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TITLE: A CROSS-CULTURAL COMPARISON OF DEATH PENALTY IN THE USA, UK, & INDIA.

By Akpan Godwin Goodhead and Anjali Kumari.

ABSTRACT

The present paper discusses how capital punishment has been a subject of intense debate across the world, with different countries taking distinct stances based on their legal traditions, human rights perspectives, and societal conditions. The United States, the United Kingdom, and India have been carefully studied due to their unique historical trajectories concerning the death penalty, leading to either its retention or abolition. While the UK has abolished it entirely, the US retains it selectively, and India applies it in rare cases.

The historical context of execution in these countries has been covered, based on how they have shaped the present acceptance, rejection, and restriction of capital punishment. It has been argued that political, social, and legal factors have greatly affected these cross-cultural practices. This article examines the judicial position of these countries and attempts to weigh the balance of deterrence and reformatory theories of punishment.

It concludes by suggesting that while retaining the death penalty, India should adopt the shift towards providing sentencing guidelines for awarding of such punishments as it was in the UK, instead of leaving the same to the discretionary powers of judges. Additionally, it is believed that retentionist States can provide more energy in addressing primary challenges that can eliminate the possibility of a criminal mindset, such as poverty, amicable dispute resolution, and empowerment or proper support for those who are victimised, which can be achieved through social defence mechanisms. Ultimately, the abolitionists are advised to ensure that the interests of victims are balanced to ensure that the punishment fits the crime.

Keywords: Death Penalty, Cross-culture, Human Rights, Retentionists, and Abolitionists.

INTRODUCTION

The struggle on the best practice of states regarding the issue of capital punishment has been a severe and hard-fought debate, yet without a drop of blood. The query that arises ranges from the fact of whether a state which is expected to protect, respect, and fulfil the human rights of its citizens has the power to do the other way round in terms of taking their lives through due process or procedure established by law. Even though the state has the duty to act as a parent to its people, the matter further remains as to what extent it can exercise its will and enforce its letters of laws on those who violate them.

Capital punishment, which is also called the death penalty and formerly referred to as judicial homicide, has been given endless definitions. The Bureau of Justice Statistics, United States Department of Justice, refers to capital punishment as the process of sentencing convicted offenders to death for the most serious crimes (capital crimes) and carrying out that sentence. This implies that the punishment is not limited to conviction, but to execution of the incarcerated persons who are on death row; even so, the delays of awaiting execution have been considered to be a violation of the right to a speedy trial of a convicted person in some jurisdictions.

On the other way round, the death penalty, if executed, is irrevocable. What happens if the convict is wrongly framed, what happens if it was not a matter that deserves a death sentence, or what if there were procedural irregularities, including the lack of proper representation of the accused person? These complicated questions have mostly remained unanswered and create room for more arguments against the acceptance of capital punishment across various countries.

Every criminal offence stands on its own legs, which means that facts may hardly be similar, yet a grievous offence is committed. There cannot be an absolute rule for determining whether a case is such that it deserves a death sentence. Inconsistencies exist, even with sentencing guidelines in the UK and doctrines like the rarest of rare cases in India; the determination of whether a case is of such a category solely depends on making out the case by the prosecution and the discretion of the judge.

Furthermore, according to some theories, such as retribution and deterrence, certain individuals do not deserve to live in human society, and others are meant to serve as an example for the masses.

These individuals are hardened criminals; the state defines specific heinous crimes and believes that those responsible for their perpetuation should be kept far from existence. Besides murder, offences like treason, terrorism, drug trafficking, and rape, though debatable, find special mention within the corridors of the death penalty. Supporters of the reformatory theory may contend that people have a better chance of returning to society if they are cured of the compelling circumstances that gave them the impetus to commit an offence.

It is undoubtedly that the abolition of the death sentence can also serve as a motivation for people to engage in crimes. People may consider the utilization of prison facilities like food and shelter as the best alternative to their frustration since their lives will not be lost, others who are first-time offenders may consider opportunities like plea bargaining for lesser sentence, and those who are critical may reason the possibility of getting parole, furlough, and even discharge on display of good conduct before the completion of life imprisonment as an incentive to commit crimes which would have naturally result in a death sentence.

The area of focus that should now be comprehended is not the historical practices of the death penalty as most countries do have several defences for the same, rather, attention should be drawn to the contemporary day society as to why some countries like UK have chosen to do away with capital punishment, why others like India restrict it to be granted in exceptional cases where the alternative is reasonably foreclosed, and the rest remain adamant or takes the mixture in altering its normal form as in the case of the USA. Assuming the death sentence was the best option for grievous offences, another human rights concern will be the integrity of the person over the time of execution, whether there is the existence of human rights on a condemned individual or an obligation to respect them to their final breathe, and even if it is so, whether death by electrocution, hanging, lethal injection, shooting, etc. should be the best standard, are also arguable.

This paper aims to address contemporary human rights perspectives on capital punishment from a critical standpoint. It aims to review the balance of deterrence and reformatory theories of punishment, cross-cultural practices, concerning why the death sentence is abolished, retained, or treated as a real-time issue in the United States of America (USA), the United Kingdom (UK), and India.

AN ANALYSIS OF THE DEATH PENALTY: HUMAN RIGHTS AND

THEORIES

Contemporary Human Rights Views of The Death Penalty

The death penalty is one of the most debated human rights issues worldwide. Contemporary human rights perspectives largely oppose capital punishment, as it is perceived as a violation of fundamental human rights, particularly the right to life and the prohibition of torture or cruel, inhuman, and degrading treatment. However, some nations still justify it based on legal, cultural, and deterrent arguments.

The global human rights perspective has experienced a shift towards abolition, particularly the Right to Life; hence, the need to examine some key international legal frameworks. The Universal Declaration of Human Rights (UDHR) 1948¹ under Article 3 recognises that everyone has the right to life, liberty, and security of person. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) 1966² also acknowledges the right to life and restricts the death penalty to only the most serious crimes. However, the Second Optional Protocol to the ICCPR (1989)³ is one of the major international frameworks that explicitly calls for the abolition of the death penalty.

To look into this further, the United Nations (UN) opposes the death penalty and calls for a global moratorium. The United Nations Human Rights Committee and the UN Special Rapporteur on Torture argue that capital punishment amounts to cruel, inhuman, and degrading treatment. Methods like hanging, lethal injection, and firing squad have been criticized for causing prolonged suffering. On the other hand, the European Union (EU) bans capital punishment as a condition for its membership, and at present, over 140 countries have abolished or stopped using the death penalty.⁴ In 2023, Malaysia abolished the mandatory death penalty,⁵ following global pressure. Even Pope Francis and other religious leaders worldwide call for the abolition of capital punishment with the common intention of protecting and enhancing the guarantee of human dignity.

In the quest for attaining a comprehensive understanding of the issue of death sentences, some scholars have found it more accommodating to classify the advocates of the subject matter in two ways. Those in favour of keeping the death penalty have been largely considered as Retentionists,

¹ Universal Declaration of Human Rights (UDHR), 1948.

² International Covenant on Civil and Political Rights (ICCPR), 1966.

³ The Second Optional Protocol to the ICCPR (1989).

⁴ Amnesty International, *The Death Penalty Facts and Figures*, WORLD COALITION AGAINST THE DEATH PENALTY (2013).

⁵ Anne Lim, *Abolishing Malaysia's mandatory death penalty: A step towards global abolition or a pipe dream?*

whereas those against its practice are the Abolitionists. Even so, those arguing in support of the Death Penalty believe that the use of 'human rights' has been exaggerated. Some governments argue that it prevents crime and guards against public safety and deterrence.⁶ This is sometimes supported by the point of retributive justice, which has the idea of "an eye for an eye", supports execution for the most heinous crimes, or deterrence to set examples against repetition of the illegal actions.

Many countries, including China, Iran, Saudi Arabia, and some US states, continue to enforce the death penalty. China and Iran execute the highest number of people, often for crimes like drug trafficking. In 2014, China and Iran executed at least 1000 and 972 people, respectively.⁷ While India sees declining executions, but retained the penalty for rarest-of-rare cases.

Positive Views Regarding Abolishing the Death Penalty

The Abolitionists take the positive position to challenge the view that the abolition of the death penalty will lead to an increase in the amount or outrage of heinous crimes in society. It is postulated based on some studies conducted in various countries that the death penalty does not have a significant impact on crime rates. Nations that have abolished capital punishment, such as Canada and several European countries, have not experienced a surge in violent crimes post-abolition.⁸ The US provides a comparative example that States without the death penalty do not necessarily have higher crime rates than those that retain it; hence, they believe that there is a lack of empirical evidence supporting deterrence.

Moreover, it has also been put forward that many violent crimes, especially crimes of passion, mass shootings, and acts of terrorism, are committed without the perpetrator considering the consequences. Psychological disorders, extremism, or strong emotional impulses drive many of these crimes,⁹ meaning the presence or absence of capital punishment has little effect on the criminal's actions. Most violent crimes are not premeditated with rational cost-benefit analysis; rather, they are committed under duress, mental instability, or ideological motives.¹⁰ Although this may be true to establish their point that most heinous crimes are not rationally calculated, yet, it remains debatable as it is not the majority of the crimes that are without intention and foresight of

⁶ M. H. Staples, *Capital Punishment: A Retentionist's View*, CHITTY'S LAW JOURNAL (1966).

⁷ Statista Research Department, *Number of Executions Worldwide in 2024, by Country*, STATISTA (2025).

⁸ E. A. Fatter, *Canada's Successful Experience with the Abolition of Death Penalty*, CANADIAN JOURNAL OF CRIMINOLOGY (1983).

⁹ Tori DeAngelis, *Mental Illness and Violence: Debunking Myths, Addressing Realities*, AMERICAN PSYCHOLOGICAL ASSOCIATION (2022).

¹⁰ *Ibid.*

plausible repercussions.

Furthermore, it is sometimes maintained by the advocates against the death penalty that life imprisonment without the possibility of parole (LWOP) is a more severe punishment than the death penalty.¹¹ Execution offers a quick end; it gives an offender little or no time to feel remorseful about their deeds, while spending a life sentence behind bars in harsh conditions may be a more effective deterrent. This can be taken with a pinch of salt, as the human rights activists have extended their advocacy to make the prison a better place than a common man's home. Countries that have abolished the death penalty have not experienced a significant rise in violent crime, suggesting that other factors, such as social conditions, law enforcement efficiency, and judicial certainty, play a more decisive role in crime prevention. They argue that instead of focusing on capital punishment as a deterrent, societies may achieve better results by investing in preventive measures, effective policing, social reforms, and ensuring strict and swift justice through life imprisonment without parole.¹²

Another common argument that has mostly been used to support the need to eschew capital punishment has been the possibility of wrongful convictions. The risk of executing innocent individuals remains a strong argument for abolition. Numerous cases of wrongful executions have been uncovered globally;¹³ even so, the availability of appeals and retrial to convicts before their actual execution has made this point to become weak in some cases, and it is believed that a justice system that prioritises reformation and certainty of punishment over capital punishment may be more effective in long-term crime reduction.

Adverse Impact of Abolishing the Death Penalty

The argument whether the abolition of the death sentence serves as a motivation for committing more heinous crimes has to be considered carefully through examining the impact of the same in today's society.

From the Retentionists' perspective, the proponents of capital punishment argue that the ultimate punishment, which is the 'death penalty', acts as a strong deterrent.¹⁴ Criminals, particularly those who commit premeditated crimes, may reconsider their actions if they know they will face

¹¹ Catherine Appleton, *Life Without Parole*, OXFORD ACADEMIC (2015).

¹² Alastair McClure, *Abolition, Retention and Capital Punishment in Twentieth-Century India*, OXFORD LAW BLOGS (2024).

¹³ Na Jiang, *A Comparison of Wrongful Convictions in Death Penalty Cases Between China and the United States*, INTERNATIONAL JOURNAL OF LAW, CRIME AND JUSTICE (2013).

¹⁴ Nethmi Nawarathna, "The Death Penalty Protects No One" (*World Day 2024 #2*), MONASH UNIVERSITY (2024).

execution. They believe that the death penalty creates a psychological barrier that life imprisonment may not do due to the fear of death.

The possibility of recidivism has been another factor in support of this; in some cases, individuals sentenced to life imprisonment may eventually be released due to parole, commutations, or legal appeals, and there have been instances where convicted murderers have reoffended after release, which could have been averted as execution eliminates the possibility of repeat offences.¹⁵

In addition, some believe that the harshest punishment provides a sense of justice for victims, their families, and satisfaction for the greater number in society.¹⁶ Some retentionist states adopt the social defence mechanisms of addressing primary challenges that can eliminate the possibility of a criminal mindset, such as poverty, amicable dispute resolution, and empowerment or proper support for those who are victimised. The absence of capital punishment may embolden criminals who no longer fear the ultimate retribution. Heinous crimes such as serial killings, terrorism, and brutal rapes often stir public outrage, and the absence of the death penalty might be perceived as leniency, potentially reducing the perceived consequences of such acts and motivating their commission in exchange for life imprisonment. What is necessary is that the punishment must be proportional to the offence committed. This raises the concern whether imprisonment can be equated with the loss of life and permanent pain, suffering, and agony inflicted on the victims whose rights were trampled upon by the offenders.

Balance of Deterrence and Reformatory Theories of Punishment

The abolition of the death penalty has been a subject of intense debate, with one of the primary concerns being whether it could lead to an increase in heinous crimes, as already discussed above. The averment revolves around the deterrence theory of punishment, whether the presence or absence of capital punishment influences criminal behaviour or not.

The Punishment theories have long been debated in legal and philosophical circles, with deterrence and reformation emerging as two dominant perspectives. In India, the justice system strives to strike a balance between these approaches, aiming to support both public safety and rehabilitation. However, contemporary challenges such as rising crime rates, human rights concerns, and judicial discretion complicate this balance.

¹⁵ Donald C. Clarke, David A. Thomas, *General Deterrence*, BRITANNICA (2025).

¹⁶ Erin O'Hara O'Connor, Maria Mayo Robbins, *Using Criminal Punishment to Serve Both Victim and Social Needs*, FLORIDA STATE UNIVERSITY (2009).

Under the deterrence theory, crime is asserted to be prevented through fear; this theory argues that harsh punishment discourages crime. This can be general deterrence, which prevents crime by setting an example, or specific deterrence, done by incapacitating the same offender from committing another crime. This theory supports capital punishment, life imprisonment, and other stringent laws as may be applicable in a given situation.¹⁷

Reformative theory, on the other hand, perceives crime as a social problem and believes in rehabilitation rather than retribution. It focuses on the psychological and behavioural correction of criminals by providing skills, education, and counselling to enable the reintegrating of offenders into society.¹⁸

Striking a balance between the above two theories of punishment has been very problematic over the years, both in legal writings and actual practice. Sometimes, this may be as a result of the judicial discretion which enables Courts to decide whether deterrence or reform suits a particular case. Additionally, public opinion and political influence, as it is in high-profile cases, often lead to harsher laws.

Even when there is the intention of reformation, there is also the problem of prison overcrowding, and many prisoners are awaiting trial, which reduces the scope for reform programs.¹⁹ Moreover, the lack of resources for rehabilitation has hampered the development programs, which are underfunded. Even so, the victim-centric approach is emerging to ensure both justice and rehabilitation. Hence, it is suggested that future reforms towards finding the middle line should focus on restorative justice; strengthening rehabilitation programs while ensuring that deterrence remains in place for serious offences.

CAPITAL PUNISHMENT IN THE US, UK, AND INDIA: A CRITICAL COMPARISON

Capital Punishments in the United States of America

The concept of capital punishment in the United States of America (USA) has been distinctively complex throughout its history. At various points, the U.S. maintained an extensive list of capital offences by extending the death penalty beyond first-degree murder. The earliest recorded set of

¹⁷ Mrinal Mukul, *Deterrent Theory of Punishment*, iPLEADERS (2022).

¹⁸ Tanu Priya, *Reformative Theory of Punishment*, ACADEMIKE (2014).

¹⁹ Megan Bastick, *The Role of Penal Reform in Security Sector Reform*, DCAF (2010).

capital offences in the U.S. traces back to the Massachusetts Bay Colony in 1636,²⁰ where crimes such as idolatry, witchcraft, blasphemy, murder, assault in sudden anger, sodomy, buggery, adultery, statutory rape, rape, man-stealing, perjury in a capital trial, and rebellion (including attempts and conspiracies) were punishable by death. However, the first recorded execution occurred even earlier, in 1608, when Captain George Kendall was executed in the Jamestown, Virginia colony after being convicted of espionage.²¹

By the time of the Revolutionary War, most colonies had reduced their lists of capital crimes to eleven offences. The prevalence of the death sentence for numerous crimes was partially due to the lack of alternative punishments. This changed in the 1780s when Massachusetts, New York, and Pennsylvania established the first penitentiaries. Subsequently, New Jersey, Virginia, and Kentucky followed in the 1790s, thereby reducing the scope of capital punishment and funding prison systems. In 1794, Pennsylvania became the first state to classify murder into degrees,²² reserving the death penalty for first-degree murder; an approach that most states had adopted by the 1960s. However, in southern states, the death penalty continued to apply to crimes such as rape and robbery, though disproportionately affecting Black defendants.

Today, executions in the U.S. are conducted privately inside prisons, witnessed only by select individuals. Historically, however, executions were public spectacles, often drawing large crowds. Connecticut was the first state to ban public executions in 1830, followed by Rhode Island, Pennsylvania, New Jersey, New York, Massachusetts, and New Hampshire by 1836.²³ A distinct cultural and policy divide between northern and southern states has shaped the history of the death penalty. Northern states were typically at the forefront of reform, whereas southern states resisted changes, often emphasizing the supposed deterrence effect of public executions. The last known public execution occurred in 1936 in Owensboro, Kentucky, although a semi-private execution was held in Missouri in 1937.²⁴

Michigan became the first U.S. jurisdiction to abolish the death penalty for all crimes except treason in 1846. However, Louisiana had earlier proposed abolition in 1821, when Edward Livingston introduced a revised criminal code eliminating the death penalty, but the legislature

²⁰ Joel S. Berson, *On the Trail of the Scarlet AD*, JSTOR (2013).

²¹ Alexandra L. Klein, *The Beginning of the End: Abolishing Capital Punishment in Virginia*, WASHINGTON AND LEE LAW REVIEW ONLINE (2021).

²² Edwin R. Keedy, *History of the Pennsylvania Statute Creating Degrees of Murder*, UNIVERSITY OF PENNSYLVANIA LAW REVIEW (1852).

²³ *Ibid.*

²⁴ Carrie Pitzulo, *The Skirted Sheriff: Florence Thompson and the Nation's Last Public Execution*, Kentucky Historical Society (2017).

ultimately rejected the provision.²⁵ Several other states followed Michigan's lead, though some reinstated the death penalty in subsequent years. By the start of the twentieth century, four states had abolished capital punishment.

By the late eighteenth century, the U.S. and much of Europe had eliminated aggravated execution methods in favour of simpler ones, such as hanging and firing squads. The electric chair was introduced in 1888 and first used in New York. Though challenged, the Supreme Court upheld its constitutionality in 1890.²⁶ By 1915, fifteen states had adopted this method, and by 1950, that number had grown to twenty-six, plus the District of Columbia. The gas chamber was introduced in 1921 in Nevada, and by 1955, ten additional states had adopted it. Lethal injection, which was first proposed in 1977, became the primary execution method by the early twenty-first century in all jurisdictions authorizing capital punishment, including the U.S. military and federal government.²⁷ While some states still permit other methods, eight states allow electrocution, five recognized the gas chamber, three permit hanging, and two allow firing squads. Overtly, lethal injection remained the primary method of execution in each.²⁸

Key US Supreme Court Cases and Legal Challenges

Most challenges to capital punishment in the U.S. invoke the Eighth Amendment, which prohibits cruel and unusual punishment. After initial legislative reforms, the Supreme Court played a central role in shaping modern death penalty jurisprudence. Some of such notable steps include the landmark cases of:

- ***Wilkerson v. Utah***:²⁹ The Court upheld execution by firing squad, noting that such long-accepted methods of execution were not inherently cruel and unusual.
- ***In re Kemmler***:³⁰ It was ruled that electrocution was a constitutional execution method, as legislatures had deemed it more humane than alternatives.
- ***Furman v. Georgia***:³¹ This was the landmark case that struck down Georgia's death penalty statute, finding it led to arbitrary and inconsistent sentencing. This ruling

²⁵ Ginger Roberts, *Edward Livingston and American Penology*, LOUISIANA LAW REVIEW (1977).

²⁶ *In re Kemmler*, 136 U.S. 436 (1890).

²⁷ Deborah W. Denno, *Back to the Future with Execution Methods*, CAMBRIDGE UNIVERSITY PRESS (2020).

²⁸ *Ibid.*

²⁹ *Wilkerson v. Utah*, 99 U.S. 130 (1879).

³⁰ *Supra* note 26.

³¹ *Furman v. Georgia*, 408 US 238 (1972).

invalidated forty-two death penalty statutes nationwide, imposing a *de facto* moratorium. As a result, 587 death row inmates had their sentences commuted to life imprisonment.

In response, states pursued one of three options: abolishing the death penalty, introducing mandatory death sentences for specific crimes, or creating guided discretion systems for juries. Seven states abolished capital punishment, ten imposed mandatory death sentences, and twenty-five developed new sentencing guidelines.³² These changes were also marked with awakened pronouncements from the judiciary in their judgments. In *Woodson v. North Carolina*,³³ it was declared that mandatory death sentences were unconstitutional for failing to account for case-specific circumstances. Further, the U.S. Supreme Court in *Gregg v. Georgia*³⁴ upheld the constitutionality of the death penalty for murder, provided sentencing procedures included safeguards against arbitrary punishment. This decision, along with related rulings in *Proffitt v. Florida*³⁵ and *Jurek v. Texas*,³⁶ ended the moratorium.

The first post-moratorium execution occurred on January 17, 1977, when Gary Gilmore was executed by firing squad in Utah. That same year, Oklahoma became the first state to adopt lethal injection, though the first execution via this method occurred in Texas in 1982.³⁷

Subsequent Supreme Court decisions further restricted the scope of capital punishment by introducing certain rules and guidelines through various instances that have shaped the laws of many countries. These include:

- *Coker v. Georgia*:³⁸ Prohibited the death penalty for rape where the victim did not die, thereby effectively limiting capital punishment to murder cases.
- *Ford v. Wainwright*:³⁹ The Court ruled that executing an inmate who had become insane was unconstitutional.
- *Atkins v. Virginia*:⁴⁰ This judgment barred the execution of individuals with intellectual disabilities.
- *Roper v. Simmons*:⁴¹ The court in its 5:4 decision delivered by Justice Anthony Kennedy prohibited the execution of juvenile offenders, that is, individuals below the age of eighteen,

³² Amanda Watford, *State's Death Penalty Policies are Heading in Sharply Different Directions*, STATELINE (2012).

³³ *Woodson v. North Carolina*, 428 U.S. 280 (1976).

³⁴ *Gregg v. Georgia*, 428 U.S. 153 (1976).

³⁵ *Proffitt v. Florida*, 428 U.S. 242 (1976).

³⁶ *Jurek v. Texas*, 428 U.S. 262 (1976).

³⁷ Deborah W. Denno, *Execution Methods in a Nutshell*, FLASH (2018).

³⁸ *Coker v. Georgia*, 433 US 584 (1977).

³⁹ *Ford v. Wainwright*, 477 US 399 (1986).

⁴⁰ *Atkins v. Virginia*, 536 US 304 (2002).

⁴¹ *Roper v. Simmons*, 543 U.S. 551 (2005).

by classifying it to be cruel and unusual, thereby violating the Eighth and Fourteenth Amendments.

Abolition of Capital Punishment in the UK

The scenario of the death penalty in the United Kingdom has taken a different shape and direction. The history of capital punishment in the United Kingdom is marked by its extensive use, gradual reforms, and eventual abolition. Historically, the death penalty was an integral part of the English legal system, with a wide range of offences punishable by execution. Over time, public sentiment shifted against the practice, leading to a series of legal reforms that culminated in its abolition.

Early History and Extensive Use

Capital punishment in England dates back to ancient times, with executions recorded as early as the Anglo-Saxon period. Under Norman rule, the death penalty was less frequently imposed, as William the Conqueror reportedly opposed executions except in times of war.⁴² However, by the medieval period, capital punishment had become a common sentence for a wide variety of crimes, ranging from murder and treason to theft and poaching.

By the 17th and 18th centuries, the so-called "Bloody Code" dramatically expanded the number of capital offences in England. At its peak in the late 18th century, over 200 crimes, including minor offences such as pickpocketing goods worth more than a shilling, were punishable by death. Public executions were a common spectacle, intended both as punishment and as a deterrent.⁴³

Reform and Reduction of Capital Crimes

By the early 19th century, public opposition to the harshness of capital punishment grew, spurred by social reformers like Jeremy Bentham and Sir Samuel Romilly. Romilly, in particular, was instrumental in reducing the number of capital offences.⁴⁴ The 1820s and 1830s saw significant legal reforms in phases outlined below in brief:⁴⁵

⁴² Paul Bridges, *Executions & Death-Penalty Reforms in Britain*, LONDON MUSEUM (2022).

⁴³ Peter King, Richard Ward, *Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery*, PMC PUBMED CENTRAL (2018).

⁴⁴ Roys Stubbs, *Sir Samuel Romilly*, THE CANADIAN BAR REVIEW (1937).

⁴⁵ Simon Devereaux, *England's "Bloody Code" in Crisis and Transition: Executions at the Old Bailey, 1760–1837*,

- ❖ The Peel Reforms (1823-1830), led by Home Secretary Robert Peel, began reducing the number of capital offences.
- ❖ The Judgment of Death Act 1823 allowed Judges discretion to commute death sentences for many crimes.
- ❖ The Punishment of Death Act 1832 abolished the death penalty for many non-violent offences, including theft and forgery.
- ❖ By 1861, the Criminal Law Consolidation Acts had reduced capital crimes to just four: murder, treason, piracy with violence, and arson in royal dockyards.

Public executions were also abolished with the Capital Punishment Amendment Act of 1868,⁴⁶ thus, shifting executions to the inside of prisons, where only a limited number of witnesses could observe them.

Abolition Movement in the 20th Century

Although the number of executions decreased in the late 19th and early 20th centuries, the death penalty remained in force for the most serious crimes. However, high-profile miscarriages of justice, shifting societal attitudes, and political movements pushed the UK toward abolition.

Key cases that influenced the abolition debate include:⁴⁷

- ❖ **The execution of Timothy Evans (1950)** – Who was wrongly convicted of murdering his wife and daughter, Evans was later posthumously pardoned. This brought to light one of the many flaws in the justice system.
- ❖ **The execution of Derek Bentley (1953)**, who was convicted under controversial circumstances, also spurred calls for reform as the court failed to consider factors such as his diminished mental capacity and the fact that he did not fire the alleged shots by himself.
- ❖ **The execution of Ruth Ellis (1955)** – The last woman executed in the UK, her case provoked widespread public outcry due to the circumstances, such as emotional, sexual, and physical abuses, which fueled her commission of murder against her partner.

ERUDIT (2013).

⁴⁶ Capital Punishment Amendment Act, 1868.

⁴⁷ JULIAN B. KNOWLES QC, THE ABOLITION OF THE DEATH PENALTY IN THE UNITED KINGDOM, 32 – 50 (The Death Penalty Project, 2015).

As a result of growing opposition, the UK Parliament began reconsidering capital punishment. The Homicide Act 1957⁴⁸ introduced significant restrictions, limiting the death penalty to specific types of murder, such as the killing of a police officer, murder by shooting or explosion. However, this partial reform did not satisfy growing public and political pressure for complete abolition.

Elimination of Capital Punishment in the UK

In 1965, the Murder (Abolition of Death Penalty) Act⁴⁹ was passed, temporarily suspending capital punishment for murder in England, Scotland, and Wales. After a five-year review, the suspension became permanent in 1969. Northern Ireland followed in 1973 with the Northern Ireland (Emergency Provisions) Act.⁵⁰

Capital punishment for other offences remained on the books for some time, including treason and military offences. However, the United Kingdom took further steps to eliminate the death penalty in three phases, as mentioned below:

- ❖ **1998:** The death penalty was abolished for all remaining crimes under the Crime and Disorder Act and the Human Rights Act, bringing the UK fully in line with the European Convention on Human Rights (ECHR).⁵¹
- ❖ **1999:** The UK ratified Protocol 6 of the ECHR, which formally abolished the death penalty in peacetime.⁵²
- ❖ **2003:** The UK ratified Protocol 13 of the ECHR, abolishing capital punishment in all circumstances, including wartime offences.⁵³

Since abolition, the UK has been an active advocate for the global abolition of the death penalty. British governments have consistently opposed capital punishment and have lobbied other nations to follow suit. The UK also prohibits the extradition of individuals to countries where they may face execution unless assurances are given that the death penalty will not be applied. The shift from a nation that once executed thousands of people under the Bloody Code to a firm abolitionist stance indicates a broader evolution in societal attitudes toward justice and human rights.⁵⁴ Today,

⁴⁸ Homicide Act, 1957.

⁴⁹ Murder (Abolition of Death Penalty) Act, 1965.

⁵⁰ Northern Ireland (Emergency Provisions) Act, 1973.

⁵¹ European Convention on Human Rights, 1950.

⁵² JULIAN B. KNOWLES QC, THE ABOLITION OF THE DEATH PENALTY IN THE UNITED KINGDOM, 11 – 22 (The Death Penalty Project, 2015).

⁵³ *Ibid.*

⁵⁴ *Ibid.*

the UK remains a vocal opponent of capital punishment worldwide, and this shows its commitment to human rights and fair legal proceedings.

The Position of the Death Penalty in India

Capital punishment in India has been a subject of extensive legal, ethical, and social debate. Rooted in colonial legal traditions, the use of capital punishment has evolved over the years, influenced by landmark judgments, constitutional considerations, and international human rights discourse. While India retains the death penalty for the "rarest of rare" cases, there has been increasing scrutiny over its application, fairness, and compatibility with human rights standards.

Historical Background

The death penalty has existed in India since ancient times. References to capital punishment can be found in early Hindu scriptures such as the Manusmriti and Arthashastra, which prescribed the death penalty for certain crimes. During the Mughal period, executions were common, often carried out through public beheadings or other severe methods.⁵⁵

Under British colonial rule, the death penalty became an institutionalized form of punishment, with executions frequently carried out for crimes such as murder, treason, and waging war against the British Crown. The Indian Penal Code (IPC) of 1860,⁵⁶ drafted by Lord Macaulay, formally codified capital punishment, which is now replaced by the Bharatiya Nyaya Sanhita (BNS), 2023.⁵⁷ Section 302 of the IPC⁵⁸ prescribed the death penalty for murder, and it was also applicable to other offences such as treason and dacoity with murder

Post-Independence Developments

After India gained independence in 1947, the continuation of capital punishment remained a contentious issue. The framers of the Indian Constitution⁵⁹ did not explicitly abolish the death penalty, leaving it to the discretion of the judiciary and legislature.

One of the earliest post-independence developments was the Code of Criminal Procedure (CrPC)

⁵⁵ Aishwarya Agrawal, *History of Capital Punishment in India*, LAWBHOO MI (2024).

⁵⁶ The Indian Penal Code (IPC) of 1860.

⁵⁷ Bharatiya Nyaya Sanhita (BNS), 2023.

⁵⁸ The Indian Penal Code, 1860.

⁵⁹ Constitution of India, 1950.

1898,⁶⁰ which required judges to provide reasons if they chose life imprisonment over the death penalty. This was reversed with the enactment of the CrPC (Amendment) Act of 1973,⁶¹ which made life imprisonment the default sentence, requiring the judge to provide special reasons for imposing the death penalty. Presently, BNSS⁶² is the procedural law dealing with the award of capital punishment by any law which is applicable.

On a substantive provision of punishment, the Bharatiya Nyaya Sanhita,⁶³ and other special laws that cover the aspects of terrorism, aggravated rape of minors, and the laws related to narcotic drugs and psychotropic substances, among others, also have such severe punishment as death.

Landmark Judicial Decisions and the "Rarest of Rare" Doctrine in India

The judiciary has played a critical role in shaping India's death penalty jurisprudence. Several landmark cases have determined when and how capital punishment should be applied, they are:

1. *Jagmohan Singh v. State of Uttar Pradesh*⁶⁴ – The Supreme Court upheld the constitutionality of the death penalty, ruling that it did not violate Articles 14, 19, and 21 of the Indian Constitution.
2. *Bachan Singh v. State of Punjab*⁶⁵ – This case established the "rarest of rare" doctrine, which held that the death penalty should only be awarded in cases where the crime was of extreme brutality and social abhorrence.
3. *Machhi Singh v. State of Punjab*⁶⁶ – The Supreme Court elaborated on the "rarest of rare" doctrine, emphasizing factors such as the manner of commission, motive, and the crime's impact on society, as well as aggravating and mitigating factors that should be considered.
4. *Dhananjay Chatterjee v. State of West Bengal*⁶⁷ – Marked the first execution in independent India in 1995 after the adoption of the "rarest of rare" doctrine, involving a rape and murder case.
5. *Shatrughan Chauhan v. Union of India*⁶⁸ – Addressed the issue of mercy petitions,

⁶⁰ Code of Criminal Procedure (CrPC), 1898.

⁶¹ CrPC (Amendment) Act of 1973.

⁶² Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶³ *Supra* note 57.

⁶⁴ (1973) 1 SCC 20.

⁶⁵ (1980) 2 SCC 684.

⁶⁶ 1983 SCC (3) 470.

⁶⁷ 1994 SCC (2) 220.

⁶⁸ MANU/SC/0043/2014.

ruling that excessive delays in deciding mercy petitions could be grounds for commuting the death sentence to life imprisonment.

6. *Mithu v. State of Punjab*⁶⁹ – The Supreme Court struck down the mandatory death penalty provision in Section 303 of the IPC, stating that it was unconstitutional.

Methods of Execution

India currently authorizes two methods of execution:

- ❖ **Hanging:** The primary method, as prescribed under section 354(5) of the Criminal Procedure Code (CrPC).⁷⁰
- ❖ **Firing squad:** Though permitted under section 166 of the Army Act,⁷¹ for the court martial to direct an offender to suffer death by being shot to death, it is rarely used.

Clemency and Mercy Petitions

Article 72 of the Indian Constitution⁷² empowers the President to grant pardons, reprieves, respites, or remissions in capital cases. Similarly, Article 161⁷³ provides governors of states with similar powers.

The mercy petition process involves several stages:

1. Filing a petition with the President or Governor.
2. Review by the Ministry of Home Affairs.
3. Final decision by the President or Governor.

Several high-profile mercy petitions, including those of **Afzal Guru in 2013** and **Yakub Memon in 2015**, have sparked nationwide debates on the death penalty's necessity and effectiveness.⁷⁴

Current Status and Trends of the Death Penalty in India

Despite being a retentionist country, India has witnessed a decreasing trend in death penalty sentences and executions. Some notable trends include the Law Commission of India's 262nd

⁶⁹ (1983) 2 SCC 277.

⁷⁰ Code of Criminal Procedure (CrPC), 1898.

⁷¹ The Army Act, 1950.

⁷² The Constitution of India, 1950.

⁷³ *Ibid.*

⁷⁴ THE STATUS OF MERCY PETITIONS IN INDIA (Asian Centre for Human Rights, 2015).

Report (2015),⁷⁵ which recommended abolishing the death penalty except for terrorism-related offences and waging war against the state. The Supreme Court's intervention in commuting death sentences due to procedural lapses has been a significant development in recent years, and the number of executions has remained low. Since 2000, only a handful of executions have taken place, including those of Ajmal Kasab in 2012, Afzal Guru in 2013, Yakub Memon in 2015, and the Nirbhaya case convicts in 2020.⁷⁶

India has repeatedly abstained from United Nations resolutions advocating the global abolition of the death penalty. However, it has progressively narrowed its application to reflect a shift towards restricting its use rather than outright abolition. Despite international pressure, India retains capital punishment for terrorism-related offences,⁷⁷ rape of minors,⁷⁸ and waging war against the state, narcotic drugs and psychotropic substances, etc.

Cross-Cultural Practices: Similarities and Differences in the US, UK, and India

Capital punishment has been a subject of intense debate across the world, with different countries taking distinct stances based on their legal traditions, human rights perspectives, and societal conditions. The United States, the United Kingdom, and India each have unique historical trajectories concerning the death penalty, leading to either its retention or abolition. While the UK has abolished it entirely, the US retains it selectively, and India applies it in rare cases.

The historical context of execution in these countries has shaped the present acceptance, rejection, and restriction of capital punishment. The US reforms limited the death penalty to heinous crimes, primarily first-degree murder and have been sceptical about the same due to concerns over arbitrary sentencing; hence, revised guidelines were formulated in retentionist states in the South, while others, like New York, Illinois, and California's moratoriums continued.⁷⁹ The UK abolished the death penalty due to public sentiment and miscarriages of justice, including wrongful executions, while India follows the "rarest of the rare" doctrine⁸⁰ for crimes like terrorism and brutal murders to address its security concerns and legal system.

By examining the current legal status of capital punishment in the US, it will be observed that the

⁷⁵ Law Commission of India's 262nd Report (2015).

⁷⁶ *Ibid.*

⁷⁷ Prevention of Terrorism Act, 2002; UAPA, 1967.

⁷⁸ Criminal Law Amendment Act, 2018.

⁷⁹ *Supra* note 37.

⁸⁰ *Supra* note 66.

death penalty has been retained in 23 states and abolished in 27 states.⁸¹ They adopt Lethal injection as the primary method of execution, electrocution, gas chamber, and firing squad in some states. The UK, on the other hand, has completely abolished capital punishment since 1998, and its execution methods, while India, though it retained it, applies it in the "rarest of rare" cases with hanging as its ordinary mode of execution.

Despite different stances, some common patterns emerge in the cross-cultural practices in the US, UK, and India on capital punishment. These cover the debate on morality and human rights. All three countries have engaged in debates regarding the death penalty's alignment with human rights. The UK and parts of the US, like California and New York, have abolished it due to concerns over wrongful convictions and human dignity. India retains it, but with an emphasis on rare application and due consideration of human rights to life and personal liberty.

Further, public executions were common in all three countries historically, but were eventually abolished. The UK led the way, banning public executions in 1868; the US followed, moving executions behind closed prison walls, and India, from the outset, has conducted executions privately in prisons.

In addition, all three countries have developed alternatives, such as life imprisonment without parole, as sentencing trends to reduce extreme capital punishment. In India and the US, life imprisonment has increasingly replaced death sentences in many cases, while the UK abolished the death penalty but has strict sentencing for violent crimes, with "whole life orders," that is, life imprisonment without parole for the most serious offences.

On the contrary, the Constitutional Scheme and legal framework of these countries have allowed their practice to vary with great influence. For instance, the decentralised nature of the legal system in the US allows individual states to decide on capital punishment, which enables some states to actively execute prisoners, while others have abolished the practice. The UK has followed the European trend of abolition, influenced by human rights laws and the European Convention on Human Rights (ECHR),⁸² India's legal system allows for the death penalty but imposes stringent conditions through the Supreme Court, which plays a key role in reviewing capital cases.

In like manner, there has also been an influence on crime rates and public opinion. The US retention is often justified by high violent crime rates in certain states, while in the UK, its lower crime rates and a strong human rights framework made abolition feasible. Public sentiment tends

⁸¹ *Supra* note 37.

⁸² *Supra* note 52.

to favour the death penalty for heinous crimes in India, particularly after high-profile cases like gang rape.

Political divisions affect capital punishment policy; with conservative-leaning, autonomy and federalism, states are more likely to retain it, as in the case of US, strong public opposition and political consensus led to abolition in the UK. In India, political parties often use the death penalty as a tool to demonstrate strong action against crime, although this is subject to the discretionary judgment of the judiciary, which is independent.

Lastly, societal factors have contributed to making the retention or abolition of capital punishment necessary. In the US, partial retention has been influenced by the crime rate. Violent crimes, especially mass shootings and homicides, drive arguments for retaining capital punishment. Since there is a history of high-profile wrongful executions that raised ethical concerns and stable crime rates as a result of the UK maintaining lower homicide rates, reducing the perceived need for capital punishment becomes inevitable. In India, the situation has been slightly different; there has been considerable public outrage over heinous crimes, cases like the Nirbhaya gang rape and terrorist attacks like 26/11 in Mumbai have reinforced the public demand for execution in rare cases, and Indian courts ensure capital punishment is only applied in the “rarest of rare” cases.⁶³

CONCLUSION AND SUGGESTIONS

The debate concerning the death sentence or capital punishment remains a matter of generational concern. This is because its necessity is noticed based on the trending and prevailing situation in any given nation. The death penalty has been a matter that requires careful examination and proper conclusions before legally taking away the life of anyone.

Those against the practice of capital punishment have been seen to have achieved great success in the UK and some parts of the US. It has been stirred from the perspective of human rights concern, the irreversibility of wrongful convictions, and the need to look into crime as a social problem, rather than punishing the offender. On the other hand, those in support of retaining the death penalty have been viewing it from the standpoint of deterrence, retributive justice, and the need to protect the interests of society at large. It is not doubtful that both ideas are correct; they have also been met with some loopholes, which have led one to safely say there is no evidential proof that the abolition of capital punishment can serve as a motivation for committing more heinous crimes. Indeed, people are motivated by several factors, including the happiness of still being alive in

prison after taking away the life of others, as the work will infer, yet the agreement that some offenders do not premeditate on the consequences of their actions has made the idiosyncrasy futile.

Political, social, and legal factors have been greatly considered as the cross-cultural practices on the inspiration to abolish or retain capital punishments in the US, the UK, and India. Economic factors have been noticed to be of lesser importance as these nations have the commonality of following the alternative measures in the form of prisons and rehabilitation centres, hence, the less impact of economic considerations is felt.

Nonetheless, it is strongly suggested that while retaining the death penalty, India should adopt the shift towards providing sentencing guidelines for awarding of such punishments as it was in the UK, instead of leaving the same to the discretionary powers of judges.

In addition, it is recommended that some of the US retention States and India can also give more energy in addressing some primary challenges that can eliminate the possibility of a criminal mindset, such as poverty, amicable dispute resolution, and empowerment or proper support for those who are victimised, which can be done through social defence mechanisms. Lastly, the UK should ensure that the interests of victims are balanced, as it is sometimes considered unfair to equate or exchange the taking away of one's life by an offender with imprisonment, even with parole.

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