

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of

International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

THE DEATH PENALTY IN INDIA: COLONIAL ROOTS AND CONTEMPORARY CHALLENGES

AUTHORED BY - SHRADDHA CHOUDHARY & KHUSHI SAXENA

ABSTRACT

The death penalty in India remains a contentious issue, sparking intense debate between proponents and opponents. This abstract explores the evolution of the judicial perspective on capital punishment, examining its historical context, constitutional validity, and the evolving standards of its application. The study delves into the landmark cases that have shaped the jurisprudence surrounding the death penalty, analysing the shift from a "rarest of rare" doctrine to the current framework. It assesses the impact of international human rights norms and the influence of socio-political factors on judicial decisions. The challenges faced by the judiciary in balancing the need for retribution, deterrence, and the fundamental right to life. Furthermore, it examines the arguments for and against the death penalty, including its effectiveness as a deterrent, the risk of executing innocent individuals, and the potential for arbitrariness in its application. This analysis aims to provide a comprehensive understanding of the complex legal, ethical, and social dimensions of the death penalty debate in India, offering insights into the on-going evolution of judicial thought on this critical issue.

INTRODUCTION

The death penalty, also known as capital punishment, stands as one of the most controversial and debated practices within the realm of criminal justice. It represents the ultimate punishment, the legally sanctioned taking of a human life by the state as retribution for a crime. Its existence and application are steeped in complex moral, ethical, and legal considerations, sparking fervent discussions across cultures, societies, and philosophical schools of thought. The evolution of the death penalty stretches back to antiquity, with evidence of its use found in ancient civilizations. Over time, the methods of execution have evolved, from brutal forms like crucifixion and beheading to the more "humane" methods of lethal injection and electrocution. The crimes for which it has been applied have also varied, encompassing offenses ranging from murder and treason to petty theft and religious dissent.

One of the primary philosophies of the death penalty is rooted in the concept of retribution. This philosophy suggests that punishment should be proportionate to the crime committed. In the case of murder, proponents argue that the taking of a life demands a corresponding penalty: the forfeiture of the perpetrator's own life. This perspective often finds support in religious and moral doctrines that emphasize the sanctity of life and the need for justice to be served.

The significant concern is the risk of executing innocent individuals. The justice system is fallible, and errors can occur. The irreversible nature of the death penalty means that any wrongful execution cannot be rectified. This risk is particularly concerning given the potential for prosecutorial misconduct, inadequate legal representation, and the fallibility of forensic evidence.

Furthermore, opponents often highlight the issue of discrimination in the application of the death penalty. Studies have shown that the death penalty is disproportionately applied to individuals from marginalized communities, particularly those of colour and those with limited financial resources. This disparity raises questions about fairness and equal justice under the law.

The death penalty in India stands as a stark symbol of the on-going struggle between justice and human rights, a debate that has resonated through the nation's legal and social fabric for decades. The very notion of state-sanctioned killing is fraught with complexity, prompting intense scrutiny of its moral, ethical, and practical implications. The evolving judicial perspectives on capital punishment in India, tracing the historical context, examining key legal precedents, and analysing the arguments that fuel this enduring controversy. The objective is to provide a comprehensive overview of the issue, considering its legal, social, and philosophical dimensions.

HISTORY AND BACKGROUND

Before the advent of British rule, India had diverse legal system shaped by local customs, religious practices, and dynastic rule. While the death penalty was practiced in ancient India, it was not uniformly applied.

- **Manusmriti and Dharmshastra:** Hindu jurisprudence permitted the death penalty for severe crimes, particularly homicide and treason. However, it emphasized restorative justice and proportionality.

- Islamic law: Under the Delhi sultanate and Mughal rule, Islamic criminal law sharia prevailed, which prescribed the death penalty for crimes like murder and apostasy, but with allowances for pardon and financial compensation.
- Customary law: Indigenous ruler often governed through local customs, where the death penalty was considered a last resort.

1. Colonial Influence and use of Death Penalty

The historical development of the Death Penalty in India reveals a complex interplay between colonial influences and indigenous practices. The Death Penalty introduced in India as the Capital Punishment during British Rule, was largely shaped by the utilitarian philosophies underpinning colonial law, which sought to impose a singular legal framework upon a diverse society.

In 1860, The Indian Penal Code was enacted under British rule and became the cornerstone of India's criminal justice system. The IPC consolidated colonial legal power. **Section 302 of IPC¹** prescribed the death penalty for murder, introducing a uniform legal standard across colonial India.

During the British era, capital punishment was widely used as a tool to suppress dissent and control the population. Many freedom fighters, including notable figures like Bhagat Singh, Rajguru, and Sukhdev, were executed by the British for their involvement in the Indian independence movement. These executions fuelled widespread resentment and protests against colonial rule, further solidifying the association between the death penalty and political oppression.

Most recognized and remembered instance of capital punishment during the colonial rule was the **execution of the revolutionary Bhagat Singh and his associates in 1931²**, an event that became a turning point in India's struggle for independence. Their execution ignited public outcry and further galvanised the Indian independence movement.

➤ Socio-Political Impact of Colonial Influence

A. Perpetuation of Fear and Control: The death penalty's colonial use as a tool of fear remains embedded in public consciousness. Even post-independence, its application often targets marginalized communities and dissenters.

B. Legal Consciousness: The colonial narrative that capital punishment is necessary

¹ Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

² SS-103/SF-103/23.03.2007.

for maintaining order has persisted. Despite reforms and judicial scrutiny, courts often lean on the deterrence rationale established during colonial rule.

C. Political exploitation: Like the British, post-colonial governments have occasionally used the death penalty to suppress dissent, particularly under anti-terror laws.

2. Retention of Death Penalty Post Independence

Following India's independence in 1947, the retention of death penalty in India post-independence has been marked by a tension between upholding the right to life and recognizing the state's authority to punish heinous crimes. The newly established Republic of India inherited the colonial legal system including the IPC, which continued to prescribe the death penalty for certain offences. The Indian Constitution, which came into effect in 1950, guarantees the **Right to life and personal liberty under article 21**.³ However, the framers of the constitution did not abolish the death penalty outright, leaving it to be regulated by the judiciary.

- Crimes punishable by Death penalty through IPC
- *Murder (Section 302 of IPC⁴)*- The most common offence for which the Death Penalty is imposed.
- *Terrorism- related offences*- Crimes involving waging war against the government (*Section 121⁵*), and terrorist acts under special laws such as the unlawful Activities (prevention) Act.
- *Rape leading to death*- as per the amendments to the IPC after the 2013 Delhi gang rape case, repeat offenders (*section 376 E of IPC⁶*) or those whose sexual crimes result in death can face the death penalty.
- *Kidnapping and Ransom (section 364 A of IPC⁷)*- the death penalty in case of

³ Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁴ Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

⁵ Waging, or attempting to wage war, or a betting waging of war, against the Government of India. Whoever wages war against the [Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or [imprisonment for life] [and shall also be liable to fine].

⁶ Punishment for repeat offenders.—

Whoever has been previously convicted of an offence punishable under section 376 or section 376A or [section 376AB or section 376D or section 376DA or section 376DB,] and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

⁷ Kidnapping for ransom, etc.—

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the

kidnapping for ransom where harm or death occurs.

➤ Provisions of Indian Constitution regarding Death Penalty

- *Article 21 of Indian Constitution*⁸ -guarantees right to life and personal liberty to all citizens, but it allows for exception in case of procedures established by law, which means that death penalty can still be imposed as long as there is a legal basis.
- *Article 72 of Indian Constitution*⁹ -provides President the power to grant pardons, reprieves, respites, or remissions of punishment or to commute the sentence of any individual sentenced to death.
- *Article 161 of Indian Constitution*¹⁰ - provides State the power to grant pardons, reprieves, respites, or remissions of punishment or to commute the sentence of any individual sentenced to death.

The first major Supreme Court judgment regarding the death penalty is the ***Jagmohan Singh v. State of Uttar Pradesh***¹¹, where the Supreme Court upheld the constitutionality of Capital punishment, ruling that it did not violate Article 21. The court reasoned that the death penalty could be imposed only after following the due process of law, ensuring that the convict's right to life was not arbitrarily taken away.

Another landmark case of ***Bachan Singh v. State of Punjab***¹² defined the scope of the death penalty in India. In this case the Supreme Court established the “rarest of rare” doctrine, which restricted the application of the death penalty to only the most egregious cases. The court held the death penalty as an exception to be used only when the crime was so heinous that life imprisonment would be inadequate.

Government or any foreign State or international inter-governmental organization or any other person to door abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

⁸ Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁹ Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

(1)The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence--(a)in all cases where the punishment or sentence is by a Court Martial;(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends; (c) in all cases where the sentence is a sentence of death.

¹⁰ Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

¹¹ (1973)1SCC20

¹² (1980)2SCC684

CONSTITUTIONAL FRAMEWORK REGARDING THE DEATH PENALTY

The constitutional dimensions of the death penalty in India are deeply intertwined with the fundamental rights, judicial principles and legislative provisions. Though the Indian constitution does not explicitly mention the death penalty, various provisions interact to influence how it is applied.

1. Right to life under Article 21 of Indian Constitution¹³

The death penalty has long been a point of contention because it involves the state's power to end a person's life. Critics argue that the death penalty violates this fundamental right, whereas the state contends that the death penalty is an exception permissible under the procedure established by law.

Article 21 has evolved over time through judicial interpretation, and while the Supreme Court initially upheld the death penalty, it emphasized that the procedure must be just, fair and reasonable.

In the case of *Maneka Gandhi v. Union of India*¹⁴, the court ruled that "procedure established by law" must be just, fair and reasonable and not arbitrary or oppressive. This ruling expanded the scope of Article 21 to ensure that even if capital punishment is allowed, its application must meet a high standard of fairness.

➤ Protection of Life and personal liberty Article 21 of Indian Constitution

Article 21 has often been used to argue against capital punishment, as it guarantees the right to life. However, the provision does allow for exceptions when a law is followed that satisfies due process of requirements.

While in some cases the court has upheld the constitutionality of the death penalty, it has consistently emphasized the need for a rigorous judicial review process. The death penalty must be imposed only after carefully weighing aggravating and mitigating factors.

In the case of *Vikram Singh v. Union of India*, the court continued to recognize that despite the constitutional guarantee of the right to life, the death penalty could be constitutionally applied in extreme cases.

¹³ Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

¹⁴ (1978)2S.C.R. 621

2. Power of President to grant Pardons, Reprieves, etc. Article 72 of Indian Constitution¹⁵

Article 72 give the President of India the power to grant clemency in cases of individuals sentenced to death. This provision serves as a check on the judicial system by allowing the President to intervene in exceptional cases.

The power includes the ability to pardon, commute, or reprieve the death penalty. It can be used when the President believes that there are compelling reasons to modify the sentence.

In the case of *Kehar Singh v. Union of India*¹⁶, the Supreme Court Clarified that the President's decision regarding the exercise of Article 72 powers is final, and it cannot be subjected to judicial review unless the decision is arbitrary or irrational.

The provision underscores the discretionary nature of the death penalty, allowing the executive to step in and grant mercy in cases where strict application of the law might be seen as unjust.

3. Power of governors to grant pardons, reprieves, etc. Article 161 of Indian Constitution¹⁷

Article 161 vests powers in State Governors, allowing them to grant mercy or alter sentences for crimes committed within their state jurisdiction. The power under article 161 is discretionary power of the State Governor and it is meant to serve as a safeguard against the harshest forms of punishments, including the death penalty.

In the case of *Maru Ram v. Union of India*¹⁸, the court emphasized that the Governor must exercise the clemency powers judiciously.

Therefore, the use of the powers under this article is often based on humanitarian grounds or in case where the person has shown remorse or there are special circumstances such as age, mental health issues, or social background that may warrant a lesser punishment.

¹⁵ Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence--(a) in all cases where the punishment or sentence is by a Court Martial; (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends; (c) in all cases where the sentence is a sentence of death.

¹⁶ (1989)1SCC204

¹⁷ Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

¹⁸ (1981)1SCC107

4. Right to Equality Article 14 of Indian Constitution¹⁹

Article 14 in context of death penalty implies that, the death penalty must be imposed in a non- arbitrary and non-discriminatory manner. The Supreme Court has emphasized that judicial discretion in sentencing must follow a fair and consistent standard.

In the case of *E.P.Royappa v. State of Tamil Nadu*²⁰, the Supreme Court ruled that arbitrariness violates Article 14 and this principle applies to the death penalty, ensuring that sentencing does not depend on subjective judicial discretion.

Whereas, In the case of *Channulal Verma v. state of Chhattisgarh*²¹, the Supreme Court commuted the death sentence due to lack of uniform sentencing, highlighting that similar case must be treated equally.

5. Right to Constitutional Remedies Article 32 of Indian Constitution²²

Article 32 in the context of the death penalty states that, death convicts can challenge their sentence before the Supreme Court using article 32. This ensures judicial review of unfair trials.

In the case of *Navneet Kaur v. State of NCT of Delhi*²³, the Supreme Court commuted Devinder Pal Singh Bhullar's death sentence due to 14-year delay in mercy petition.

JUDICIAL EVOLUTION OF DEATH PENALTY: PRECEDENTS- SETTING JUDGMENTS

In India, the death penalty has been a divisive topic for many years, generating much discussion and debate. The nation's legal system, judicial rulings, and constitutional framework have all significantly influenced the direction of this discussion. This essay explores the judicial development of the death penalty in India, following significant

¹⁹ Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

²⁰ (1974)4SCC3

²¹ (2018)14S.C.R.355

²² Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.(2)The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, whichever maybe appropriate, for the enforcement of any of the rights conferred by this Part.(3)Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction ill or any of the powers exercisable by the Supreme Court under clause (2).(4)The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

²³ (2014)7SCC264

events and turning points in the nation's highest court.

1. Early Years: 1950s-1970s

Early on after India gained its independence, the Supreme Court took a comparatively conservative stance on the death penalty. For example, in *Babu Singh v. Punjab State*²⁴, as well as *Narayan v. State of Maharashtra*²⁵, the Court confirmed the trial courts' authority to apply the death penalty and upheld the constitutionality of the death penalty. Nonetheless, the Court started adopting a more sophisticated stance in the 1970s. Regarding *Rajendra Prasad v. In the State of Uttar Pradesh*²⁶, the Court made a major change in its stance by ruling that the death penalty should only be applied in the "rarest of rare" circumstances.

2. The 'Rarest of Rare' Doctrine

The concept of the "rarest of rare" was initially introduced in the case of *Rajendra Prasad v. In the State of Uttar Pradesh*²⁷, the Court's stance on the death penalty has been based on the theory maintains that there should be no exceptions to the death penalty and that it should only be applied when the crime is extremely cruel or heinous.

In *Bachan Singh v. State of Punjab*²⁸, the Court elaborated on this theory, concluding that capital punishment ought to be applied only in cases where there is a "special reason" to support it. The Court ruled that this special justification had to be based on the facts of the case and show that the accused is a persistent danger to society.

3. Recent Developments: 2000s-Present

The Court's stance on the death penalty has been further developed in recent years. The case of *Dhananjay Chatterjee v. State of West Bengal*²⁹, the Court underlined the necessity of a "meticulous and careful" approach to the death penalty while restating the "rarest of rare" doctrine. regarding *Sangeet v. State of Haryana*³⁰, the Court ruled that the death penalty ought to be applied only in cases where the accused has "no possibility of reform or rehabilitation.". The Court's continue dedication to protecting the accused's

²⁴ AIR 1952 SC 7

²⁵ AIR 1967 SC 1

²⁶ 1979 S.C.R.(3) 78

²⁷ 1979 S.C.R.(3) 78

²⁸ (1980) 2 SCC 684

²⁹ (2004) 9 SCC 751

³⁰ (2013)2SCC452

rights and making sure that justice is done is demonstrated by these rulings.

4. International Human Rights Norms

A major influence on the Court's stance on the death penalty has also come from India's responsibilities under international human rights law. Regarding *Bachan Singh v. State of Punjab*³¹, the Court concluded that the death penalty should only be applied in the "rarest of rare" circumstances in citing India's responsibilities under the International Covenant on Civil and Political Rights (ICCPR). In *Sangeet v. State of Haryana*³², the Court emphasized the need for a "meticulous and careful" approach to the death penalty.

5. Impact of Judicial Evolution

India's criminal justice system has been significantly impacted by the country's judicial development of the death penalty. The number of death sentences given by Indian courts has significantly decreased as a result of the "rarest of rare" doctrine in particular. A sophisticated and nuanced approach to the death penalty is also reflected in India's judicial development of the death penalty. The Supreme Court has debated the moral, ethical, and legal ramifications of the death penalty since the early years of India's independence. The number of death sentences in India has gradually decreased over the last few decades, from 774 in 1995 to just 136 in 2015, according to data from the National Crime Records Bureau. This decrease is a reflection of the Court's dedication to protecting the accused's rights and its increasingly stringent stance on the death penalty. The Court has attempted to strike a balance between the demands of justice, human rights, and the rule of law through its seminal rulings and guidelines. The Court's changing stance will continue to play a significant role in determining the direction of the death penalty controversy.

DEBATE ON DEATH PENALTY AS PUNISHMENT

The death penalty, also known as capital punishment, is one of the most controversial and debated forms of punishment worldwide. It involves the execution of an individual by the state as a penalty for committing certain crimes. The debate over the death penalty revolves around its morality, effectiveness, constitutionality, deterrent effect, and fairness in implementation.

This discussion is further structured into arguments in support and arguments against the

³¹ (1980)2SCC684

³² (2013)2SCC452

death penalty, supported by factual descriptions, statistical evidences, case laws and varied perspectives.

1. Arguments in support

A. 1 Theory of Deterrence-the death penalty acts as a strong deterrent against heinous crimes Deterrence theory is a concept in criminology and international relations that suggests that the threat of punishment or retaliation can prevent people from engaging in undesirable or illegal behaviour. It operates on the principle that individuals or states will avoid actions that lead to negative consequences, such as death penalty or military retaliation, if the penalties are perceived as certain, severe and swift.

The principle suggests that harsh punishments discourage people from committing crimes. The fear of losing one's life is the strongest deterrent, preventing individuals from committing serious crimes like murder, terrorism and rape.

Evidence and Case laws:

Jagmohan Singh v. State of Uttar Pradesh³³, the Supreme Court upheld the constitutionality of death penalty, stating that it serves as a deterrent against serious crimes.

Bachan Singh v. State of Punjab³⁴, introduced the "rarest of rare" doctrine, ensuring that only extreme cases receive the death penalty.

Statistical evidence countries with strict capital punishment laws, such as China and Saudi Arabia, report lower violent crime rates than countries with lenient punishments.

A. 2 Death penalty ensuring justice for victims and their families

Families of victims suffer emotional trauma and psychological distress after losing a loved one. Knowing that the criminal will never harm again gives them a sense of justice.

Evidence and Case laws

Nirbhaya case (Mukesh v. state)³⁵, the brutal gang rape and murder of 23-year old woman in Delhi led to nationwide outrage. The Supreme Court sentenced the convicts to death, acknowledging the severity of the crime and the need for justice.

Dhananjay Chatterjee v. State of West Bengal³⁶ Dhananjay Chatterjee was executed for raping and murdering a 14-year old girl. The court held that justice demanded the harshest punishment for such heinous crimes.

Factual Analysis without the death penalty, families may feel that justice is incomplete,

³³ (1973)1SCC20

³⁴ (1980)2SCC684

³⁵ (2017)6SCC1

³⁶ (2004)9SCC751

especially when criminals commit horrific crimes without remorse.

A. 3Retributive justice- the punishment matches to the severity of the crimes

The principle of “*an eye for an eye*” in *retributive justice* means that a punishment should be proportional to the crime committed. It emphasizes that offenders should suffer consequences equivalent to the harm they caused. It interprets that if someone takes a life deliberately, the only just punishment is the loss of their own life.

Evidence and Case laws

Machhi Sing v. State of Punjab³⁷ the Supreme Court ruled that in cases where crimes are gruesome, cold-blooded and shock society’s conscience, the death penalty is morally justified.

Factual analysis retributive justice does not mean revenge but rather fair punishment for the crime.

A. 4Death penalty- necessary for National Security (Terrorism Cases)

Terrorists are often highly radicalized and dangerous. Life imprisonment allows them to spread extremist ideologies in prison or be released in hostage negotiations.

Evidence and Case laws

Yakub Memon v. State of Maharaashtra³⁸- ***1993 Bombay Bombings*** Memon was executed for financing and organizing a series of bomb blasts that kill over 250 people. The Supreme Court ruled that terror-related offences require stricter punishments to ensure national security.

Example, ISIS and AL-Qaeda Terrorists: many terrorists influence followers from inside prison, leading to new waves of attacks.

Factual Analysis Israel and USA impose the Death Penalty in Terrorism cases to eliminate future threats.

It is necessary to maintain law and order, deter serious crimes, and administer justice in a way that reflects the moral values of society. It serves as a deterrent, provides closure for victim’s families and morally justified in the case of the most heinous crimes. While its effectiveness as a deterrent is still debated, the death penalty continues to have a strong support in certain societies where it is seen as a vital tool for justice and national security.

³⁷ (1983)3SCC470

³⁸ (2015)9SCC552

2. Arguments Against

For centuries, the death penalty has been a divisive topic, with supporters claiming it deters crime and opponents claiming it violates human rights. This essay will look at the arguments against the death penalty, concentrating on two main points: the right to life being violated and the possibility of erroneous convictions and a miscarriage of justice.

A. 1 Violation of the Right to Life:

The death penalty has been a contentious issue in India for decades, with proponents arguing that it serves as a deterrent to crime and opponents arguing that it is a violation of human rights. This essay will examine the arguments against the death penalty in the context of violation of the right to life, as enshrined in the Constitution of India.

The Constitution of India guarantees the right to life under Article 21, which states that "no person shall be deprived of his life or personal liberty except according to procedure established by law"³⁹

Because it entails the state's deliberate killing of a person, the death penalty is an obvious violation of the right to life. Even if fresh evidence surfaces that exonerates the condemned, the punishment is final and cannot be undone once the person has been put to death. Furthermore, some groups, like racial and ethnic minorities, are more likely than others to be given the death penalty, which is frequently applied arbitrarily and discriminatorily. Article 14 of the Indian Constitution guarantees the right to equality, which is obviously violated by this discriminatory use of the death penalty.

Judicial Interpretation of the Right to Life

The Supreme Court of India has interpreted the right to life in several landmark judgments. In the case of *Maneka Gandhi v. Union of India*⁴⁰, the Court held that the right to life includes the right to live with dignity, and that this right can only be restricted by a law that is fair, just, and reasonable.

In the case of *Bachan Singh v. State of Punjab*⁴¹, the Court held that the death penalty can only be imposed in the "rarest of rare" cases, and that the court must consider the circumstances of the case, including the nature of the crime and the character of the accused.

A. 2 Risk of Miscarriage of Justice and Wrongful Convictions

A major worry regarding the death penalty is the possibility of erroneous convictions and

³⁹ Constitution of India, Article 21.

⁴⁰ (1978) 2 S.C.R. 621

⁴¹ (1980) 2 SCC 684

miscarriages of justice. Because the death penalty is final, it is crucial that the legal system be impartial and error-free. But a lot of research has shown that the legal system is biased and prone to mistakes, especially when it comes to capital cases. A National Academy of Sciences study, for instance, discovered that between 2–3% and 5% of defendants in the US who received death sentences were innocent. A number of things, such as misidentification of eyewitnesses, false confessions, and prosecutorial misconduct, can result in wrongful convictions. These mistakes can have terrible repercussions in capital cases.

For many years, there has been debate over the death penalty. Supporters contend that it deters crime, while opponents claim it violates human rights. A major worry regarding the death penalty is the possibility of erroneous convictions and miscarriages of justice.

Causes of Wrongful Convictions

Wrongful convictions in capital cases can result from a number of factors, including:

- A. **Eyewitness misidentification:** When a witness is under stress or pressure, their testimony is frequently untrustworthy.
- B. **False confessions:** Coercion, manipulation, and mental health conditions are just a few of the causes of false confessions.
- C. **Prosecutorial misconduct:** This category includes unethical actions such as coercing witnesses, omitting evidence, and more.
- D. **Insufficient Defence counsel:** Defendants are more likely to be wrongfully convicted if they do not have access to good legal counsel.

The consequences of wrongful convictions in capital cases are severe and irreversible. Innocent people are executed, and families are left to grieve and seek justice. Furthermore, wrongful convictions undermine trust in the justice system and perpetuate cycles of violence and trauma.

A.3 Socio economic Biases and Discriminatory Application

Particular groups are more likely than others to be subjected to the death penalty, which is frequently applied in a biased and discriminatory manner. Studies have revealed, for instance, that racial and ethnic minorities are overrepresented on American death row. Likewise, marginalized groups like *Dalits and Adivasis* are frequently subjected to the death penalty in India. When it comes to the death penalty, socio economic biases a real so a major factor. Because they frequently lack access to good legal counsel, defendants from lower socio-economic backgrounds are more likely to be given the death penalty.

A.4 Lack of Conclusive Evidence Supporting Deterrence

One of the main defences of the death penalty is that it deters crime. There isn't enough solid evidence to back up this assertion, though. Numerous studies have looked into the connection between crime rates and the death penalty, but the findings are not entirely clear. While some research as found a link between the death penalty and decreased crime rates, other studies have not found any. A number of methodological issues also plague studies that assert a deterrent effect. For instance, many studies don't account for socioeconomic circumstances and policing methods, two more variables that may affect crime rates.

COMPARATIVE ANALYSIS

1. Death Penalty Practices in Other Countries

The death penalty is a controversial topic that has been discussed for many years by academics, decision-makers, and human rights advocates. The death penalty is still used as a form of punishment for a variety of crimes in some nations, even though it has been abolished in others. The death penalty policies of various nations will be compared in this study, with an emphasis on the variations and parallels between their strategies. Countries that have abolished the death penalty

The death penalty has been abolished in law or in practice in a number of countries. Among the noteworthy instances are:

Australia has been a steadfast supporter of the global movement to abolish the death penalty since it did so in 1973.

Canada: Outlawed the death penalty in 1976 and hasn't brought it back, despite some efforts.

Germany: Outlawed the death penalty in 1949 and has been a strong opponent of its application abroad.

Italy is a fervent supporter of human rights and the abolition of the death penalty, having abolished it in 1947.

Countries That Still Use the Death Penalty: Some nations still use the death penalty as a means of punishing a variety of offenses. Here are a few noteworthy instances:

United States: While some states allow the death penalty, others do not. There are significant differences in the application of the death penalty across the nation; some states apply it regularly, while others do not.

China: With thousands of executions annually, China is one of the most active

executioners in the world. But the precise figures are kept under wraps by the government.

India: Although it is permitted, the death penalty is only applied in the "rarest of rare" circumstances. The Indian Supreme Court has established guidelines for the application of the death penalty, stressing the importance of a cautious and nuanced approach.

Saudi Arabia: Murder, adultery, and apostasy are among the many crimes for which the death penalty is applied in Saudi Arabia. The uses of the death penalty against children and other vulnerable people, as well as the nation's record on human rights, have drawn criticism.

Comparative Analysis of Death Penalty Practices:

There are a number of significant distinctions and parallels between the death penalty laws in various nations when compared. Here are a few of the primary distinctions:

Law: Each nation has a very different set of laws pertaining to the death penalty. While some nations have completely abolished the death penalty, others have placed stringent restrictions on its application.

Death penalty crimes: The list of crimes that carry the death penalty varies greatly from nation to nation. While the death penalty is only applied to the most serious crimes, such as murder, in some nations, it is applied to a broad range of crimes, including non-violent ones.

Execution techniques: Different nations employ different execution techniques. While some nations employ lethal injection, others employ firing squads, hanging, or other techniques.

The use of the death penalty varies from nation to nation, but there are also some similarities. Among the most notable parallels are:

Worry about erroneous convictions: The possibility of erroneous convictions and the execution of innocent people has raised concerns in a number of nations.

Concerns about human rights: Human rights organizations and other groups have condemned the death penalty, claiming that it violates people's rights and dignity.

Discussion about deterrence: The usefulness of the death penalty as a crime deterrent is a topic of continuous discussion. While some contend that it has no deterrent effect, others contend that it does.

In light of this comparative analysis, the following suggestions can be made:

The risk of erroneous convictions and human rights issues make it worthwhile for nations that still use the death penalty to think about doing away with it.

A stronger legal system is necessary for nations that still apply the death penalty to guarantee that the penalty is administered justly and fairly.

Greater openness: Nations should make their death penalty policies more open, including the number of executions they carry out and the offenses for which they are carried out.

Alternative Punishments: Countries should consider alternative punishments that are more humane and effective, such as life imprisonment without parole. This would ensure that individuals who commit serious crimes are held accountable while also respecting human rights and dignity. The death penalty is a complex issue that requires careful consideration of human rights, fairness, and justice. By implementing these recommendations, countries can work towards improving the fairness and justice of death penalty practices and ensuring that human rights are respected.

CONCLUSION

The death penalty remains one of the most controversial and polarizing issues in legal and human rights discourse. This research has explored the multifaceted dimensions of capital punishment-its legal foundations, historical evolution, ethical implications, international trends, and current debates. Across jurisdictions, the legitimacy and efficacy of the death penalty continue to be questioned on moral, procedural and practical grounds.

From a legal standpoint, capital punishment poses serious challenges to the principles of fairness, due process and equality before law. Empirical evidence and case studies consistently reveal patterns of racial, economic, and geographic combined with the potential for wrongful convictions, raises grave concerns about justice being irreparably miscarried.

Globally, the trend is unmistakably moving toward the abolition or restriction of the death penalty. Influenced by international human rights instruments such as the international covenant on civil and political rights and guided by evolving judicial interpretations, many nations have either abolished the death penalty in law or imposed on its use. The European Union, for example, has set a strong precedent by making abolition on condition of membership, and a growing number of countries in Africa, Asia and Latin America are joining the ranks of abolitionist states.

Despite these advancements, resistance persists, especially in countries where the death penalty is viewed as a tool of deterrence, retribution, or national security. In such context, cultural beliefs, political ideologies, and public opinion continue to influence retentionist policies. However, a closer analysis of deterrence arguments reveals limited empirical

support and alternatives such as life imprisonment without parole offer less controversial but equally firm responses to heinous crimes.

In light of evidence and global trends, the continued use of death penalty stands increasingly at odds with contemporary legal and human rights standards. For abolition to advance, a multifaceted approach is required—one that combines legal reform, public education, judicial leadership and international cooperation.

Ultimately, the pursuit of a just legal system must prioritize rehabilitation over retribution, and human dignity over punitive symbolism. The gradual but steady global movement toward abolition reflects an evolving understanding of justice—one that recognizes the fallibility of human judgment and the moral imperative to uphold life, even in the face of grave crimes.

The 21st century is unique in that it freely acknowledges that the time has come to abolish the death penalty by formulating compelling arguments and opinions and outlining specific circumstances under which it ought to be applied. This has become a contentious issue, and some developing nations have taken notice of it and abolished the death penalty. Although India, a well-known developing nation, has not reached a decision to abolish the death penalty, it has granted the death penalty in extremely rare instances. The idea of the death penalty is essential to the criminal justice system, despite the fact that there are numerous laws and penalties that are prescribed. The death penalty has caused a lot of problems in today's society. As a result, this essay outlines and elaborates on the current concerns surrounding the death penalty in India.