the latest report from Amnesty International, over 140 countries have abolished the death penalty either in law or in practice. In Europe, the Council of Europe has established abolition as a prerequisite for membership. In the United States, while the death penalty remains legal in several states, there is an

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<sup>1</sup> 1973

<sup>2</sup> 1980

<sup>3</sup> 1983

<sup>4</sup> 2014

increasing trend toward implementing moratoriums and legislative repeals. Notably, in 2021, Virginia became the first southern state to abolish the death penalty. In contrast, countries such as China and Iran continue to execute the highest number of individuals each year, often for drug-related offenses.

Worldwide organizations have made notable progress in discouraging the death penalty. On numerous occasions, the UN General Assembly has adopted resolutions urging a ban on executions. The Second Optional Protocol of the ICCPR is explicitly aimed at abolition, and several nations have signed and ratified it. India has continued to be the target of global condemnation for its lack of transparency in execution procedures and its hesitancy to abolish the death penalty, even though it still maintains it.

## **CURRENT INDIAN CASES AND PUBLIC PERSPECTIVE**

The execution of Yakub Memon<sup>5</sup> for the 1993 Bombay bombings and high-profile cases such as the Nirbhaya gang rape<sup>6</sup> have heightened the discussion surrounding the death penalty in India. The public's indignation at such acts frequently results in calls for the death sentence and other severe penalties. Others expressed worry that the 2020 execution of the four convicted men in the Nirbhaya case did little to address the underlying causes of violence against women, while others celebrated the fact that justice had been served.

In the year 2021, the Supreme Court, in the case of **M. Nagraj vs. Union of India**<sup>7</sup>, emphasized that the imposition of the death penalty should not be done in a mechanical manner and reaffirmed that life imprisonment ought to be the standard. Public sentiment in India is polarized—some individuals view the death penalty as essential for addressing terrorism and heinous crimes, whereas others advocate for its abolition based on humanitarian principles.

## **DEBATE ON STATISTICAL EVIDENCE AND DETERRENCE**

Research on the deterrent effect of the death penalty has yielded inconsistent findings. A report from the National Crime Records Bureau (NCRB) indicates that there is no significant decrease in murder rates in states that implement the death penalty compared to those that do not. Furthermore, a study conducted by the National Law University (NLU Delhi) reveals that a majority of death row inmates in India originate from economically and socially disadvantaged backgrounds, raising critical issues regarding discrimination and access to justice. Additionally, global data from Amnesty International suggests that nations that do not impose the death penalty often experience lower homicide rates than those that continue to carry out executions, implying that deterrence may be more effectively associated with robust law enforcement and comprehensive social policies.

## **THE USE OF PRESIDENTIAL AUTHORITIES AND MERCY PETITIONS**

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<sup>5</sup> 2015

<sup>6</sup> 2012

<sup>7</sup> 2006

In cases involving the death penalty, the President of India has the authority to issue pardons, reprieves, or remissions of punishment under Article 72 of the Indian Constitution. Although the procedure might be protracted and inconsistent, mercy requests act as the last defence against unjust execution. In circumstances like *Shatrughan Chauhan v. Union of India*<sup>8</sup>, the Supreme Court ruled that excessive delay in ruling on mercy petitions may be grounds for converting a death sentence into life in prison. This indicates a growing judicial bias toward restricting the use of the death penalty and guaranteeing procedural fairness.

## **ALTERNATIVES TO THE DEATH PENALTY**

In lieu of the death penalty, many experts support life in prison without the possibility of parole. This preserves the sanctity of life while guaranteeing that dangerous criminals are permanently removed from society. Models of restorative justice and rehabilitation concentrate on victim needs and offender transformation. Recidivism rates are lower and justice systems are more compassionate in nations like Norway and Germany that prioritise rehabilitation over retaliation. Similar restorative approaches are being discussed more and more in India, particularly for juvenile offenders and those convicted of non-violent offences.

## **PHILOSOPHICAL AND RELIGIOUS PERSPECTIVES**

Discussions in philosophy regarding capital punishment frequently centre on thinkers such as Immanuel Kant, who advocated for retributive justice, and philosophers like Cesare Beccaria, who opposed the death penalty in his publication 'On Crimes and Punishments'. Religious opinions differ, with some considering it justified for serious transgressions, while others, including specific interpretations of Buddhism and Jainism, highlight the principles of non-violence and forgiveness.

## **GLOBAL HUMAN RIGHTS TREATIES AND ABOLITION MOVEMENTS**

The movement advocating for the abolition of capital punishment has been profoundly shaped by various international human rights treaties and organizations. The Universal Declaration of Human Rights (UDHR) underscores the fundamental right to life and the necessity of protection against cruel and inhumane treatment. The European Convention on Human Rights (ECHR) explicitly prohibits the death penalty through Protocols 6 and 13, which advocate for its abolition in peacetime and under all circumstances, respectively. Numerous human rights non-governmental organizations, such as Amnesty International and Human Rights Watch, actively campaign against the death penalty and offer legal assistance to individuals on death row worldwide. Their advocacy efforts have contributed to heightened awareness and policy reforms in several nations.

## **EFFECTS ON SOCIETY AND PSYCHOLOGY**

In addition to its psychological and sociological effects on the condemned person, capital punishment has a significant impact on their family, prison employees, and the community as a whole. The families of death row inmates frequently experience emotional anguish and social stigma. Prison officers and executioners may face moral dilemmas and emotional

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<sup>8</sup> 2014

anguish while performing executions. Society as a whole may get desensitized to violence, fostering a culture of retaliation rather than rehabilitation. This brings up significant issues regarding the sort of society we wish to establish: one that values retribution or one that fosters justice and reform.

## **ADMINISTRATIVE AND ECONOMIC DIFFICULTIES**

Empirical research conducted in nations like the US has demonstrated that the death penalty can be more costly than life in prison, refuting the claim that it is a cost-effective solution. The price of a life sentence in prison is frequently less than the cost of drawn-out trials, numerous appeals, and specialised legal procedures. Administrative burdens are increased in India by the upkeep of death row facilities and security procedures. These funds could be used to support victims' families, strengthen rehabilitation initiatives, and improve the criminal justice system.

## **THE INFLUENCE OF MEDIA AND PUBLIC PERCEPTION**

Media reporting significantly impacts the formation of public opinion regarding capital punishment. Sensationalized coverage of violent offenses frequently fosters an atmosphere of fear and outrage, resulting in a public call for more severe penalties. Although the media can highlight atrocious crimes, it may also lead to emotional and impulsive reactions instead of well-informed and logical decision-making. It is essential to have balanced media coverage to guarantee that public opinion is grounded in facts and a thorough comprehension of the justice system.

## **LAW COMMISSION OF INDIA REPORT<sup>9</sup>**

In its 262nd Report, submitted in 2015, the Law Commission of India made a significant recommendation for the abolition of the death penalty for all crimes, with the exception of terrorism-related offenses and acts of war against the nation. The Commission contended that the death penalty does not achieve the penological objective of deterrence more effectively than life imprisonment. Furthermore, it highlighted the arbitrariness and discrimination associated with its application, particularly affecting the poor and marginalized populations. This report represented a notable shift in the official discourse surrounding capital punishment in India and contributed to the momentum of the abolition movement.

## **A COMPARATIVE CASE STUDY OF SOUTH AFRICA, SINGAPORE, AND JAPAN**

The death penalty is still practiced in nations like Japan and Singapore, which frequently point to its necessity as a deterrent and widespread popular support. In Singapore, a required death penalty may be imposed for drug trafficking crimes. Despite its sophistication, Japan's criminal justice system has been criticized for its opaque execution procedure and lack of transparency. The death penalty, however, was deemed unconstitutional by a Constitutional Court judgment in the case of **S v. Makwanyane and Another**<sup>10</sup>, and South Africa outlawed it in 1995. The South African court emphasized the conflict between capital punishment and

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<sup>9</sup> 262<sup>nd</sup> Report, 2015

<sup>10</sup> 1995

the constitutional rights to life and dignity. This comparative viewpoint highlights how a nation's position on the death penalty is heavily influenced by constitutional principles and socio-political situations.

## **PROSPECTS FOR THE FUTURE AND SUGGESTIONS**

As suggested by the Law Commission, India might take a step towards abolition gradually, beginning by restricting the death sentence to acts involving terrorism and the military. The apparent need for the death penalty may be diminished by bolstering the criminal justice system, guaranteeing prompt trials, enhancing legal assistance, and emphasising rehabilitation. Campaigns for public awareness and educational programs can influence society to accept more humane forms of discipline.

## **MY PERSPECTIVE**

From my standpoint, although capital punishment might seem warranted in instances of severe violence, it ultimately does not align with the values of human dignity and justice within a contemporary democratic framework. The irrevocable aspect of the death penalty, along with the potential for judicial mistakes, renders it a punishment too definitive to maintain. A life sentence without the possibility of parole can sufficiently safeguard society while permitting rehabilitation and removing the threat of wrongful execution. Consequently, I am of the opinion that capital punishment ought to be phased out and substituted with more humane and effective options.

## **CONCLUSION**

In summary, while capital punishment is often defended as a necessary measure for deterring severe crimes and administering justice, its effectiveness and moral justification continue to be subjects of significant debate. The potential for wrongful convictions, instances of discriminatory application, and violations of human rights present compelling arguments for its abolition. Global trends indicate a clear movement towards a more humane and rehabilitative justice system. In India, the application of the death penalty is restricted by the rarest of rare doctrine; however, the ongoing existence of capital punishment within the legal framework reflects an uncertainty in fully committing to its abolition. The increasing global momentum, alongside evolving judicial perspectives and public discourse, indicates that the future may trend towards life imprisonment and restorative justice as more effective and ethical alternatives to the death penalty.

The abolition of the death penalty has become a major worldwide trend. In more than two-thirds of the world's nations, it has been outlawed either de jure or de facto. The death penalty is absolutely forbidden in the European Union, and several nations in South America and Africa have likewise abolished it. But executions are still carried out in the United States, China, Iran, Saudi Arabia, and other nations.

The death penalty is intended to be outlawed globally by international human rights agreements, such as the Second Optional Protocol to the International Covenant on Civil and

Political Rights (ICCPR). Although India hasn't ratified this protocol, it has been under pressure from other nations to abolish it.

The discourse surrounding capital punishment is intricate and multifaceted. Proponents assert that it functions as a deterrent, administers justice, and safeguards society, while critics highlight the potential for wrongful convictions, infringements on human rights, and an absence of deterrent effect. In India, the judiciary has endeavoured to establish a balance by restricting its application to the 'rarest of rare' cases. An increasing global consensus favours abolition, indicating that life imprisonment without parole may represent a more humane and effective alternative.

Ultimately, the true benchmark of justice in any society is reflected not in its treatment of the most privileged, but in its approach to the most condemned.