

DEATH PENALTY: A COMPARATIVE ANALYSIS BETWEEN
INDIA, UK, AND USA

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ABSTRACT

Death penalty as a sentence is considered as the extreme form of punishment, among all the modes of punishment, the death penalty can be considered as the most extreme and severe form of punishment. Capital punishment or the death penalty is an idealistic and thoroughly investigated topic which has led to the contemplation of various opinions. This research paper will make a comparative study of the death penalty in India, the United Kingdom and the United States and examine the differing IPR of law, constitutional concepts and the government policy as well as, the legal framework governing the practice of death penalty practice within these countries with special interest being given to the Indian origin of capital punishment provisions in specific areas of murder and Rape. The argument about the constitutionality of death penalty is also highlighted in the paper with reference to its congruence with fundamental rights.

This paper uses a comparison of legal approach and desk-based research in socio-legal approaches to identify significant themes in sentencing in relation to race, religion, caste, and socio-economic status when applied to sentencing of the death sentence. Poor legal representation and prosecutor misconduct, which have resulted in an unnecessary population of Black Americans in death row and in the context of the UK, the paper addresses abolition of capital punishment and the part played by the Human Rights Act. These factors increase the bias. Nevertheless, the article critically examines the application of the doctrines of the rarity of rare in the Indian context when dealing with capital cases, by citing major Supreme court decisions on the awarding of capital punishment in the Indian system.

The study wraps up by saying there is an urgent need to reform the death penalty system in India, putting forward a system more transparent, humane, and entrenched in the principles of human rights that go by the global guidelines.

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Keywords: Death penalty, Capital punishment, rarest of rare doctrine, USA, India, UK, Judicial interpretation, Supreme Court verdicts.

INTRODUCTION

Capital punishment, otherwise referred to as the death penalty, represents the ultimate type of punishment. It has been said to be a device of justice and it has been said to be an infringement of the fundamental human rights as well. Capital offences refer to offenses that attract death penalty and the term capital punishment is derived out of the word capital meaning that of the head.

The death penalty function on a point of law, morality and social justice is prone to questioning based on its deterrence effect alleged, arbitrariness and the possibility of committing an irreparable error. The issue of capital punishment is one that has been debating decades. The concept of capital punishment is at variance with the notion that different countries have. Crime levels have increased across the world and India is no exception. It should have a decent justice system and punishments should be meted out accordingly and proportionately.

India retains death penalty as a legal form of punishment, but it is reserved for the “rarest of rare” cases involving especially heinous crimes such as murder, terrorism, and certain repeat offences. Executions are carried out by hanging, and the number of actual executions is very low compared to the number of death sentences imposed. Indian courts impose strict procedural safeguards, and legislative reforms over the decades having aimed to make life imprisonment the norm and capital punishment the exception.

In the USA, the death penalty remains legal in 27 states, with each state and the federal government having discretion over its use and procedures. Capital punishment is most often applied in cases of aggravated murder and treason. Methods of execution include lethal injection, electrocution, and less commonly, other methods.

The United Kingdom has fully abolished the death penalty for all crimes. The last execution occurred in 1964, and subsequent legislation eliminated capital punishment for murder in 1965 in Great Britain (and in 1973 in Northern Ireland). Later laws removed it for remaining offences and the UK is now committed to abolition through domestic law and international human rights treaties.

According to theorist, the death penalty serves retribution and closure in the victims, and serves in trials of the most heinous crimes; however, much empirical research contradicts these arguments and indicates that it is neither a better deterrent than life imprisonment of crime nor is effective in deterring recidivation of crime.

This is because the justice system globally finds it hard to balance the socially instilled demands of vengeance with those of justice and rehabilitation. Practically, it is also true that the death penalty is more detailed in condensed populations, intensified racial, socio-economic, and geographical dissimilarity in the combined systems of law.

HISTORICAL CONTEXT

Capital punishment is regarded as historically universal and the events of it can be traced back even to the Babylonian laws of Hammurabi (18th century BCE), where it classified the death sentence as relating to 25 offenses. The Hittite code of the 14th century BCE, the Draconian Code of Athens of the 17th century BCE, which introduced death as the sole punishment to all forms of crime, and the Roman Law of the Twelve Tablets of the 15th Century BCE also included the death penalty. Such actions as crucifixion, drowning, death through beating, being burned alive and impalement were some of the ways of administering death sentences.

Before late in the 18th century, public executions were used, but legal reforms and policies of humane punishment started to be promoted, with thinkers of the Enlightenment. Abolition movements began to gain momentum in the 19th and 20th centuries and countries such as Michigan (USA), Venezuela and San Marino led the way and introduced legal constraints and ban. More than 70 percent of nations have today either abolished or laws or practice of the death penalty an estimated majority of the world living population today reside in the 150 or so states where the death penalty still exists.

INDIA:

1. Ancient and Medieval Period:

- In India, the death penalty has its origins in ancient era, where it is prescribed in Hindu scriptures such as Manusmriti as the punishment against a wide range of wrongdoings, including murder, adultery and slander against the Brahmins (priestly caste).²

² U.C. Sarkar, *Crime and Punishment in Ancient India* (1920).

- Under the Maurya Empire (322-185 BCE), the death penalty was widely employed and different ways of practicing it were employed including impalement, trampling by elephants and burning alive.
- Islamic rulers during the medieval like Delhi sultans and Mughals utilized the concept of executions utilized more as a form of punishing crimes against the state or corporate religion.³

2. British Colonial Rule:

- Indian penalties India New Ideas uncodified capital punishment in the Indian Penal Code of 1860, against serious offenses like murder, treason, abetting mutiny, limited types of theft.⁴
- Hanging on gallies was a widespread custom and revolutionaries, such as Bhagat Singh and Rajguru were galled in 1931, which caused an uproar.

3. Post-Independence:

- Following independence in 1947, however, our Indian legal system kept the death penalty in their books, although its application came under judicial system rarest of rare cases due to critical, scrutinized Supreme Court rulings.⁵
- The death penalty is hardly used in India nowadays; occurrence in case of terrorism, especially the gruesome murder and other serious offense.
- The most recent execution came in 2020 in the case of the Delhi gang rape (Nirbhaya case) in which four male culprits were hanged.⁶

UNITED STATES:

4. Colonial Period:

- The origin of capital punishment traces back to America during the Colonial period where the first death sentence was carried out in 1608 (Captain George Kendall) in the Virginia Colony.

³ P. Saran, *The Provincial Government of the Mughals 1526–1658* (Kitabistan 1973).

⁴ *Indian Penal Code*, No. 45 of 1860, India Code.

⁵ *Code of Criminal Procedure*, No. 2 of 1974, India Code.

⁶ Nirbhaya Case: All Four Convicts Hanged in Delhi's Tihar Jail, *Indian Express* (Mar. 20, 2020).

- There was a high level of capital punishment in the initial law in capital crime such as murder, rape and crimes against religion and states. Lynch law was a regular event, and the accused were at times obliged to make their own hangmen.

5. Post-Independence:

- States established their preferences and procedures of execution after independence.
- Later on in the 19th century, more humane forms of executions began to be used, which resulted in the use of a gas chamber, electric chair and lethal injection.
- A 1976 case by the Supreme Court named *Gregg v. Georgia* has revived death penalty following a spell of suspension but this time with guidelines on more rational application. Capital punishment has one been a very debatable matter and there have been continued legal battles and controversies ever since.
- Instead, the death penalty has been abolished in 27 states, and is still permitted in 23 states (including the federal government) because of some of its unfairness, racially discriminatory views and prolonged periods.

UNITED KINGDOM:

The death penalty was practiced in the UK has been in use centuries before, it was performed by hanging and burning plus a very strict colonial policy, most notably in India.

This shifted to leniency in 1957 Homicide Act restricted the executions to certain cases.

The Murder (Abolition of Death Penalty)⁷ Act of 1965 They basically brought to an end the execution of all murder cases, although certain uncommon offences (treason by force, piracy) were temporarily allowed.

Its final execution was in 1964 and it was only after the European norms were met and after the public appeals that the death penalty was fully abolished in 1998 by the Human Rights Act of 1998.⁸

COMPARATIVE OVERVIEW:

In India, capital punishment is still maintained in offending video of the most infrequent circumstances.

The formulation of the approaches of the USA is conflictual, and applications in different states differ, and the discussion appears.

⁷ *Murder (Abolition of Death Penalty) Act*, 1965, c. 71 (U.K.).

⁸ *Human Rights Act*, 1998, c. 42 (U.K.).

In the United Kingdom, death penalty is completely abolished and there is not held any execution since 1964.

PHILOSOPHICAL AND THEORETICAL REASONS

Philosophically and theoretically, the death penalty can be substantiated in various great schemes and each of them presents different reasons why death penalty should be legitimate, with the primary reasons being expenditure on vengeance, deterring and safeguarding the society.

Retributive Justification

The retributive school of thought is based on the principle of vengeance. When retributivists justify the degree of punishment to misconduct, they do so by looking back to what is in the wrongdoing.

The most common appeal to retributivism concerning capital punishment frequently cites an appeal to the principle of lex talionis, or the law of vengeance, an idea widely made accessible in the old and biblical proverb, an eye for an eye and a tooth for a tooth. The Punishment aspect of Retribution theory is important to provide security through punishing lawbreakers as a means of deterrence; it also provides an opportunity to society to perceive justice as well as acting as a role model to the culprits who could find themselves in such predicament of becoming criminals, therefore preventing the act of committing such crimes.⁹

Theory of the Deterrence of Punishment

Basing on the classical theory of criminology, the criminological theory of deterrence presupposes that people are inherently based on self-interest and, consequently, could be deterred by the threat of immediate, automatically imposed, and severe penalties.

According to the deterrence theory, the death penalty discourages the commission of heinous crimes by making them see the end result including the perpetrator and the would-be perpetrators alike like murder because of the death penalty.¹⁰

The detractors assert that the efficacy of deterrence can hardly be documented, yet it continues to be a highly emphasized reasoning in the course of law and political examination.

Supplementary Social Safety and Security

⁹ Stuart Banner, *The Death Penalty: An American History* (Harvard Univ. Press 2002).

¹⁰ John Rawls, *A Theory of Justice* (Harvard Univ. Press 1971).

The theory of punishment according to the preventative opinion suggests that punishment of offender is not aimed to serve in avenging the offender, but to avert reoccurrence of further crimes.

The theory of preventive punishment has developed during the enlightenment era in Europe and in particular by the Italian philosopher and jurist Cesare Beccaria. In his ideas, Beccaria also maintaining present-day punishment had utilitarian needs, namely, to prevent crimes in the future rather than to give revenge and show retribution.¹¹

Nonetheless, there are other critics of the theory who feel that this theory does not have the ability of preventing future criminal activities. This is because by taking a criminal to jail, he becomes kered by becoming even more worse than he was before going to jail in the company of other criminals who are already as bad as an offender as he is.

However, critics have also said that once an offender is imprisoned, the reason of ensuring that such an offender does not commit any other crime against society is served. This is easily done through the removal of his presence in the society. Therefore, at last, making the crime and criminal useless.¹²

The Utilitarian and Kantian Approaches

Where the utilitarian viewpoint will rationalize the death penalty is when overall happiness or utility in the society is more than in the individual. In case capital punishment is determined to deter serious crimes such as murder much more efficiently than redressing alternatives such as life imprisonment and that it leads to safety and confidence or trust into the legal system; then it is said to be morally appropriate.¹³

In opposite, the Kantian approach towards the death penalty is an expression of deontological ethics that focuses on moral responsibility, justice and human decency without regard to the outcome. Immanuel Kant supported capital punishment according to the retributive approach or lex talionis- the penalty should suit the offence committed.

Distinguish death penalty; what is important is the delivers of offenders their dues per universal moral law.

Ethical and Philosophical Implicated Considerations

¹¹ Cesare Beccaria, *On Crimes and Punishments* (1764).

¹² Jeremy Bentham, *The Rationale of Punishment* (R. Heward 1830).

¹³ Utilitarian Theory of Punishment, in *Jeremy Bentham, Principles of Morals and Legislation* (1789).

Another is whether state power and moral duties are involved in the theory is whether the deliberate killing of offenders by the state is justifiable under any circumstances.

The death penalty is commonly the subject of philosophical debate in a broader sense, in the relation to the more generic theories of the standard case or the central case of punishment, as an institution or a phenomenon within a complex of legal rules. Any form of punishment, and most sharply an execution, knowingly inflicts pain, suffering, unpleasantness or deprivation on a subject typically not compatible with sources of such papers as the state authority.¹⁴

Altogether, the reasons why the death penalty should be used are based on the theory of retributive justice, protection, and deterrence with the current discussion of the terms of fairness, proportionality and the legality of such a sentence.

LEGISLATIVE FRAMEWORK

INDIA:

1. Legal Basis and Statutes:

IPC (1860) specifies the death penalty to the offenses such as, murder (Section 302)¹⁵, Waging war against the state (Section 121), kidnapping to ransom resulting to death (Section 364A), and most crucially and brutally rape (Section 376A).¹⁶

More recentifying legislation- the Bhartiya Nyaya Sanhita (BNS), 2023- introduced death eligibility to 15 crimes, including mob murder, terrorism, gang rape of minors and organized crime¹⁷.

The criminology Procedural protections of the Criminal Procedure Code (CrPC, 1973) are could be:

- separate sentencing hearings (Section 354(2)),
- The condition that a reason should be entered as to why the death sentencing has taken place (Section 354(3)).
- Section 366 Mandatory confirmation by the High Court.

2. Constitutional and Procedural Protecting:

¹⁴ H.L.A. Hart, Prolegomenon to the Principles of Punishment, in *Punishment and Responsibility: Essays in the Philosophy of Law* 3–5 (Oxford Univ. Press 1968).

¹⁵ *Indian Penal Code*, § 302 (Punishment for Murder).

¹⁶ K.D. Gaur, *The Indian Penal Code* (35th ed. 2021).

¹⁷ *Bhartiya Nyaya Sanhita*, No. 26 of 2023, Gazette of India, Extraordinary, Part II, Sec. 1.

Article 21 Of Indian Constitution envisages capital punishment under such a law that needs to be fair, just due free process and observing natural justice.¹⁸

UNITED STATES:

3. Constitutional and Legal Environment:

Eighth amendment does not outlaw capital punishment but only the unnatural weird type of punishment. In the Fifth Amendment, it should be noted that it recognizes capital crimes under due process.

Capital punishment both in the United States and globally is a matter that is regulated by the federal and state laws. There are ushers in the application of the death penalty which are set forth by the federal government and individual state. The U.S transmission of literature on death sentencing has been exercised in much through decision making by the U.S Supreme Court who adopted the principle of capital punishment as likening to the decision allowing the death penalty in this case through a two-fold deed. In cases such as

Furman v. Georgia (1972) and *Gregg v. The court*, (Georgia 1976) dealt with questions before arbitrariness and constitutionality and the death penalty was temporarily suspended, and then reinstated, with new provisions.

4. Federal vs State Dynamics:

There are many differences in the state level legislation of the death penalty: out of more than two dozen states capital punishment remains a lawful procedure, and most states abolished the death penalty as well.

Capital punishment is still considered a way out in federal law because in cases of espionage, genocide, and first-degree murder the offender has been found guilty of a crime committing which his life will be taken away. The federal death sentence is not common--only 80 have been imposed and only 16 executed between 1988-2024.

Such political dynamics in recent history (e.g., the demand to execute a death penalty on the state of Washington, D.C., and federal executive orders) indicate the controversial and politization capital punishment on the federal level.

UNITED KINGDOM:

5. The Timeline of Abolition of Legislation:

¹⁸ *India Const.* art. 21.

The death penalty against murder was ended by Meaning of the term, Murder (Abolition of Death Penalty) Act 1965 in Great Britain (effective November 1965), meaning that it continued in force in Northern Ireland till 1973.

The application of capital punishment on espionage (Armed Forces Act 1981, Criminal Damage Act 1971) and to behead (1973) was also reduced having gone through subsequent exchange.

The European Convention regarding the Human Right unwounded the death penalty in any civilian matter and this is ratified by the House of Lords in 1998 in 6 th Protocol. Additional abolition in all cases, including military, was added by the 13th Protocol (in force February 2004) and the Human Rights Act 1998.

6. Present Status:

UK has fully abolished capital punishment even during a war or any military situation. Any legislative/judicial avenue to reinstatement is gone.

In the UK in 2024, a vote of the House of Parliament was narrowly defeated when its proposals to leave the Council of Europe, abrogate the Human Rights Act, and revive the use of the death penalty, were defeated.

These were defeated by a margin of 14- 21 votes.

LANDMARK JUDGEMENTS

INDIA:

1. Jagmohan Singh v. v. State of Uttar Pradesh (1973)¹⁹In the case the Supreme Court affirmed that the death penalty continues to be Constitutional and that the sentencing procedure must be evaluated in detail and that lack of due process is not found as long as the process of earthly justice guides the judicial judgment.
2. Bachan Singh v. State of Punjab (1980)²⁰: This was a landmark because it brought in the important principle of the doctrine of the rarest of rare to apply the death penalty. In another statement of the rule, the death sentence is the exception and that life imprisonment is the rule where the alternative sentencing order of life imprisonment is clearly inaccessible.
3. Machhi Singh v. State of Punjab (1983)²¹: The decision elucidated the principles in case of Bachan Singh and assumed upon five groups of cases that might be expressed as rarest of the rare cases where the death penalty can be given. These criteria involve how the crime was

¹⁹ *Jagmohan Singh v. State of Uttar Pradesh*, AIR 1973 SC 947 (India).

²⁰ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).

²¹ *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 (India).

perpetrated, the reason behind that, the type of crime perpetrated and the character of the victim.

4. In this high-profile case, *Mukesh and Anr. v. State (NCT of Delhi)* (2017) the idea of justice was to accept that the death sentence against the four men who were guilty of murder and rape of Nirbhaya, was complete and justified. The court noted that the case belonged in the rare of rare category because of the immense brutality and the fact that the crime had rocked the collective conscience on the society.
5. *Shabnam v. Union of India* (2015)²² In the case, the Court sentenced the woman to death resulting to the refreshed death penalty marked as the first in the Indian criminal justice system. Shabnam murdered her relatives because they were not permitting her marry her lover, which indicates the improbability in receiving such penalty and its harshness.

UNITED STATES:

1. *Furman v. Georgia*, 408 U.S. 238 (1972): penal laws that were in place were declared by the U.S. Supreme Court to be unconstitutional because of death penalties applied of a random nature, the death penalties awaiting execution in the case were all commuted and the states made changes on the law they presently had in place to affect the constitutional standards.
2. *McCleskey v. Kemp*, 481 U.S. 279, (1987): Alabama High Court of Justice approved procedures of capital punishment: The Supreme Court found it impossible to challenge procedures in Georgia on the basis of a racially disparate effect although it has been demonstrated that there are consistent capital punishment disparities on the basis of race.
3. *Atkins v. Virginia*, 536 U.S.304 (2002): The Supreme Court in this case affirmed that the death of an individual with intellectual retardation is a breach of the 8 th amendment which prohibited cruel and unusual punishment.
4. *Baze v. 7. Rees*, 553 U.S. 35 (2008) The Supreme Court determined that the 3-drug combination used by Kentucky to administer lethal injections does not constitute cruel and unusual punishment under the Eighth Amendment, however, a substantial effect of causing very intense pain is indeed objectively intolerable and includes death caused by lethal injections.

²² *Shabnam v. Union of India*, AIR 2015 SC 3648 (India).

5. *Kennedy v. Louisiana*, 554 U.S.407 (2008): the judgment of the Supreme Court says there is no possibility of imposing death sentence to non-homicidal crime against individuals, like rape of a child; the victim never dies.

UNITED KINGDOM:

No single huge law was repealed to stop the use of the death penalty in the UK, it was actually a matter of several acts passed through the legislature, and the first major step was taken in 1965 with the publication of the Murder (Abolition of Death Penalty) Act 1965, erasing capital punishment on murder.

1. **Murder (abolition of death penalty) act 1965 and abolition cases:** This is the Act of Parliament of murder in Great Britain. It substituted the death sentence with the life imprisonment that was to be mandatory.

The death penalty was repealed in the murder case in 1965 following the infamous miscarriages of justice like in the cases of Timothy Evans and Derek Bentley- both following demises pardoned following the execution which led to the revelation of high flaws in the justice system.

2. **Soering v. United Kingdom (1989)²³:** In this case, the European Court of Human Rights decided that transferring a UK-residing person to the USA to be executed would lead to the breach of the Article 3 of the European Convention on Human Rights (prohibition of inhuman and degrading treatment) particularly because of the so-called death row phenomenon, the psychological distress of a person sentenced to death due to a prolonged stay in prison.

3. **Miscarriages of Justice:** The Birmingham Six and others, Cases such as the one involving the Birmingham Six, in which innocent men spent years of their lives in jail because of a murder that they did not commit, proved stated that the retention of death penalty could do irreversible mistakes to the people and parliaments to condemn murder.

Unorientable Privy Council Decisions on Delay and Human Rights in Britain and its former colonies, where the common law prevailed (invoking comparable history and standards), the Privy Council noted that excessively long delays in the execution were inconsistently treated as cruel and unhuman punishment in common law countries. The thinking behind these judgements

²³ *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) (1989).

and legislative acts has ingrained the categorical anti-death penalty into the countries criminal law policy and international law policy.

CONCLUSION AND SUGGESTION

The topic of the legitimacy of the death penalty as one of the most contentious areas of the penal liability is influenced by the past, legislative changes, social aspects, and human rights prescription. With the longstanding debates, the moral and ethical and practical implication of capital punishment should be taken into consideration as to how it can affect the human rights. The major movement worldwide is away to abolishment, which is seen in the European jurisprudence.

India has limited its use through judicial activism which retains the use but to exceptional cases, the UK shows complete abolition but retains greater use on exceptional cases, the USA shows the issue of federalism, social diversity and has a history of doubts about fairness.

More research, policy discussion, and a legal change will need further improvements to balance the ideals of justice, deterrence and human dignity.

Suggestions

Move toward gradual abolition or, where retention remains, restrict use to the absolute “rarest of rare” cases with heightened legal safeguards. Invest in fairer justice systems, forensic improvements, and robust legal aid to minimize wrongful convictions. Consider alternatives such as life imprisonment without parole, which allows for future exoneration in the event of miscarriages of justice. Promote open societal debate and research on the effectiveness, morality, and social consequences of the death penalty to guide evidence-based policy decisions.

US should consider a federal moratorium or abolition, reflecting growing doubts about deterrence, high costs, racial disparities, wrongful convictions, and evolving societal standards. For states retaining the penalty, further restrict its use to only the most heinous crimes and enhance mandatory procedural safeguards to minimize arbitrary or erroneous application. Increase support for alternatives like life without parole and expand support for crime victims’ families.