

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

EDITORIAL TEAM

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 & Utkrisht 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.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, 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 IMoot 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.

ABOLISHING CAPITAL PUNISHMENT: A CALL FOR CHANGE

AUTHORED BY: VAANI GARG

Institution: Army Institute of Law, Mohali

ABSTRACT

This research paper is based upon the hypothesis that the application of the death penalty raises more ethical and legal issues than its ostensible benefits as a means of enforcing the law. It instead has a disproportionately negative impact on marginalised communities and fails to appreciably reduce the rate of violent crime.

The paper tracks the historical and international significance of capital punishment to understand its continuance in the modern day. It further analyses India's stand on death penalty weaving through the legal and judicial developments in the country. It also takes into consideration the ethical dilemmas surrounding death penalty and whether it truly serves the purpose of 'deterrence' it was intended for.

The method for research in this paper relies on both theoretical as well as empirical evidence. Secondary sources have been further relied upon to further prove the hypothesis so alleged.

INTRODUCTION

Death Penalty remains one of the major dilemmas of the 21st century. It draws attention to the popular phrase- 'to kill or be killed?'. Capital punishment still remains as a form of punishment not only imposed in India, but across the legal systems of many countries. Various studies have been conducted time and again elucidating upon various aspects of capital punishment, but there still lacks an eye which thoroughly takes into consideration the entirety of the subject. There hasn't been a more necessary time where the need to critically evaluate all aspects of death penalty has arisen.

Proponents of capital punishment argue that it serves as a deterrent to severe crimes, provides justice for victims, and upholds societal order. But the opponents raise concerns about its

morality, the risk of wrongful convictions, and the potential for disproportionate impacts on marginalized communities. The discourse around capital punishment is further complicated by differing legal standards, cultural perspectives, and advancements in forensic science.

This research paper through a comprehensive analysis attempt to discover whether capital punishment still serves the purpose it is intended for in current times.

HISTORICAL EVOLUTION OF CAPITAL PUNISHMENT

There is almost certainly no nation in the world that hasn't used death penalty as a form of punishment at one point in time. Instances of capital punishment have been found since the beginning of history. Modern age has only mitigated its usage. Its focus has now shifted from petty offences to the most gruesome of crimes.

Ancient Civilisations

The first laws regarding capital punishment date back to as far as 18th century BCE in Babylon law. This was the code of Hammurabi. It normalised punishment by death in cases of adultery, rape, disobedience of son, incest, kidnapping, theft, wrong at work¹ etc. The Egyptians awarded the death penalty to those who broke the universal law. This includes betrayal/revolt/conspiracy against the state, violating religious rules, swearing, murder, and giving false information. In Rome, the death penalty was executed in different ways, such as drowning, beheading, throwing torpedo stones, idolatry, burning, and hanging, depending on the nature of the crime². The death penalty was deemed necessary by the Romans. In ancient China, death penalty developed w.r.t. three rules of Emperor Kao Ti of the Han dynasty in 201 B.C. It was awarded for more than 220 crimes in T'ang Code of 653³. By 18th Century, the Ch'ing Code of 1740 provided death strangulation, decapitation, and slicing for more than 800 crimes.

In United States, capital punishment was introduced by the European settlers. The first recorded incident is the execution of Captain George Kendall in the Jamestown colony of Virginia in 1608⁴. Each colony had its own rules regarding death penalty.

¹ J. Dyneley Prince, *Review: The Code of Hammurabi*, 8 *The American Journal of Theology* 601, 603 (1904).

² Orzikulova Gulbahor Usmonovna, *In the History of the Ancient World, the Death Penalty*, 6 *JournalNX- A Multidisciplinary Peer Reviewed Journal* 100, 105 (2020).

³ Chin Kim, *The Death Penalty in Traditional China*, 5 *GA. J. INT'L & COMP. L.* 77, 79 (1975).

⁴ DEATH PENALTY INFORMATION CENTRE, <https://deathpenaltyinfo.org/curriculum/high-school/about-the-death-penalty/history-of-the-death-penalty> (last visited Aug. 6, 2024).

Religious Perspectives

In ancient India, capital punishment originated from theology. The concept of *danda*⁵ (punishment) arose during the Vedic period (1500- 600 BCE) which emphasised on the duty of the King to inflict punishment on the guilty. *Danda* was associated with righteousness. In Smritis of Manu and Yajnavalkya death penalty was provided as an obligation of the King to punish the culprits⁶. Manu speaks of four forms of punishments, one of which—*Badhadanda*⁷ (physical punishment including death), included (1) *tadanam* (beating), (2) severance of limbs, (3) branding (imprinting marks on visible parts of the offender's body, indicating that he or she is convicted), (4) capital punishment, and (5) pouring heated oil into the offender's earhole.

Followers of Judaism and Christianity have based their justification for capital punishment in the biblical passage “*Whosoever sheddeth man's blood, by man shall his blood be shed.*”

In Islamic law, as expressed in the Qur'ān, capital punishment is permitted, though only allowed in limited circumstances⁸. It prescribes death penalty for several *Hudud* (fixed) crimes—including robbery, adultery, and apostasy of Islam. Murder is treated as a civil crime and is covered by the law of *Qisās* (retaliation), whereby the victim's relatives decide whether the perpetrator is to be punished with death or be made to pay compensation called *diyāh* (wergild). Death penalty is discretionary for *Ta'zir* crimes which are the ‘claims of the state/society.’⁹

And We ordained for them herein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed – then it is those who are the wrongdoers. (Quran 5:45)

If you punish, then punish with an equivalent of that which you were harmed. But if you are patient - it is better for the patient. (Quran 16:126)

⁵ADVOCATE

KHOJ, [https://www.advocatekhaj.com/library/lawreports/capitalpunishment/167.php?Title=Capital%20Punishment&STitle=Capital%20Punishment%20in%20Hindu%20Period#:~:text=During%20the%20Maurya%20period%20\(325,treason%20attracted%20the%20death%20penalty.&text=There%20are%20interesting%20discussions%20in,coercive%20authority%20of%20the%20King](https://www.advocatekhaj.com/library/lawreports/capitalpunishment/167.php?Title=Capital%20Punishment&STitle=Capital%20Punishment%20in%20Hindu%20Period#:~:text=During%20the%20Maurya%20period%20(325,treason%20attracted%20the%20death%20penalty.&text=There%20are%20interesting%20discussions%20in,coercive%20authority%20of%20the%20King) (last visited Aug. 6, 2024).

⁶ Radha Krishna Choudhary, *Theory of Punishment in Ancient India*, 10 Indian History Congress, 166 (1947), https://www.jstor.org/stable/44137122?read-now=1&seq=6#page_scan_tab_contents.

⁷ Qadeer Alam, *Historical Overview of Torture and Inhuman Punishments in Indian Sub-Continent*, 31 Journal of the Punjab University Historical Society 133, 137 (2018).

⁸ Naima Asif, *An Introduction to Sharia Law and the Death Penalty*, FACULTY OF LAW BLOGS UNIVERSITY OF OXFORD (Aug. 6, 2024, 6:42PM), <https://blogs.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2021/01/introduction-sharia-law-and>.

⁹ Michael Mumisa, *Sharia law and the death penalty: Would abolition of the death penalty be unfaithful to the message of Islam?* Penal Reform International 1, 11 (2015).

MODERN DEVELOPMENTS AND INTERNATIONAL LAW

As of 2021, **108** countries have abolished the death penalty in law for all crimes. **144** countries have abolished the death penalty while **55** countries still retain it¹⁰. The Death penalty for all crimes except treason was abolished by Michigan in 1846. Subsequently, Rhode Island and Wisconsin abolished the death penalty. By the end of 19th century, countries such as Venezuela, Portugal, Netherlands, Costa Rica, Brazil and Ecuador followed suit. Ghana became the latest country to abolish death penalty in 2023. Capital punishment hasn't been outrightly banned under international law. However, its use has been severely discouraged and countries are urged to abolish it in their respective domestic laws.

- On 10 December 1948, the United Nations General Assembly adopted the 'Universal Declaration of Human Rights' as a 'common standard of achievement for all peoples and nations':

Article 3: "*Everyone has the right to life, liberty, and the security of person.*"

Article 5: "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*"

- ICCPR, 1967- Article 6 limits death penalty for the most serious crimes in accordance with the law. Further it states, that for the abolition of capital punishment, nothing in the aforesaid Article shall be invoked to delay or prevent the abolition.
- In 1984 the UN Economic and Social Council (ECOSOC) adopted safeguards guaranteeing protection of the rights of those facing the death penalty for countries which have not abolished the death penalty. It lists 9 such conditions where death penalty can be awarded.
- Adopted on 20 April 2005, in resolution 2005/59, the UN Commission on Human Rights stated that "*the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights*" and that "*the abolition of the death penalty is essential for the protection of [the right to life]*".
- Under the Statute of the International Criminal Court adopted in 1998, the death penalty is excluded from the list of applicable penalties under Article 77.

¹⁰ AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/documents/act50/5418/2022/en/> (last visited Aug. 6, 2024).

DEATH PENALTY IN INDIA

Criminal justice system in India is the brain-child of the British Raj. Indian Penal Code, 1860 (IPC), which listed a number of capital crimes remains in force even after independence¹¹. It has been also included in several laws related to the armed forces, local laws and other legislations. The first hanging in independent India was of Nathuram Godse and Narayan Apte for assassination of Mahatma Gandhi in 1949. Ironically, Mahatma Gandhi pioneered for the abolishment of capital punishment. He believed ‘hate the sin, not the sinner’¹².

Attempts to abolish death penalty in India

A Bill abolishing the death penalty for IPC offences in 1931 was initiated by Gaya Prasad Singh. However, it was opposed. In March 1931, after Bhagat Singh, Sukhdev and Rajguru were executed by the British government, the Congress introduced a resolution in its Karachi session. This resolution included a demand for the abolition of the death penalty. India’s constitutional assembly debates between 1947-49 also raise questions on validity of death penalty. Pandit Thakur Das Bhargava, Frank Antony, Shibbanlal Saksena, and Dr. Ambedkar, amongst others severely opposed death penalty. The question of its abolishment was left to the wishes of the future parliaments of the country. Various bills were moved between 1952-1963 to abolish death penalty but resulted in a deadlock due to non-consensus. Finally, the task of examining the IPC and CrPC w.r.t. death penalty was entrusted to Law Commissions.

Law Commission Reports

The 35th Law Commission Report on capital punishment in 1967 remarked- “*Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment*”¹³.

¹¹ Indian Penal Code, §.120-B, 132, 194, 195A, 302, 303, 305, 307(2), 364A, 396, No. 45, Acts of Parliament, 1860 (India).

¹² Krishnan, R and Moore., *A Source Book in Indian Philosophy - A commentary on Ahimsa*, Central Law Publication 500, 536 (1978).

¹³ LAW COMMISSION OF INDIA, <http://lawcommissionofindia.nic.in/1-50/Report35Vol1and3.pdf> (last visited Aug. 6, 2024).

In 2003, the 187th Report of Law Commission on the “Mode of Execution of Death and Incidental Matters” was released. It recommended-

- i) inclusion of lethal injection as a method of execution, in addition to hanging.
- ii) Provision of a statutory right of appeal to the Supreme Court where a High Court confirms a death sentence, or enhances the sentence to capital punishment.
- iii) all death sentence cases be heard by a 5 judge Supreme Court bench.¹⁴

In 2015, the law commission released its 262nd Report on death penalty. It remarked that “*time has come for India to move towards abolition of the death penalty, for all crimes other than terrorism related offences and waging war.*”

The Indian Parliament has sought to replace the IPC with Bharatiya Nyaya Sanhita, 2023 (BNS). Hopes of abolishment of death penalty were crashed when BNS instead has increased the number of crimes which can attract the death penalty from 11 to 15. It has been added for four new crimes- mob lynching, organised crime, terrorism and rape of a minor.

Constitutional Validity of Death Penalty in India

Death sentence in India was first challenged in the case of Jagmohan Singh v. State of U.P.¹⁵, where it was alleged to be violative of article 14, 19 and 21 of the constitution. It was challenged that death sentence puts an end to all rights guaranteed under clauses (a) to (g) of Article 19(1) and is unreasonable and not in the interest of the general public. The wide scale discretion vested in the judges to impose death punishment is uncontrolled and unguided. It is also subject to Article 14 of the Constitution as two persons who commit murder are liable to be treated differently when conviction is based on similar facts- one is deprived of his life and the other is awarded a sentence of life imprisonment. Lastly it was contended that the provisions of the law do not provide a procedure for making the choice between the capital penalty and imprisonment for life. In the absence of any procedure established by law sentence of death is unconstitutional under Article 21. But the court held that-

“Article 19 of the Constitution does not directly deal with the freedom to live. Unless it was shown that the sentence of death for murder passed the test of reasonableness and general public interest, it would not be a valid law.”

“Death penalty was not violative of Article 14 of the Constitution as the law gives a judge discretion in the matter of sentence after balancing all the aggravating and mitigating

¹⁴ LAW COMMISSION OF INDIA, [://lawcommissionofindia.nic.in/reports/187th%20report.pdf](http://lawcommissionofindia.nic.in/reports/187th%20report.pdf)), (last visited Aug. 6, 2024).

¹⁵ Jagmohan Singh v. State of U.P., (1973) 1 SCC 20.

circumstances of the crime. It will be impossible to say that there would be at all any discrimination, since facts and circumstances of one case can hardly be the same as the facts and circumstances of another.”

“It also does not violate Article 21 as CrPC contains a detailed procedure on finding of guilt of a person.”

In Rajendra Prasad v. State of U.P.,¹⁶ court held that *“reasonableness’ and fairness are the touchstone of the constitutionality of capital penalty. Death penalty is permissible only where reformation within a reasonable range, is impossible. It is permissible when the murderer offers such a traumatic threat to the survival of social order, security of the state and society, and the interests of the general public were threatened, then his enjoyment of fundamental rights may be rightly annihilated.”*

Doctrine of Rarest of the Rarest Case

The decision in Jagmohan Singh was reaffirmed in Bachan Singh v. State of Punjab¹⁷. The court upheld the constitutional validity of Section 302 IPC and 354(3) CrPC. It emphasised on the need to weigh the aggravating and mitigating factors to be considered while awarding death penalty. It further said-

“Real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”

P.N. Bhagwati gave a dissenting opinion. She held that death penalty is irrevocable and beyond recall. Moreover, ‘special reasons may differ judge to judge making death penalty extremely arbitrary.’ The uncontrolled discretion and lack of any standards or guidelines while awarding death penalty make it violative of Article 14 and 21 of the constitution.

Nevertheless, The Supreme Court’s decision did not define or restrict the use of the phrase ‘rarest of rare.’ This was enumerated upon in Machhi Singh v. State of Punjab¹⁸-

“‘Rarest of rare cases’ were those where the collective conscience of society is so shocked that it will expect the holders of the judicial power centre to inflict death penalty.

The court need to ask 2 prime questions before awarding death penalty-

- (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?*

¹⁶ Rajendra Prasad v. State of U.P., (1979) 3 SCC 646.

¹⁷ Bachan Singh v. State of Punjab, (1980) 2 SCC 684.

¹⁸ Machhi Singh v. State of Punjab, (1983) 3 SCC 470.

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?”

In Mithu v. State of Punjab¹⁹, the court struck down Section 303 of the IPC which mandatorily awarded death sentence for committing murder. It held that this amounted to “*deprivation of rights and safeguards which is bound to result in injustice is harsh, arbitrary and unjust.*”

In Jashubha Bharatsinh Gohil v. State of Gujarat²⁰, it has been held that in the matter of death sentence, the Courts are required to answer new challenges and mould the system to meet these challenges. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence.

In the case of Swamy Shraddhananda v. State of Karnataka²¹, the Supreme court commented that the confirmation or commutation of death sentence by and large depends upon the predilection of the judge. The Supreme court has repeatedly acknowledged inconsistency in applying “rarest of the rare” doctrine.²² The Court has also raised concern over “judge-centric” application of “principled sentencing”.²³

In Mukesh v. State (NCT of Delhi)²⁴, the accused persons committed gang rape in a moving bus, inserting iron rods in the private parts of one victim, subsequently throwing out both the victims out of the bus. This act shocked the collective conscience of the society. The Court held that the case was a “the rarest of rare case” where the question of any other punishment was “unquestionably foreclosed”. It hence affirmed the death sentence awarded to the accused persons. They were hanged in 2020, which is also the most recent executions made in India. Around 755 death penalty convicts have been hanged in Independent India till now²⁵.

¹⁹ Mithu v. State of Punjab, (1983) 2 SCC 277.

²⁰ Jashubha Bharatsinh Gohil v. State of Gujarat, (1994) 4 SCC 353.

²¹ Swamy Shraddhananda v. State of Karnataka, (2008) 13 SCC 767.

²² Aloke Nath Dutta v. State of West Bengal, (2007) 12 SCC 230; Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641; Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546.

²³ Sangeet v. State of Haryana, (2013) 2 SCC 452.

²⁴ Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1.

²⁵ Taran Deol, *Rarest of Rare: History of Death Penalty in India*, THE PRINT (August 6, 2024, 7:14 PM), <https://theprint.in/theprint-essential/rarest-of-rare-history-of-death-penalty-in-india-and-crimes-that-call-forhanging/383658/>.

ETHICAL CONSIDERATIONS V. DEATH PENALTY

Views of Philosophers on Death penalty

Plato was averse to retributive punishment. He believed that capital punishment was meant only for the incurable and the bad men themselves²⁶. Immanuel Kant was a staunch believer of retributive justice and Criminal Punishment. He appealed for maximum support for “Law of Retribution”. He believed that if a person has committed a murder, then he deserved to die.

On the other hand, Cesare Beccaria supported abolitionism and called for, “Sympathetic sentimentality and affection of Humanitarianism”. He challenged the authority of the state to carry out the death penalty and the utility of death penalty²⁷.

Jeremy Bentham’s theory of utility holds that capital punishment is justified if it will promote the ‘happiness of the greatest good for the greatest number of people’ in the society²⁸. Emile Durkheim supported capital punishment to have a salutary effect on society by reaffirming the collective consciousness²⁹. Barring a few exceptions, Durkheim believed that criminal punishment was awarded on behalf of society.

Psychological Perspective

The death row phenomenon is the emotional distress felt by prisoners on death row. This phenomenon has been accepted in Indian jurisprudence. The Supreme Court in Shatrughan Chauhan v. Union of India³⁰ held that sentence of death creates adverse physical conditions and psychological stresses on the convict. Prisoners are completely barred from the world outside, they spend 24 hours of the day locked between closed doors, often isolated, in a state of constant uncertainty of when they’ll be hanged. Many often also suffer from suicidal thoughts. Living in the shadow awaiting execution, their mental health collapses as they complex legal process takes years to resolve.

Not only the convicts, but several reports have also described that families of prisoners sentenced to death face both cognitive, emotional and financial difficulties. The emotional

²⁶ Anasfasios Ladikos, *Plato's views on capital punishment*, 6 Journal for South African Society for Greek Philosophy and Humanities 49, 49 (2005).

²⁷ F. Rosen, *Crime Punishment and Liberty*, 20 History and Political Thought 173, 174 (1999).

²⁸ Raphael Olisa Maduabuchi, *Epistemic Investigation into Jeremy Bentham's Theory of Capital Punishment: Implications on Nigeria Situation*, 11 Open Journal of Philosophy 75, 79 (2021).

²⁹ Rick Phillips, *Executions and Public Support for Capital Punishment in the United States: A Durkheimian Perspective*, 6 International Journal of Criminology and Sociological Theory 57, 58 (2013).

³⁰ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

trauma they suffer is intense and prolonged³¹.

There is another hidden impact of awarding death penalty- the dilemma faced by the executioners. For example, Nata Mullick, a veteran executioner of the Central Jail in Kolkata, describes his work as a ‘public duty’. He also reveals that he has sleeping problems and recurring flashbacks to executions, and that he turns to religion to deal with the ‘the horror of being a legalised killer.’ Others have exhibited other symptoms of secondary trauma such as physical ailments and detachment from neighbours and family³². Executioners report to be suffering from depression, personality changes, nightmares, obsessive- compulsive behaviours, and PTSD³³.

CAPITAL PUNISHMENT- IS IT HERE TO STAY?

Irreversible mistakes

There are innumerable instances where the Supreme Court has altered the death sentence awarded by the lower courts- In 2023, the apex court acquitted almost 55% of the death row prisoners in the cases it heard³⁴. The Supreme Court recently acquitted two death row convicts for which the trial court and High Court awarded capital punishment³⁵.

In an appeal to the President of India — Pranab Mukherjee — thirteen former judges mentioned that two prisoners who had been wrongly sentenced to death — Ravji Rao and Surja Ram — had been executed on May 4, 1996, and April 7, 1997, respectively, due to flawed judgments³⁶. The lives of two innocent persons were put to an end because humans are fallible.

³¹ H. De La Rey, *Socio-psychological effects of the death penalty on families of prisoners on death row*, 7 African Journal of Criminology & Victimology 20, 24 (1994).

³² Shubhangi Agarwalla, *The Hidden Cost of the Death Penalty in India*, OXHRH BLOG (Aug. 6, 2024, 6:42PM), <https://ohrh.law.ox.ac.uk/the-hidden-cost-of-death-penalty-in-india>.

³³ Robert T Muller, *Prison Executioners Face Job-Related Trauma*, PSYCHOLOGY TODAY (Aug. 6, 2024, 7:30PM), <https://www.psychologytoday.com/intl/blog/talking-about-trauma/201810/prison-executioners-face-job-related-trauma#:~:text=He%20began%20crying%20and%20shaking,relationships%2C%20and%20changes%20in%20personality>.

³⁴ Lakshmi Menon, *India's burgeoning death penalty crisis*, THE HINDU (Aug. 3, 2024, 5:30PM), <https://www.thehindu.com/opinion/op-ed/indias-burgeoning-death-penalty-crisis/article67904333.ece>.

³⁵ Gyanvi Khanna, *Supreme Court Acquits Two Death Row Convicts, Perplexed at Trial Court & HC Awarding Capital Punishment Despite Loopholes in Evidence*, LIVE LAW (Aug. 6, 2024, 9:30PM), <https://www.livelaw.in/top-stories/supreme-court-acquits-two-death-row-convicts-perplexed-at-trial-court-hc-awarding-capital-punishment-despite-loopholes-in-evidence-238478?fromIpLogin=91896.2354275306>.

³⁶ Maneesh Chhibber, *Former judges seek pardon for 13 prisoners on death row*, Indian Express (Aug. 3, 2024, 5:30PM), <https://indianexpress.com/article/news-archive/web/former-judges-seek-pardon-for-13-prisoners-on-death-row/>.

The irrevocable nature of the death penalty means that any error, whether due to flawed evidence, judicial bias, or prosecutorial misconduct, results in the permanent deprivation of life, making the stakes exceptionally high and the cost of any mistake immeasurable.

Is death penalty a deterrent?

Three main theories on which the penology system is based are: retribution, deterrence and rehabilitation. The chief argument of retentionists is the deterrence outcome formed by the death penalty. According to NCRB data, the crime rate has increased by 34.1% during the decade 2003-2013 from 160.7 in the year 2003 to 215.5 in the year 2013. It increased further in 2023 where the crime rate stood at 445.9 per 100,000 individuals. According to figures released by the National Crime Records Bureau, at the end of 2023, there were 561 convicts serving death sentences, which is the biggest number of those on death row in a single calendar year in over two decades (compared to 144 in 2003).³⁷ The statistics clearly ascertain that the death penalty has no such deterrence and the effectiveness of deterrence of the tremendous punishment remnants unproven.

Organisations such as Amnesty International hold that there is no evidence which shows that death penalty has a unique deterrence on crime. Since most crimes are done on the spur of the moment, there is little chance that possible penalties will deter criminal activity because they don't think they will be discovered and held accountable. Other research has compared patterns before and after the change to examine how abolition affected the number of homicides. If the death penalty did deter, murder rates would be expected to rise once the deterrent was removed. That has not happened³⁸. The only support for death penalty as a deterrent lies in public belief. This myth has been embedded into the minds of the people in such a way that it has become a social norm.

Economic implications

As much as death penalty is a socio-legal and moral issue, from the perspective of the government is a program with related costs and benefits.

Many individuals believe that because the state no longer has to pay for an executed person's

³⁷ PROJECT 39A, <https://www.project39a.com/annual-statistics-report-2023>, (last visited Aug. 6, 2024).

³⁸ THE DEATH PENALTY PROJECT, https://deathpenaltyproject.org/wp-content/uploads/2022/08/The-Death-Penalty-Project_Policy-Deterrence.pdf, (last visited Aug. 6, 2024).

incarceration, medical care, or other associated costs, the state saves money by implementing the death penalty. But such presumption has been shown to be incorrect in the context of the capital sentence as it is used today. The cost of a system that substitutes life in prison without the possibility of parole for the death penalty is significantly higher. The need for more attorneys and experts on both sides of the case, the prolonged trials and appeals that occur when someone's life is at stake, and the comparatively small percentage of executions are the main causes of the death penalty's high cost. The death sentence is not applied in the majority of situations where it is requested. Furthermore, the likelihood of a conviction or death sentence being reversed in court is high when it comes to capital punishment. Majority of prisoners who get death sentences actually serve out their whole jail sentence—albeit at a greatly inflated expense.

CONCLUSION

The paper covers many aspects of death penalty. There is an ever going, century continuing debate of whether capital punishment is here to stay. As a society, we have to think hard on whether it is really the ultimate form of punishment. The world is shaping itself to be a capitalistic and money churning machine. Though the question of life shouldn't be put to an economic vote, capital punishment stands to be on the costlier end. When we are moving an inch closer to being more humanitarian every day, there shouldn't be any exceptions. Mutually exclusive positions cannot be maintained simultaneously.

Death penalty might put to rest the most barbaric and gruesome of individuals, but it carries a significant risk of executing innocent individuals. Our legal system has too often made mistakes. Wrongful convictions continue to occur, lives unjustly taken. In the absence of any evidence to support that it has a deterrent effect, death as a punishment is only awarded to satisfy the quench for revenge.

If public opinion today stands for death punishment, tomorrow it can be persuaded to oppose it. Historically, legally, ethically, morally and psychologically, capital punishment is deeply flawed. Alternative practises and forms of punishment must be pursued- life imprisonment and sentence without parole. No matter how severe one tries to draw the distinction between murder and death penalty, the latter is still murder, only state sanctioned. The sanctity of human life must be preserved, the path of compassion over vengeance must be opted for.