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# THE RELEVANCE OF CAPITAL PUNISHMENT IN INDIAN CRIMINAL JUSTICE SYSTEM: A COMPREHENSIVE ANALYSIS

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## I. ABSTRACT

The concept of life is profoundly significant, intertwining morality, justice, and the implications of wrongdoing. Capital punishment, or the death penalty, is a highly contested form of punishment where a person is executed by the state for a crime. This paper examines the introduction and evolution of capital punishment in India's criminal justice system, analyzing arguments for and against it. It explores international law compliance, judicial precedents, and significant reports shaping its implementation in India.

Historically, the death penalty has roots in ancient Hindu and Islamic laws and was prevalent during the Mughal Empire. In modern India, it is reserved for the rarest of rare crimes. Arguments favoring the death penalty include deterrence and moral retribution, while opponents highlight the risks of grave injustice, lack of selectivity, and ineffectiveness in curbing crime. Global trends show a movement towards abolition, with many countries reducing or eliminating its use.

The paper underscores the need for judicial reforms, life imprisonment without parole, and education programs as alternatives to the death penalty, advocating for a shift towards more humane and restorative forms of justice.

## II. KEYWORDS

Capital punishment, Indian Penal Code, Death penalty, Human rights, UN resolution, Supreme Court

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### III. INTRODUCTION

The concept of life is profoundly significant when considering the human experience, as it is interwoven with morality, justice, and the implications of wrongdoing. A contested punishment for major crimes death sentence, is the prime example of this complication.

The term 'capital' has a Latin origin from the term Capitalist which means "off the head." It refers to a sentence that condemns a convicted defendant to death. Capital Punishment, also known as the death penalty or the death sentence, is a legal process where a person is put to death by the state as a punishment for a crime committed by him. The death penalty has been defined in the Indian Penal Code under different kinds of punishments<sup>2</sup>. The judicial decree that someone should be punished in this manner is called a death sentence, while the actual process of killing the person is called an execution.<sup>3</sup>

### IV. RESEARCH OBJECTIVE

- To examine the introduction and evolution of capital punishment in the Indian criminal justice system.
- To analyze the arguments supporting and opposing the death penalty as a punishment.
- To study the international law regarding capital punishment and India's compliance with the law.
- To assess judicial precedents and reports on the death penalty in the Indian legal system.

### V. RESEARCH QUESTIONS

- How has the punishment of the death penalty evolved in India, and what are the factors affecting the implementation of capital punishment over time?

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<sup>2</sup> Section 53, Indian Penal Code 1860

<sup>3</sup> monika, "Critical Analysis Of Death Penalty In India" (*iPleaders*, April 20, 2019) <https://blog.iPLEADERS.in/death-penalty/> accessed June 29, 2024

- What is the core justifications made for and against the death penalty in India?
- To what extent does India's continuous application of the death penalty adhere to its obligations under international law?
- How have the landmark Supreme Court judgments and reports by law commissions shaped the implementation of capital punishment in India?

## VI. RESEARCH HYPOTHESIS

The death penalty is still a part of the Indian legal system, but its use has been scrutinized with the passage of time because of the moral and global legal standards and concerns about how effective it is as a deterrent.

## VII. RESEARCH METHODOLOGY

The Methodology for research adopted in this paper is purely doctrinal in nature. As included in doctrinal research, an intensive study of the existing literature was conducted. Various case law articles, books, committee reports, and acts spanning the last few years were studied and analyzed to thoroughly study the provisions of capital punishment in India. The case laws incorporated in the dissertation are those that intricately deal with the dimension of capital punishment in India. A little bit of historical literature was also studied to understand the origin and concept of capital punishment in India.

## VIII. HISTORY AND EVOLUTION

Capital punishment is an ancient sanction. "*There is practically no country in the world where the death penalty has never existed*"<sup>4</sup>. The history of human civilization reveals that during no period of time, capital punishment has been discarded as a mode of punishment. "*Capital punishment for murder, treason, arson, and rape was widely employed in ancient Greece under the laws of Draco (fl. 7th century BCE), though Plato argued that it should be used only for*

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<sup>4</sup> Staff C, "Civildaily" (*Civildaily*, March 19, 2022) <https://www.civildaily.com/burning-issue-debate-over-capital-punishment/> accessed June 29, 2024

*the incorrigible*<sup>5</sup>. The Romans also used it for a wide range of offenses, though citizens were exempted for a short time during the republic.

This finds support in the observation made by Sir Henry Marine, who stated that “*the Roman Republic did not abolish the death sentence, though its non-use was primarily directed by the practice of punishment or exile and the procedure of questions*”.<sup>6</sup>

### **A. Evolution in India**

According to the Code of Criminal Procedure<sup>7</sup>, 1898, judges had to provide grounds for their decision to impose a life sentence in place of the death penalty, which was the default punishment for the death penalty<sup>8</sup>. The requirement for written justification for avoiding the death penalty was removed in a 1955 modification to the CrPC, indicating that there were no legislative preferences between the two punishments.

Following the additional amendments to the CrPC in 1973, life imprisonment became the norm, and the death penalty was reserved for extremely serious offenses. The death penalty was only to be carried out in exceptional cases, especially if the perpetrator of a heinous crime proved to be too dangerous to even be considered for parole release after 20 years of imprisonment.<sup>9</sup>

Capital punishment, or the death penalty, in India is considered a punishment for the rarest of crimes. There cannot be any hard and fast rule or definition for the same, but the Indian Penal Code provides for sentence of death or life imprisonment as alternative punishment for waging war against the Government of India, attempting or abetting thereof a mutiny by a member of the armed forces, fabricating false evidence leading to

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<sup>5</sup> “DEATH PENALTY CAPITAL PUNISHMENT” (*The Lawyers & Jurists*, April 9, 2019) <https://www.lawyersjurists.com/article/death-penalty-capital-punishment/> accessed June 29, 2024

<sup>6</sup> Gupta SC, *Capital Punishment in India* (2000) 1

<sup>7</sup> Publication. (n.d.). *THE CODE OF CRIMINAL PROCEDURE*, 1973. Retrieved July 5, 2024, from [https://www.indiacode.nic.in/bitstream/123456789/15272/1/the\\_code\\_of\\_criminal\\_procedure\\_1973.pdf](https://www.indiacode.nic.in/bitstream/123456789/15272/1/the_code_of_criminal_procedure_1973.pdf)

<sup>8</sup> Lethal Lottery : The Death Penalty in India. Amnesty International India and People’s Union for Civil Liberties(Tamilnadu and Puducherry, 2008)

<sup>9</sup> Section 252 of the Indian Penal Code, Indian Kanoon. Retrieved October 7, 2020.

the conviction of an innocent person and his execution, committing murder, abetting suicide of a child, an insane or intoxicated person, attempting murder by a person under sentence of imprisonment for life if hurt is caused, and committing dacoit accompanied with murder.<sup>10</sup>

- **Under Hindu law:** The death penalty has deep historical roots in the Hindu community, being mentioned in ancient scriptures and books. It was not seen as barbaric but rather as a necessary measure to deter crime through severe punishment. Historical fragments of the death penalty date back to the 4th century. Renowned figures like Kalidas and epics like the Ramayana and Mahabharata emphasized the importance of the death penalty for societal safety. Legal scholars Katyayana and Brahaspati also supported it. Even during the Buddhist era of non-violence, Emperor Ashoka did not deem the death penalty unjust. The Hindu criminal justice system prioritized deterrence and mental health, with the notions of social security and non-correctional philosophy being prominent. Manu's writings, particularly the Manu Smriti, highlighted both the crime and the criminal's weaknesses. Kautilya, in his works, also advocated for the death penalty as essential for public safety.
- **Under Muslim Law:** Islam is governed by Sharia law, which was developed from the Qur'an, the Sunnah (Hadith), the Ijma', 'Urf, the Masalih al-Mursala, and the Qiyas. In verse 2:30 of the Qur'an, it is stated, "Your Lord said to the angels, I am appointing a vicegerent on earth." The text also said, "Your Lord said to the angels, I am about to create a human being out of clay; when I have fashioned him and breathed of My spirit into him, kneel before him in prostration." Thus, the Qur'an denies the authority to take human life. According to Islamic philosophies, Ijad, the act of giving life, and I'dam, the act of taking it away, are entirely divine entitlements. In order to stop further

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<sup>10</sup> "Journal of The Indian Law Institute" (1993) 35 Indian Law Institute 122

heinous crimes from occurring in society, as required by Sharia Law, the Qur'an permits the taking of life by authorities other than Allah through the due process of law and justice.<sup>11</sup>

- **Under the Mughal Empire:** India's medieval history was dominated by the Mughal Empire, which primarily followed Quranic laws. These laws were not consistently applied, and judges often used Quranic principles along with arbitrary punishments in disputes. Akbar had a lenient approach, advocating for the death penalty only after thorough consideration and for serious sedition offenses, without cruel treatment. Jahangir and Aurangzeb followed similar laws<sup>12</sup>. However, the execution methods were often brutal, including leaving prisoners covered in rawhide under the hot sun or nailing them to walls. Modern British criminal justice and administration schemes have since surpassed these brutal methods with more humane approaches.
- **In the Pre - and Post - Independence Era:** The issue of the death penalty was not discussed in the legislative assembly of British India until 1931, when Shri Gaya Prasad Singh, a member from Bihar, attempted to introduce a bill to abolish the death penalty for crimes under the Indian Penal Code. However, the motion was defeated after the then-Home Minister responded to it. Before independence, then-Home Minister Sir John Thorne made clear the government's position on the death penalty in British India twice during Legislative Assembly debates. "The government does not believe that it is prudent to repeal the death penalty for any crime for which it is currently authorised."<sup>13</sup>

Following its independence, the Republic of India adopted various colonial-era laws, including the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973. The IPC imposed six punishments, including the death penalty.

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<sup>11</sup> Mahawar S, "Capital Punishment in India" (*iPleaders*, December 5, 2022) <https://blog.iplayers.in/capital-punishment-in-india-2/> accessed June 29, 2024

<sup>12</sup> Saṅgara S, *Crime and Punishment in Mughal India* (1998)

<sup>13</sup> Gupta SC, *Capital Punishment in India* (2000) 104-105

## IX. ARGUMENTS IN FAVOUR OF THE DEATH PENALTY

### A. Capital punishment is a definite deterrent to crime

The chief argument that is offered to justify the continuance of capital punishment is that it acts as a deterrent to the recurrence of crime. That is, when the general public finds that the wages of murder are death and degradation, it deters or suppresses those emotions that make a man violent and hostile. Besides, if the fear of death is removed from the consciousness of the people, they will commit murders very lightly, knowing that the maximum punishment they can have if caught and convicted, is a term in jail. Lombroso is an ardent advocate of the death penalty<sup>14</sup>.

Nevertheless, this argument is not supported by the empirical data. There is no discernible annual decrease in the number of murders in nations that uphold the death penalty, and there is no significant annual increase in the number of heinous crimes in nations that abolish the death penalty.<sup>15</sup>

### B. Capital punishment is a moral war

A disciple of Mr. Lombroso, Mr. Garofalo was of the opinion that capital punishment is a weapon by which society fights a moral war against inveterate criminals and incorrigible immoralists<sup>16</sup>. How can society protect itself from cutthroats, stranglers, and sadist rapers? How can society protect itself from Jack the rippers who have sexual intercourse and then cut up the victims of their lust into pieces? Capital punishment is the only deterrent for such perverse souls.

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<sup>14</sup> FZE BB, "Lombroso and Beccaria: Theories of Crime" *UK Essays* (November 6, 2023) <https://www.ukessays.com/essays/criminology/lombroso-and-beccaria-on-crime.php> accessed June 29, 2024

<sup>15</sup> Sharma RK, *Criminology and Penology* (Atlantic Publishers & Dist 1998) [https://books.google.co.in/books?id=1pRJT6EdtsC&redir\\_esc=y](https://books.google.co.in/books?id=1pRJT6EdtsC&redir_esc=y) accessed June 29, 2024

<sup>16</sup> (barone) RG, *Criminology* (1914) <https://www.google.co.in/books/edition/Criminology/i3JDAAAIAAJ?hl=en&gbpv=0&bsq=Garofalo,%20Raffaele.%20Criminology.%20Study%20on%20Crime,%20Its%20Causes%20and%20the%20Means%20of%20Repression.%20Torino:%20F.lli%20Bocca,%201885> accessed June 29, 2024



### **C. Capital Punishment is a Selective Process**

According to Haeckel, capital punishment is a selective process. It is a method by which nature eliminates those individuals who are dangerous for society and whose continued existence in society poses a threat to social law and order.<sup>17</sup>

According to Plato, the famous Greek philosopher, "If a man cannot be harmless otherwise than in sleep, it is better for him to die than live."<sup>18</sup>

### **D. Capital Punishment is a Legal Demand**

The supporters of capital punishment contend that capital punishment is a legal demand. If a killer is let off unpunished, this would militate against the majesty of the law, and gradually the respect for the law will vanish from society; and a society in which the respect for the law is gone will go to dogs<sup>19</sup>.

Moreover, if a killer is let off unpunished, his killing instinct will get a boost, and the relatives of the victims will feel depressed, morose, and sullen. Losing faith in law and justice, they may think of avenging the wrong at a personal level. Therefore, it is necessary that the lawbreaker be punished.<sup>20</sup>

### **E. Capital punishment is humanitarian**

The supporters of capital punishment argue that capital punishment is perfectly humanitarian<sup>21</sup>. Ordinarily, it is true that no one who does not have the power to make life has the right to take it. But, considered from a total social perspective, we find that it is not absolutely possible to follow this injunction.

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<sup>17</sup> Sharma RK, *Criminology and Penology* (Atlantic Publishers & Dist 1998) 31

[https://books.google.co.in/books?id=1pRJT6EdtsC&redir\\_esc=y](https://books.google.co.in/books?id=1pRJT6EdtsC&redir_esc=y) accessed June 29, 2024

<sup>18</sup> Plato, *Laws* (IX, DigiCat 2022) 855

<sup>19</sup> Sharma RK, *Criminology and Penology* (Atlantic Publishers & Dist 1998) 32

[https://books.google.co.in/books?id=1pRJT6EdtsC&redir\\_esc=y](https://books.google.co.in/books?id=1pRJT6EdtsC&redir_esc=y) accessed June 29, 2024

<sup>20</sup> "Amnesty International Urges Zambia to Respect Freedom of Expression and Assembly and Abolish Death Penalty" [2012] Human Rights Documents Online

<sup>21</sup> Garland D, *Punishment and Modern Society* (University of Chicago Press 1990)

<http://dx.doi.org/10.7208/chicago/9780226922508.001.0001> accessed June 29, 2024

We have to kill vipers and poisonous animals and birds to make the lives of general humanity possible. If we do not destroy dangerous animals, birds, and insects, humanity will fold up its chapter on this earth in no time. Similarly, by killing the murderer, the sadist raper, and a cruel man, we allow others to live in peace and security.

For example, if it is rumored that some wild lions are roaming in the city, no one will dare leave their homes until they are killed.<sup>22</sup> Similarly, if we are told that there is a man at large who pounces upon undefended females and who defiles them and then strangles them, our lives will be insecure and under constant fear.

## **X. ARGUMENT AGAINST THE DEATH PENALTY**

### **A. Capital punishment can result in grave injustice**

Capital punishment, or the death penalty, poses a significant risk of grave injustice within legal systems. Despite the acknowledged principle that it is better for 99 criminals to be acquitted than for one innocent person to be wrongly convicted, the reality of potential errors in judgment cannot be dismissed.

Courts, constrained by admissible evidence, are susceptible to manipulation, with case outcomes often relying more on the competence of lawyers than the merits of the case. In Sing Sing prison, Lewis reported that 50 out of 437 convicts were later proven innocent, suggesting a flawed system. Lewis argued that opting for life imprisonment instead of the death penalty could prevent such grave injustices. A similar case in Italy saw a man sentenced to life found innocent after 14 years, highlighting the irreversible nature of the death penalty and the need for careful reconsideration<sup>23</sup>.

Henting underscores the inadequacy of the death penalty as a socially insufficient means of punishment, especially considering the potential for judicial errors. These examples

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<sup>22</sup> Sharma RK, *Criminology and Penology* (Atlantic Publishers & Dist 1998)

[https://books.google.co.in/books?id=1pRJT6EdtsC&redir\\_esc=y](https://books.google.co.in/books?id=1pRJT6EdtsC&redir_esc=y) accessed June 29, 2024

<sup>23</sup> Reports and statistics from Amnesty International and the Death Penalty Information Center

underscore the imperative to reevaluate the use of capital punishment in the pursuit of justice.

### **B. Capital punishment is not selective**

Capital punishment, advocated by materialist philosopher Haeckel as a tool to eliminate societal threats, is debunked as non-selective and flawed. The system often condemns innocents due to inadequate defense resources, while many hardened criminals escape detection. Imperfect governmental agencies, susceptible to corruption cannot ensure the flawless identification, prosecution, and conviction of all true criminals while protecting the innocent.

Modern crime syndicates, led by cunning individuals, evade implication despite their moral responsibility for numerous crimes. The disparity in treatment is evident when a sexually frustrated rapist faces execution, contrasting with someone engaging in consensual encounters receiving societal acclaim. These examples expose the inadequacies of capital punishment, challenging its efficacy as a selective and just means of addressing societal dangers.

### **C. Capital punishment doesn't save money**

The argument that capital punishment saves money by sparing society the cost of feeding and sustaining criminals is refuted on the grounds that prisoners often engage in labor contributing to their upkeep<sup>24</sup>. The economic contribution of those incarcerated undermines the claim that killing criminals is a cost-effective measure for saving a nation's wealth. Moreover, the immorality of capital punishment is emphasized, as it is considered a moral war against morally perceived wrongdoers.

However, this justification falls short, as it fails to account for individuals who may be psychopathic, mentally underdeveloped, or denied their rights by society. Most murders

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<sup>24</sup> Bair A, *Prison Labor in the United States* (Routledge 2007) <http://dx.doi.org/10.4324/9780203933985> accessed June 29, 2024

are not premeditated, and the death penalty denies criminals self realization and genuine moral punishment. It places the power of punishment in the hands of an external agency, negating the chance for the individual to comprehend and atone for their actions.

#### **D. Capital punishment is irreligious**

Capital punishment is deemed irreligious by many world religions rooted in an implicit faith in God. The foundation of these faiths rests on the belief that only God possesses the authority to create and destroy life. Despite the might of a state, it cannot generate life, and therefore, from a religious standpoint, it lacks the authority to deprive anyone of life.

The argument aligns with the theological principle that the divine power to give and take life should not be usurped by human institutions.

#### **E. Capital punishment is not a way to curb crimes**

Capital punishment is argued to be an ineffective deterrent to crime, particularly murder. The notion that the fear of death will suppress the murderous instinct in potential killers has been found to be empirically untenable. A comparative analysis of murder statistics in countries with and without the death penalty reveals no significant difference<sup>25</sup>.

Countries that have retained capital punishment show no decline in murder rates, while those that have abolished it do not experience a corresponding rise in murder rates. This empirical evidence contradicts the idea that the death penalty serves as a deterrent to crime<sup>26</sup>.

The preceding discussion underscores the indefensibility, invalidity, and injustice of capital punishment. The global movement advocating for the abolition of the death penalty is gaining momentum. Many countries worldwide have significantly reduced the number of crimes punishable by death, with all the European nations except Belarus and

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<sup>25</sup> Kovandzic TV, Vieraitis LM and Boots DP, "Does the Death Penalty Save Lives?" (2009) 8 *Criminology & Public Policy* 803

<sup>26</sup> "Study: International Data Shows Declining Murder Rates After Abolition of Death Penalty" (*Death Penalty Information Center*, January 3, 2019) <https://deathpenaltyinfo.org/news/study-international-data-shows-declining-murder-rates-after-abolition-of-death-penalty> accessed June 29, 2024

Russia already abolishing capital punishment<sup>27</sup>. Additionally, 11 Latin American nations and- 23 US states have followed suit. Nepal has been without the death penalty since 1931, and in India, while formally not abolished, there is a decline in the number of convicts hanged each year.

Sri Lanka had initially abolished the death penalty, but after the murder of Prime Minister S.W.R.D. Bandaranaike. The UK has also abolished the death penalty in 1998.<sup>28</sup> These global trends reflect a shifting perspective towards the elimination of capital punishment.

## XI. UN RESOLUTIONS AND TREATIES

There is not a specific United Nations (UN) resolution that abolishes the death penalty universally. However, the UN has actively promoted the idea of a moratorium on executions and eventually abolition through various resolutions and treaties.

### A. UN General Assembly Resolutions

In a series of resolutions adopted in 2007<sup>29</sup>, 2008<sup>30</sup>, 2010<sup>31</sup>, 2012<sup>32</sup>, 2014<sup>33</sup>, 2016<sup>34</sup> and 2018<sup>35</sup>, the General Assembly directed states to respect international standards that protect the rights of wrongdoers who have been sentenced to capital punishment. Its objective is to

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<sup>27</sup> "International Law: Abolition Protocols Ratified Last Month" (*World Coalition Against the Death Penalty*) <https://web.archive.org/web/20180822113517/http://www.worldcoalition.org/International-law-abolition-protocols-ratified-last-month.html> accessed June 29, 2024

<sup>28</sup> "Abolition of the Death Penalty" (*British Institute of Human Rights*) <https://www.bih.org.uk/get-informed/what-rights-do-i-have/abolition-of-the-death-penalty> accessed June 29, 2024

<sup>29</sup><https://documents.un.org/doc/undoc/gen/n07/472/71/pdf/n0747271.pdf?token=wmED2ZibUFH7PY9KWN&fe=true>

<sup>30</sup><https://documents.un.org/doc/undoc/gen/n08/480/87/pdf/n0848087.pdf?token=ejdzMpyPSic2ZeBYbw&fe=true>

<sup>31</sup><https://documents.un.org/doc/undoc/gen/n10/524/90/pdf/n1052490.pdf?token=w3DdxyAv0xRXSh184y&fe=true>

<sup>32</sup><https://documents.un.org/doc/undoc/gen/n12/489/16/pdf/n1248916.pdf?token=i9jgMYOFjs2H24T8Yt&fe=true>

<sup>33</sup><https://documents.un.org/doc/undoc/gen/n14/708/68/pdf/n1470868.pdf?token=RIK4KxeNOYV3MDpjKf&fe=true>

<sup>34</sup><https://documents.un.org/doc/undoc/gen/n16/454/48/pdf/n1645448.pdf?token=Q9IkWjVS3EP13EDUBK&fe=true>

<sup>35</sup><https://documents.un.org/doc/undoc/gen/n18/449/69/pdf/n1844969.pdf?token=4R31ioJanuc5DbWfCH&fe=true>

restrict the use of capital punishment and decrease the number of heinous offenses awarded the death penalty.

## **B. Second Optional Protocol to the International Covenant on Civil and Political Rights**

The early 1960s were marked by the use of capital punishment by the majority of the states. However, the drafting minds behind the International Covenant on Civil and Political Rights had already initiated the abolition of the death penalty in an international legal scenario.

Although **Article 6 of ICCPR**<sup>36</sup> Permits the use of the death penalty in limited circumstances, it also provides that:

*“Nothing in this article shall be invoked to delay or prevent the abolition of capital punishment by any state party to the present Covenant.”*

In 1989, after 33 years of abolition of the Covenant itself, the UN adopted the **Second Optional Protocol to the ICCPR**<sup>37</sup> Which gave abolition decisive new momentum. Member states that were parties to the Protocol agreed not to execute anyone within their jurisdiction.

In 1984, the UN Economic and Social Council adopted **Safeguards, guaranteeing protection of the rights of those facing the death penalty**.<sup>38</sup>

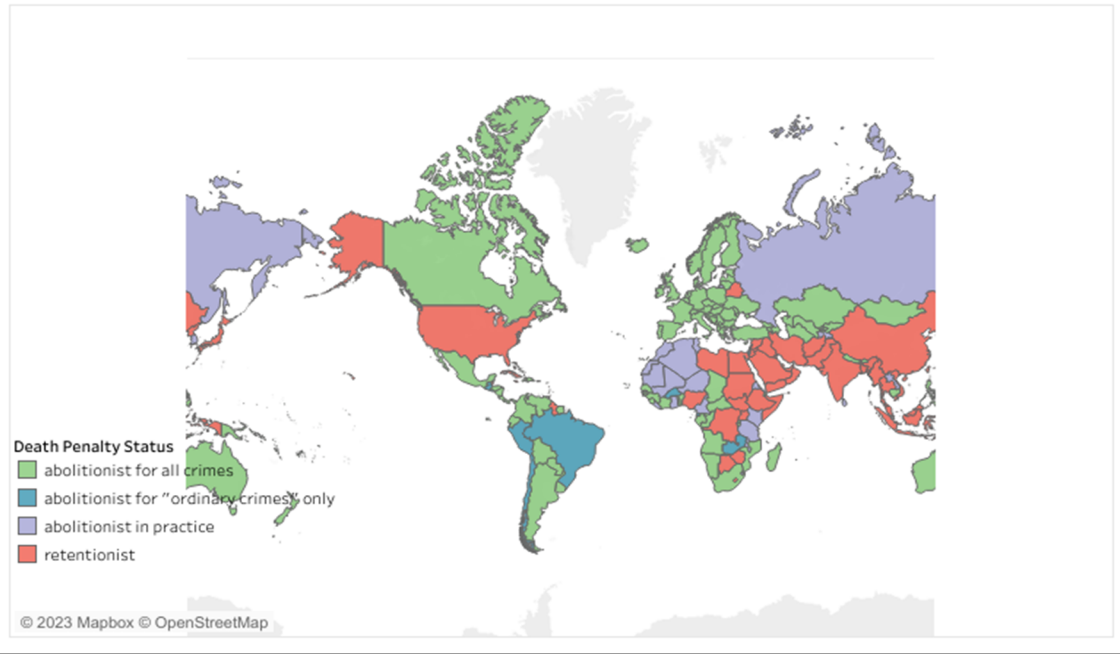
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<sup>36</sup> “International Covenant on Civil and Political Rights” (OHCHR) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> accessed June 29, 2024

<sup>37</sup> “Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty” (OHCHR) <https://www.ohchr.org/en/instruments-mechanisms/instruments/second-optional-protocol-international-covenant-civil-and-political-rights> accessed June 29, 2024

<sup>38</sup> “Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty” (OHCHR) <https://www.ohchr.org/en/instruments-mechanisms/instruments/safeguards-guaranteeing-protection-rights-those-facing-death> accessed June 29, 2024

**Abolitionist and Retentionist Countries**  
 (data from Amnesty International’s 2022 Death Penalty report)



[Information accurate as of December 31, 2022 (Amnesty International)<sup>39</sup>]

Type of Country	NUMBER
Abolitionist for all crimes	112
Abolitionists for ordinary crimes only	9
Abolitionists in practice	23

<sup>39</sup> “Death Sentences and Executions 2022” (Amnesty International, May 15, 2023) <https://www.amnesty.org/en/documents/act50/6548/2023/en/> accessed June 29, 2024

Type of Country	NUMBER
Total abolitionists in law or practice	144
Retained countries	55

*“Amnesty International's 2021 year-end report noted that 579 executions had been recorded worldwide, spread across 18 countries. While this total is 20% higher than the number of executions in 2020, it is worth noting that 2020's executions were slowed by the COVID-19 pandemic and were the lowest since at least 2010. Overall, the worldwide use of capital punishment has trended sharply downward since its peak of approximately 1,600 known executions in 2015.”<sup>40</sup>*

## XII. JUDICIAL PRECEDENTS

The Hon'ble Supreme Court, in **Rajendra Prasad vs. State of Uttar Pradesh**<sup>41</sup>, Justice Iyer opined that the death penalty is a complete violation of Articles 14, 19, and 21 of the Indian Constitution. In this case, the Hon'ble Justice, Krishna Iyer, asserted that there must be two basic requirements to execute capital punishment for any offender. The two requirements are that the reasons for the execution of the death penalty must be cited, and secondly, it must be given only in extraordinary circumstances.

The landmark case of **Bachan Singh vs. State of Punjab** establishes the 'rarest of rare' doctrine. A judgment on the execution of the death penalty was made in this case by a five-judge bench. In the ratio of 4:1, this constitutional bench upheld the constitutionality of capital punishment. It was asserted that the death penalty can only be implemented in extreme instances, i.e., the rarest of rare crimes.

<sup>40</sup> “Countries with Death Penalty 2024” <https://worldpopulationreview.com/country-rankings/countries-with-death-penalty> accessed June 29, 2024

<sup>41</sup> Rajendra Prasad vs. State of Uttar Pradesh, AIR 1979, SCp 916



The constitutionality of the death penalty was again challenged in the **Deena Dayal vs. Union of India**.<sup>42</sup> Case. The challenge was based on the ground hanging from the rope was inhumane, barbaric, and cruel; hence, it violated Article 21 of the Constitution. However, the Hon'ble Supreme Court denied the claim and asserted that the method of execution of the death penalty is within the purview of Article 21.

The Supreme Court of India, while deciding the case of **Ramnaresh and Ors. vs. State of Chattisgarh**<sup>43</sup> Laid down five principles that are to be followed as guidelines by courts across India for determining whether a death sentence is to be awarded or not:

- The Court must use the standard to decide if this is the 'rarest of rare' cases in which a death sentence should be imposed.
- The Court believes that any further sentence, such as life imprisonment, would be insufficient and would not serve the interests of justice.
- The death penalty is an exception rather than the norm.
- Given the nature and circumstances of the crime, as well as other relevant considerations, the option of imposing a life sentence cannot be used with caution.
- The technique (planned or otherwise) and manner (amount of violence and inhumanity, etc.) in which the crime was perpetrated, as well as the circumstances surrounding its occurrence, need to be taken into account.<sup>44</sup>

In another landmark case, **Mithu vs. the State of Punjab**<sup>45</sup>, Supreme Court held that the death penalty given under Section 303<sup>46</sup> Of Indian Penal Code is a violation of the right to equality guaranteed under Article 14 and Article 21 of the Indian Constitution.

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<sup>42</sup> Deena Dayal vs. Union of India, AIR 1983 1155

<sup>43</sup> Ramnaresh and Ors. vs. State of Chattisgarh, AIR 2012 SC 1357

<sup>44</sup> <https://indiankanoon.org/doc/45260772/>

<sup>45</sup> Mithu vs. State of Punjab, AIR 1983 SC 473

<sup>46</sup> "India Code: Section Details" [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_5\\_23\\_00037\\_186045\\_1523266765688&orderno=339](https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=339) accessed June 29, 2024

In the case of **Machhi Singh and Ors. vs. State of Punjab**<sup>47</sup>, a three-judge bench of the Hon'ble Supreme Court upheld the judgment given by the same court in *Bachan Singh vs. the State of Punjab*. The Supreme Court provided certain requisites:

- The extreme penalty of death need not be inflicted except in the gravest cases of extreme culpability;
- Before opting for the death penalty, the circumstances of the 'offender' also require consideration, along with the circumstances of the 'crime'.
- Life imprisonment is the rule, and the death sentence is an exception. In other words, a death sentence must be imposed only when life imprisonment appears to be altogether inadequate punishment having regard to the relevant circumstances of the crime, and only when the option to impose a sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
- A balance sheet of aggravating and mitigating circumstances has to be drawn up, and in doing so, the mitigating circumstances have to be accorded full weightage, and just a balance has to be struck between aggravating and mitigating circumstances before the option is exercised.<sup>48</sup>

### XIII. LAW COMMISSION REPORT

**262<sup>nd</sup> Report**<sup>49</sup>- The following are the arguments that the commission gives for recommending the abolition of the death penalty:

- Although the commission doesn't extend this rationale to its end, one can assume that the specific argument for abolition being made here is premised on the moral belief in the sanctity of human life. Respecting the sanctity of life, a

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<sup>47</sup> *Machhi Singh and Ors. vs. State of Punjab*, AIR 1983 957

<sup>48</sup> Indian Kanoon: <https://indiankanoon.org/doc/545301/>

<sup>49</sup> Saikumar R, "NEGOTIATING CONSTITUTIONALISM AND DEMOCRACY: THE 262ND REPORT OF THE LAW COMMISSION OF INDIA ON DEATH PENALTY" (2016) 12

principle that the commission unearths as existing in the Constitution becomes the basis for its abolitionist argument.

- Second, the commission strongly agrees that the death penalty does not serve the goal of deterrence. It also rejects the retributive claim, stating that “the notion of ‘an eye for an eye, tooth for a tooth’ has no place in our constitutionally mediated criminal justice system. Capital punishment fails to achieve any constitutionally valid penological goals.”
- Third, the commission acknowledges that police investigation is often poor, victims are not well represented by lawyers, and the criminal justice system is ailing with immense problems such as undue delay, overwhelming caseload, etc., thus leading to a rather high probability of error in judgment.
- Fourth, although Bachan Singh laid down the ‘rarest of rare’ exception as a “demanding and compelling” standard, the evolution of this guideline has been dismal. The commission recounts Ravji’s violation of stare decisis, and argues that the application of Bachan Singh has been inconsistent, arbitrary, and judge-centric rather than principled.”
- Fifth, the exercise of clemency powers by state and union governments has been insensitive, delayed, procedurally inefficient, and politicized, and the decisions lack proper application of mind.
- Sixth, religious, caste, and class biases are deeply entrenched in our criminal justice system. An overwhelming majority of the convicts are Dalits, religious minorities, and from backward castes; almost all of them are poor, from the poorer geographical regions, and a majority of them, at some point in the investigation, were tortured into confessions.<sup>50</sup>

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<sup>50</sup> 262 Report of the Law Commission of India, *The Death Penalty*, 217 (August, 2015)

## XIV. CONCLUDING REMARKS

In conclusion, the push to do away with the death penalty – apart from offenses related to terrorism and war – marks a significant advancement towards a society that is more just and compassionate. It represents a group effort to create legal frameworks based on the values of compassion, dignity, and respect for human life. Let us not waver in our quest for a future in which the pinnacle of justice symbolizes not the annihilation but the affirmation of our common humanity as we traverse this path.

### A. Recommendations

- **Life Imprisonment Without Parole:** Sentencing the convict to life imprisonment without parole will be a severe punishment for such a heinous crime, where the current punishment is the death penalty. Imprisonment without parole will ensure that there is no possibility of release for such a heinous offender, and he will spend the rest of his life in prison.
- **Restoring Justice:** Restoring justice means not only punishing the offender for his crime but also compensating the victim. In this way, the focus will shift towards the victim rather than the offender. The offender can take responsibility for the victim for the rest of his life. It also focuses on making amends and engaging with the victim community.
- **Judicial Reforms and Stricter Safeguards:** To avoid the irreversibility of the death penalty, there must be fair trials and judicial reforms. This will include enhanced judicial safeguards and ultimately reduce wrongful convictions.
- **Education and Prevention Program:** In most cases, the reason for committing a crime is a socioeconomic factor. Investing in education and prevention programs will help to spot the reason for the commission of crime, and ultimately, it will help in long-term strategy.

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