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# **CAPITAL PUNISHMENT: A TALE OF TWO SYSTEMS - COMPARING THE DEATH PENALTY IN THE U.S. AND THE REST OF THE WORLD**

AUTHORED BY - PARINITA SANDHU

## **Introduction**

Capital punishment which is also referred to as judicial homicide or death penalty in other words, is the execution which is sanctioned by the state as a punishment to the individual who has committed a serious crime known as capital crime. It is regarded as the most severe form of criminal punishment which is reserved only for the most grievous offenses against the society. Typically, these series of offenses include murder, terrorism, treason acts against the nation and in some cases, espionage or drug trafficking. The term capital derives from the Latin word *capitalis*, meaning “of the head”, historically reflecting extreme execution methods like beheading.<sup>1</sup>

The purpose behind capital punishment or death penalty, is several as it serves as a preventive aiming to preclude potential offenders from committing serious crimes out of the fear of severe punishment<sup>2</sup>. A relative justice view about this is that capital punishment seems to be the most fitted punishment for the most heinous crimes as it provides a sense of justice as well as a fitting closure for the victims and the society. It put out of action the dangerous criminals, guaranteeing that they cannot repeat the offense.

Globally, the landscape of capital punishment is marked by a division between countries that have death penalties and ones who have abolished it. This strikes a global debate over societal values, justice, morality as well as human rights. Meanwhile in the United States, ever since the reinstatement of Capital Punishment in the country, it has always been a topic of debate, which further led to some states abolishing it in their states, while other states chose to continue the practice with the federal government and states imposing moratorium on the

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<sup>1</sup> Naveen Talawar, Capital Punishment in India, iPleaders (July 5, 2023), <https://blog.ipleaders.in/capital-punishment-in-india-2/>.

<sup>2</sup> Stephen D. C. McDonald, Death Penalty (Capital Punishment), Internet Encyclopedia of Philosophy (last updated Jan. 2022), <https://iep.utm.edu/death-penalty-capital-punishment/>.

executions. Currently, capital punishment is considered to be legal at the federal level in 27 states while the others have abolished the practice.

## Historical Brief

Capital Punishment or popularly known as the death penalty shares a long and a very complex history that has span across civilizations throughout the continents. The practice of execution has existed since ancient times. The punishment of executing individuals for the crimes, followed the ancient law codes and legal systems. Babylonian Code of Hammurabi (circa 1750 BCE) was one of the earliest known legal codes that prescribed capital punishment. The code included 25 capital crimes. Another code that included capital punishment back in the ancient times was, The Mosaic Code of the ancient Hebrews, it identified various offenses which were punishable by death, invoking the principle of *Lex Talionis*, meaning “the law of retaliation”.<sup>3</sup>The Draco’s Code of 621 BCE of ancient Athens, punished several crimes by the punishment of death, while later on, the Athenian law famously permitted the execution of Socrates.

Times later, the ancient Romans as well incorporated the punishment of death penalty into their legal system. The 5th century BCE Twelve Tables of Roman law included the death penalty for crimes such as publishing insulting songs or disturbing the nocturnal peace of urban areas. Later Roman law even allowed for the crucifixion of Jesus of Christ. These early practices established capital punishment as a tool of political authorities to enforce societal norms and punish severe misconduct. In the Middle Ages and the early-modern period European states maintained very long lists of capital offenses and developed even more cruel forms of punishment. It must be noted that both secular and religious authorities took part in executions which were most often torturous and carried out in full view of the public. The execution techniques used associated with the period as execution methods were beheading, burning alive, drawing and quartering, hanging, disemboweling, and using the rack, thumbscrews, pressing with weights, boiling in oil, public dissection, castration and others.

The degree of the above tortures was an expected component of establishing capital punishment hence there was an open display of killing and dying both in public as a means of

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<sup>3</sup> Early History of the Death Penalty, Death Penalty Info. Ctr., <https://deathpenaltyinfo.org/policy-issues/history-of-the-death-penalty/early-history-of-the-death-penalty> (last visited Sept. 5, 2024).

asserting the authority of the state. The late 18th century however saw some reform whereby there were less brutal measures used and more procedural measures were adopted.

The twentieth century started witnessing certain changes in the pattern of capital punishment across the world. After the 2nd world war and The Universal declaration of human rights many countries began to gradually abolish the death penalty in their jurisdictions as they deemed it as inhuman. At the turn of the 21st century about 80 percent of the global population resided in countries that had banned the practice, and thirty-five states had imposed a different moratorium on capital punishment.

### **Historical development of Capital Punishment in the U.S.**

Punishment or capital punishment has been practiced in the United States of America for many years during which there has been expansion and abolition of capital punishment. The practice was from the founding of the nation with the first federal execution taking place in 1790. However, in the 19th century the movement for abolition got underway and Rhode Island became the first state to eliminate all mandatory death sentences in 1852 and the second state after the first one to make deliberate and conscious move towards abolition when it passed legislation to eliminate all deaths penalties except the ones for treason in the following year, 1853.

The number of executions started declining and slowly in the early part of the twentieth century which was at its highest in the 1930s at 1,523 and in the 1960 s at 192. This was partly due to the increasing concern of the U. S. Supreme Court in the manner and method of implementation of capital punishment. Still in the year 1972, a significant case of *Furman v. Georgia*<sup>4</sup> temporarily suspended the conduct of executions all over the country. While the Court was unable to reach consensus as to the reasoning behind it, a majority decided that the death penalty, as was being administered at the time, was a violation of the Eighth Amendment and was thus cruel and inhuman.

The *Furman decision* stirred up a new look at laws that had to do with the capital punishment thus making states modify their statutes to get a semblance of standard measures for the unified and fair implementation of the capital punishment laws. In the *Gregg v. Georgia*<sup>5</sup> case,

<sup>4</sup> *Furman v. Georgia*, 408 U.S. 238 (1972).

<sup>5</sup> *Gregg v. Georgia*, 428 U.S. 153 (1976).

the supreme court of the United States of America re-affirmed the death penalty and set procedural measures as to when it could be implemented. The Court held that it was constitutional to impose the death penalty provided that this is done under certain stipulations which included the provision of a new trial and sentencing phase during which the judges have to compare the facts of the capital crime to that of other similar crimes to establish the degree of their penalty.

### **Current Status of Capital Punishment in the U.S.**

The legal status varies from one state to another at federal level, state level

#### 1. Federal Law

-The federal government employs the death penalty and has performed executions in the current years.

-In July 2021, for instance, the U. S. Attorney General banned federal executions for six months while he investigated policies in place and protocols followed.<sup>6</sup>

#### 2. State Laws

-Currently, fifty states in the United States admit the practice of capital punishment but only twenty-seven have it legal.

-Thus, 23 states have announced the complete abolition of the death penalty.

-Colorado, Connecticut, Delaware, Maryland, New Hampshire, New Jersey, New Mexico, New York and Washington have abolished the doctrine prospectively or, in a few cases, retrospectively.

-Oregon has also recently been involved in a process of narrowing down the range of the crimes which would qualify the perpetrator for the death penalty according to the state legislation. Then the state Supreme Court concluded that it was unconstitutional to execute persons when their crimes were no longer prosecutable.<sup>7</sup>

The Supreme Court has established certain constitutional requirements for the application of the death penalty such as In *Furman v. Georgia* 1972, the court provided a brief moratorium on the executions, they were of the view that the death penalty was unconstitutional or rather its application was unconstitutional in the period in question. Thus, in *Gregg v. Georgia*

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<sup>6</sup> State by State, Death Penalty Info. Ctr., <https://deathpenaltyinfo.org/states-landing> (last visited Sept. 5, 2024).

<sup>7</sup> *id*

(1976)<sup>8</sup> the Court decided that applying the death penalty sanction is not contrary to the Eighth Amendment if the following conditions are met first, the defendant and his case are tried separately and second, the court has to assess the character and nature of the capital offense against the background of other similar cases. Like any other prosecutors, they are banned from discriminating against the accused on matters of race or ethnicity in relation to the capital sentence.

As per the federal law, it is mandatory on the part of U. S. Attorneys to forward all cases, which are involving a pending charge of an offense, for which the death penalty is authorized, for centralized review process. In a criminal case, defendants are given a right to be represented by two lawyers, one of which must be knowledgeable in the law relating to capital crimes.

Thus, as long as capital punishment is still legal at federal and over half of the states, its use is contingent on numerous constitutional provisions and state laws. In recent years, some of the states have either restricted or in some cases altogether ban the practice of the death penalty.

### **Demographics**

The current composition of the death row inmates in the criminal justice system in the United States reflects high racial, gender and socio-economic disparities. African Americans are overrepresented and most of them are young men, who comprise a huge majority of the prison population. Moreover, many of them have had a poor education and criminal records and many of them come from impoverished homes. Such issues help fuel controversies over the issues of absolute fairness and social justice reflected by the death penalty in the U. S. justice system, implying the further necessity for critical analysis and improvements.

#### **1. Race**

As per early 2024, the racial composition of death row is as follows:

- White: About 42 % (that is, 930 inmate)
- Black: About 41 percent, that is 846 to 899 inmates.
- Hispanic: About 14 percent of the population i. e. 317 inmates.

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<sup>8</sup> *Gregg v. Georgia*, 428 U.S. 153 (1976).

- Asian: About 2 per cent (that is around 42 inmates)
- Native American: This, therefore, means that about 24 inmates or 1 % of the total number of inmates under detention.

African Americans are only 13% of the U. S.'s population yet are 41% of those on death row. In this regard, there is an over-representation of African Americans in imposing the death penalty that strongly indicates that there is a racial aspect in the application of the death penalty. Research has proved that when the victim is white, defendants are more likely to be given the death penalty. This is racial discrimination in capital cases. For instance, it was suggested that roughly 80 % of all capital offenses are committed against white people but white people constitute only 50% of murder victims in the U. S.

## 2. *Gender*

In most of the cases, the prisoners at the gallows are actually prisoners of male gender. The male inmates make up 8% of the death row while the females comprise about 2%. These emphatic gender differences are to be expected given trends in criminal justice where man is more involved in violent crime. However, today, with more than 3,500 people executed since 1976, only 17 of them were women and more than 1,500 were men pointing to the fact that women receive the death penalty much less.

## 3. *Socioeconomic Factors*

Another demographic of importance towards the death row inmates is their socioeconomic status. It is a fact that many defendants who end up on death row, had a bad start in life, and many are illiterate. Currently, over 70 percent of the death row inmates did not complete high school or received a GED, while only 12 percent of the adult population of the United States do the same. Based on such educational attainment, most of the condemned might have been disadvantaged in issues of educational necessities hence might not have gotten relevant factors that ensure good results in academics which may be an implication for high incidences of criminality. Moreover, more than half of them have prior history of felony, and about 67% of the death row inmates have other criminal records. This in effect means that socially deprived defendants are likely to continue with criminal activities and will be most likely to be given a death penalty<sup>9</sup>.

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<sup>9</sup> Race and the Death Penalty, NACDL, <https://www.nacdl.org/Content/Race-and-the-Death-Penalty> (last visited Sept. 4, 2024).

#### 4. *Mental Health*

The population of prisoners who are on the death row has been cited to report a high percentage of mentally ill people with over ten percent of them having a severe mental disorder. This is much more than the estimated percentage. The paucity of freshwater sources that are easily accessible to hundreds of millions of people across the world translates to means that millions of people do not have access to drinking water. A similar percentage of the general American adult population has been reported to suffer from similar conditions. Ethically, socioeconomic status and race, combined with mental disorder, make for a grim world and raise questions where the death sentence to persons of subpar mental capability is humane or warrants the death penalty for their crimes.

### **International Perspectives about Capital Punishment**

Countries around the world can be categorized into two main groups regarding capital punishment: abolitionist and retentionist countries. This classification is based on their legal position on the death penalty and the level at which they use it.<sup>10</sup>

1. *Abolitionist Countries:* Countries that are abolitionists of the death penalty have no death penalty for all sorts of crimes or have not carried out any execution for a long time such that they can also be termed to be abolitionist in practice. Notable examples include:

- *Canada:* Eliminated the death penalty in 1976 for all crimes because of a belief that human rights and working to rehabilitate people held more value than fiscal retribution.
- *United Kingdom:* Capital punishment was removed for murder in 1965, with the last death penalty taking place a year earlier. In the years since, much of the UK has shown preference for tariffs and life imprisonment.
- *Australia:* Federal ban in 1973, states have also removed the death penalty. What Australia Stresses on Rehabilitation, Restorative Justice?
- *Germany:* Abolished the death penalty in 1951 for all crimes, showing solidarity with human rights following World War II.

The reason behind the abolishment of capital punishment is often cited as moral, ethical and humanitarian reasons by these countries. These countries have always emphasized over the possible wrongful convictions and emphasized the fact that the state should not take away a life.

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<sup>10</sup> Abolitionist and Retentionist Countries, Death Penalty Info. Ctr., <https://deathpenaltyinfo.org/policy-issues/international/abolitionist-and-retentionist-countries> (last visited Sept. 1, 2024).

2. *Retentionist Countries*: These states remain to employ this penalty for a variety of offenses including the serious ones. Prominent examples include:

- *China*: The largest consumer of the death penalty is China together with the USA, which uses the death penalty for murder, drug trafficking, and some economic crimes. It is not known how many are executed, however there are suggestions that indicate thousands of people are executed each year.
- *Iran*: It is often used in cases like murder, drug related offenses and some forms of political crimes. The use of the death penalty is still widely exercised in Iran and the country has one of the highest execution rates per capita anywhere in the world.
- *Saudi Arabia*: Capital punishment is employed for many kinds of crimes for example, murder, trafficking in drugs and treason, apostasy. Sentences are usually carried out in the public arenas in a show of respect of the anti-west Sharia laws.
- *United States*: Which is the only country in the Americas that proactively participates in executions of people including for civil offenses. Currently 27 states permit the death penalty, and the use of the death penalty and the approval rating have many differences across the states.

Retentionist countries usually come up with reasons that support application of the death penalty in the society to discourage evil doers as well as dish out justice to the victims. However, they still receive a lot of complaints concerning human rights abuses, lack of the rule of law and are likely to execute innocent people.

An assessment can be made between retentionist and abolitionist nations to allow comparison of essential disparities in legal, cultural, and ethical standards of capital punishment. Abolitionist countries prioritize human rights, rehabilitation, and the prevention of wrongful executions, while the retentionist countries often emphasize retribution, deterrence, and maintaining social order in the society.

## CASE STUDIES

The nature and application of capital punishment also differs from one country to another owing to cultural, legal and sociological considerations. Here are concrete examples from different countries which show these differences.<sup>11</sup>

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<sup>11</sup> Capital Punishment, Gale, <https://www.gale.com/open-access/death-penalty> (last visited Sept. 1, 2024).

1. China: Punishment by execution is still deeply rooted in China where latest statistics show that more people are executed here than anywhere else in the world with the Chinese authorities not revealing these figures to the public as they consider it state secrets. They use capital punishment for various offenses such as murder, drug trafficking and other vices such as corruption.

*Cultural and Legal Factors:* The Chinese government has always seen capital punishment as a means of having order in the society and curbing on cases of crime. There is a culture of rapid trials and severe punishment in the legal system since the society supports retributive justice and values its security. Chinese legalism has also been termed as unfair and lacking in transparency in almost all pretrial processes; forced confessions and unsuitable legal representation cases.

*Social Factors:* Surveying the Chinese citizens' perception, the majority holds a positive attitude towards the death penalty regarding it as a justice and as a deterrent. The enhancements by the state-run media towards punitive measures calling for war against crime camp up the cultures in the denial of capital punishment.

2. Saudi Arabia: The country is an absolute monarchy that adheres to Islamic sharia law: this is why capital punishment is used for murder, drug trafficking and blasphemy. Public beheading is common and usually the method of executing a high-profile prisoner.

*Cultural and Legal Factors:* All these are embedded in civil law and Sharia law which forms the legal system in Saudi Arabia, and this supports use of capital punishment so as to correct and maintain moral and social order. The legal system is a rigid one and offers considerably little protection to defendants, and trials might be conducted in a hurry and are usually not open to the public.

*Social Factors:* As being a part of an Islamic country, it is evidently measurable that capital punishment takes pleasure within Saudi Arabia in the light of its cultural and religious values. The government supports executions claiming it helps to keep the order and maintain Islamic standards while the idea is popular among the majority of the population.

3. Canada: The country already had no death penalty since 1976 for any type of crime also

prompted by cultural changes that support rehabilitation and human rights.

*Cultural and Legal Factors:* In Canada, the objective of punishment is rehabilitation, and absence of death penalty is regarded as the respect for human rights and human person. The legal provisions include provision for non-imprisonment measures like ‘life imprisonment without possibility of a parole.’

*Social Factors:* An analysis of the opinions that Canadians have concerning the death penalty shows that a majority of them now have negative attitudes towards the same with regard to wrongful convictions and the fact that the state has no right to take the life of another. This cultural perspective can be said to conform to the general Canadian outlook towards social justice and human rights.

4. United States: Unlike the above-mentioned countries, there is divergence in America as some of the states continue to use the death penalty while others have abolished the practice. Twenty-seven states authorize the death penalty while the methods that have been used include lethal injection, electrocution and firing squad.

*Cultural and Legal Factors:* Capital punishment is legal in the United States although its use differs from one state to another. They have triggered reforms and the placing of moratoriums to some of the state’s due to legal hurdles and societal opinion. Historical court cases in the Supreme Court that are important include *Furman v. Georgia* and *Gregg v. Georgia* that have informed the population about the application of the death penalty fairly and the requirement of due process of the laws.

*Social Factors:* There are two schools of thought on the death penalty throughout the United States with some arguing that it is a crucial way of discouraging wrongdoers while others arguing that it is unfair. Racial discrimination has also been prosecuted leading to various controversies as to why death penalty should continue to be practiced leading to a Public Opinion on Capital Punishment: U. S compared to other Countries Capital punishment and its perception have a huge difference between the United States and other countries due to cultural, legal and social differences. Highlighted in this analysis are these differences with the help of data of recent surveys and polls.

#### *About Public Opinion in the United States*

The opinions of people in the U. S. regarding the death penalty have been changing over some

time. A survey conducted by Pew Research Center in the U. S. in the year 2021 reveals that about 60% of the American adults support the death penalty for those convicted of murder while 64% supported that option because it is morally right under certain circumstances. However, there are certain questions concerning its usage: 63% of the respondents are sure that the death penalty discourages serious crimes and 78% are worried about the miscarriage of justice which may result in execution of innocent persons.<sup>12</sup>

- Demographic Variations: Pulse for capital punishment differs considerably in relation to the demographic characteristics. Hoping, 77% of Republicans support this penalty while only 46% of democrats do. Similarly, educational levels play a role with higher levels of opinion towards the programme among people with low educational standards.

- Trends Over Time: The main survey question has been “Do you support the use of the death penalty”? It was in the mid 1990 that the death penalty was more supported with about 80% support, and it has been declining all the way to stand at 53% in 2023. This may be due to a shift in the social values as well as increased information regarding the injustices of capital punishment, racism and injustice in the convictions among other things.

#### *Opinion of the People in Other Nations*

On the other hand, a number of countries have ended the ‘death penalty’ or, at least, a majority of the population is not in favor of its practice. For example:

- European Union: The polity on Capital punishment in the EU is in a very negative perspective with the EU regarding capital punishment as violation of human rights. When using exit polls that measure the level of support by its members, it is evident that the level of support for the death penalty is low. For instance, sometimes it may be lower than 30% of the population in countries like the UK, and Germany.

- Japan and South Korea: Currently, the death penalty is still existent in Japan and the public’s approval rate for it is relatively high, according to the survey, it is about 80%. The other country that also reveals strong support for capital punishment includes South Korea and there has been a gradual campaign in support of its total ban lately.

- Canada and Australia: The two countries have actually omitted the death penalty and generally people of the two countries have rejected it. In every survey conducted in Canada over the years, the level of support for the death penalty as a form of punishment has been low and recently it touched 30 percent in all the polls conducted. Similarly, to other

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<sup>12</sup> 10 Facts About the Death Penalty in the U.S., Pew Research Ctr. (July 19, 2021), <https://www.pewresearch.org/short-read/2021/07/19/10-facts-about-the-death-penalty-in-the-u-s/>.

developed countries, such as Australia, people's opinion has evolved to consider the death penalty as unjust and inadmissible. of the death penalty in many areas.

### **Conclusion**

Thus, capital punishment stands as one of the most discussed phenomena in the American contemporary legal system, which is characterized by high levels of racial and economic discrimination as well as extremely high risk of the miscarriage of justice. Despite the fact that many citizens of the United States still believe that capital punishment is correct, doubts arise due to the ethical issues and the probability for an injustice. This transition of public opinion can be explained in the social context on the liberalization of the death penalty where many nations have realized that the penalty contravenes with the modern paradigms of the rights of human beings. From those considerations one can turn to the future, and it is at this point pertaining to America that the country is at crossroads as to capital punishment. Some of these sources of law may be more persuasive, for example, the lessons learnt from other countries' practices and the changing definition and perception of human rights may help to bring about change. Possible reforms that may include the scrapping of the death penalty, a mandatory life without parole regime from a number of crimes, a reform that extends constitutional rights to the minorities, and other provisions, may go a long way in offering the U. S justice system a deserved positive image of fairness and justice. Finally, it is imperative to note that the debate on capital punishment in the U. S still has to factor in the legal aspect as well as the moral aspect but most importantly the people aspect. Continuing the global trend of abolition, the U. S. has a chance to reconsider the trend of justice, which may shift toward the model based in rehabilitation and restorative justice instead of punitive one. Whether capital punishment will remain a part of the American legal system in the future cannot be said with certainty; however, the asynchronous panorama of endeavors and revelations may shed light on the course in the country.