**“Death Penalty Debate: Perspectives and Controversies in India”**

***“The death penalty not only takes away the life of the person strapped to the table — it takes away a little bit of the humanity in each of us”****[[1]](#footnote-1)*

***-Clint Smith***

**Abstract**

The death penalty has sparked a global debate, raising ethical, legal, and human rights concerns. This abstract narrows down the discussion to India's stance on capital punishment by examining differing viewpoints and controversies surrounding its implementation.

This study explores the historical context of capital punishment in India. It traces its origins and evolution from colonial rule to present-day practices, delving into the legal framework that governs the death penalty. The research emphasizes relevant legislations, judicial interpretations, and procedural intricacies to provide a clear picture of how capital punishment functions in India today. This abstract delves into the debates surrounding the death penalty in India, exploring a range of controversies such as arbitrary sentencing practices, potential instances of wrongful convictions, socio-economic biases, and the influence of public opinion on judicial decision making. Focusing on situations related to terrorism, sexual offenses or crimes against minors raises specific concerns and invites heated discussions.

The abstract highlights the current state of India's death penalty landscape. It covers recent legal developments, landmark judgments, and shifting public sentiment. Additionally, it delves into the challenges faced by the Indian legal system in ensuring fairness, transparency, and consistency when handling death penalty cases.

The abstract presents a comprehensive overview of the death penalty debate in India, exploring various perspectives and controversies surrounding its implementation. It lays the groundwork for further research and encourages a nuanced understanding of capital punishment's complexities in an Indian context.

**Keywords**

Death penalty, India, Perspective, Abolish, Controversies, Legal framework, Cases.

**Introduction**

Death penalty has been a contentious topic from quite a long, as those who in favour argues that it act as a deterrent and help in preventing crime rate, while on the other hand critics argue that it is violation of fundamental as well as basic human right, it serves disproportionally where people from marginalized and poor section have been the major victims. Death penalties have been a feature of the legal system in India for generations. The origins of the death penalty in India can be traced to ancient times, when “Retribution theory” was prevailing.[[2]](#footnote-2) Anyone who broke the law received "a tooth for a tooth and an eye for an eye," with even animals receiving judgment. Islam also contributed to developing this aspect of Indian jurisprudence and addresses issues about retribution, stating that the retribution for one human eye is equal to another human being’s eye.[[3]](#footnote-3)

During British colonization, the death penalty was brought in to India. The Indian Penal Code enacted in 1860 provided for prescribed punishments, including death by hanging. Independence came with a retention of this rule after 1947.[[4]](#footnote-4)

Death/execution is considered an integral part of criminal justice here. However, there have been moves to drop the punishment from our laws. The instances where death has occurred are many, and no one rallies against it or questions its existence because in their argumentation process, with human rights advocates questioning the very ethics of having a law explicitly providing for execution as ethically wrong.

During the 20th century, a campaign to abolish the death penalty was launched, leading various states to follow suit and ban the death penalty. However, only recently has the possibility of executing dangerous criminals been publicly discussed in India.

The utilization of the “*death penalty*” as a form of punishment is widely debated not only in India, but across the globe. There exist two distinct arguments; one side believes it serves as an essential deterrent for gruesome crimes while the opposing side vocalizes it is barbaric and infringes upon human rights. While India regards this measure as legal under its official substantive penal law - known as the Indian Penal Code

Globally there are total of 140 countries who have done away with the menace of death penalty in law as well as in practice, as we can see in 2015, Suriname, Madagascar and Fiji abolish the concept of death penalty, and as of now South Korea, Mongolia and Faso were also planning to abolish it.[[5]](#footnote-5)

Each and every country has their own reason for abolishing and done away with the practice of death penalty but one of the major reason for abolishing the death penalty given by the countries that the death penalty is in violation of the human rights and due to fear or concern regarding executing an innocent as, since 1973, around 192 former inmates on death row were acquitted of all charges (unwarranted) that put them on death row.[[6]](#footnote-6) Another major reason for abolishing the menace of death penalty is that its ineffectiveness to reduce the crime rate, as in Canada Crime rate (murder) in 2008 is less than that of 1976 when country abolish the practice of death penalty as a form of punishment.[[7]](#footnote-7)

Death Penalty in India as well has been a controversial topic from quite a long time, people who supports the practice of death penalty argue that death penalty serve as a disincentive to crime and so establish just behaviour in the society, hence according to them death penalty is a fair punishment for heinous acts like murder, terrorism, etc. On contrary critics argues, that death penalty violates the basic human rights and fundamental rights consider it as inhumane form of punishment, according to them death penalty is irreversible, for which innocent people have to suffer. Critics also argue that, death penalty has been applying in a prejudicial manner, where people from poor and marginalized sections have been wrongly and disproportionally convicted and represented on death row. Hence according to critics the menace of death penalty should be abolish as it neither helps in preventing crime and also on the other violates fundamental rights.

**Research Methodology**

In this research paper, doctrinal research method has been used, where the researcher has thoroughly gone through various research paper, blogs and news articles and also opinions of different jurist also have been considered while writing these research paper.

**Literature Review**

Death penalty has been topic of discussion from quite a long time, where there has been a continuous debate on it, whether it should be continue or not, considering its effect in preventing crime and providing justice. The following below mentioned articles, research paper, and the opinion of several jurist provide us with detailed literature review on the topic.

According to Journal published by *“International Journal of Advanced Engineering and Management”* where the author has strongly argued to do-away with the menace of “death penalty”. The author in this journal backed his argument by taking examples of various countries who have done away with death penalty, as it didn’t fulfil its purpose as a deterrent of crime. The Journal also highlights the socio-economic implications of “death penalty”, by arguing how it is disproportionately affect marginalized and poor section of society. This paper also highlights how there are chances of innocent people can be wrongfully convicted for a death sentence and author also argues death penalty violates the Right to Life *(“Article 21”* of Indian Constitution), which is fundamental right. This journal strongly argues to done away with the menace of death penalty considering its inhumane effect and its failure in preventing heinous offences.

The *“Office of High Commissioner for Human rights”* published a book, explaining the impact of death penalty and how it affect the mind-set of an individual and also they have done a thorough research and analysed how death penalty has resulted in violation of basic human rights. Another study conducted by “Journal of Criminal Justice Education” where they have done a detailed analysis of death penalty, there are series of arguments, in favour and against the practice of death penalty.

Various Jurist have also provided their rational in favour of discarding the practice of death penalty, Justice Krishna Iyer (Supreme Court) strongly condemns the practice of death penalty and frequently asks questions from law commission for the justification of continuation of death penalty and ask government to discard the practice of death penalty, another *“Jurist Usha Ramanathan”*, an independent law researcher on “*jurisprudence of law, poverty and rights*”. He also favours the abolition of the death penalty and in his research cites a 1980 case in which the legality of the death penalty was debated by a panel of five judges in the Supreme Court. Their decision was a turning point in the development of India's death penalty law. Four out of five judges refused to rule that the death penalty was unconstitutional. However, they also embraced the "rarest of rare" doctrine at the same time. Justice Usha Ramanathan remarked, *“There is, in the resurgence of the death penalty, a lack of respect for life, for the law and for procedure established by law.”*[[8]](#footnote-8)

**Origin of Death penalty in India**

The death sentence has been legalized for centuries. There would be no country in the world that has never practice punishment in the form of death penalty. The growth of humanity throughout history reveals that the death penalty has never been abandoned as a form of retribution. May be the method of execution differs but punishment in the form of death has been practiced by each and every country at some point of time. And India has been using death penalty way back from ancient period. We can trace back the punishment in form of death penalty in “*Ramayana and Mahabharata”,* and also various ruler such as *“Akbar, Humayun”* used death penalty as a form of punishment to whosoever break the rules and defies the king order.

**Death Penalty: As per Hindu law**

*“Since the dawn of humanity, punishment has been an integral part of human society”*.[[9]](#footnote-9) Cases of Capital punishment are considered to be as old as the Hindu community. During “ancient period Hindu society” followed a hierarchal system of punishment where punishment given on the basis of the person social status and the severity of crime the individual has committed. Though it has nowhere explicitly written about death penalty in Hindu law. The punishment is always meant to maintain social order, provide justice and make the person realize the offence that person has committed and Danda (Punishment) is primarily based upon the concept of Dharma (righteousness) and Karma (Consequence of one’s action)[[10]](#footnote-10). Ashoka did not consider death penalty was unfair even in the Buddha's day, when Ahimsa was the moral law.[[11]](#footnote-11) In his writings, Kautilya also addressed the death sentence, according to him, it plays a crucial role in ensuring public safety. Kalidas has expertly illustrated the need for the death penalty. The Ramayana and Mahabharata, historical and mythological epics, have also argued for the necessity of the *“death penalty”* by declaring that the king's upmost priority is to protect society from all kinds of threats, which may be accomplished by putting the evildoer to death.

**Death Penalty: As per Muslim Law**

Sharia law, which governs Islam, was created based on *“the Qur’an, the Hadith (Sunnah), the Ijma’, the 'Urf, the Masalih al-Mursala, and the Qiyas”*. The Qur’an states in verse 2:30, *“Your Lord said to the angels, I am appointing a vicegerent on earth.”* The text also said, *“Your Lord said to the angels, I am about to create a human being out of clay; when I have fashioned him and breathed of my spirit into him, kneel before him in prostration.”*[[12]](#footnote-12) As a result, the Qur’an contests the legitimacy of taking human life. Ijad, which means the act of giving life, and I'dam, which means the act of taking it away, which are regarded in Islamic philosophy as wholly divine entitlements. The Qur’an authorizes the taking way life by authorities other than that of Allah through the appropriate paths of law and justice in order to prevent other heinous acts from taking place in society, as required by Sharia Law.

**Death Penalty: Under Pre and Post-Independence era**

It was not until 1931 that the issue of capital punishment came before the British Indian Legislative Assembly when Shri Gaya Prasad Singh, a member from Bihar, tried to introduce a measure to abolish the death penalty for offenses covered by the Indian Penal Code. However, after the then Home Secretary responded, the proposal was rejected. During two debates in the legislature before independence, the then Home Secretary Sir John Thorne made it clear what the government's position was on the death penalty in British India. “The government does not believe it is reasonable to abolish the death penalty for any crime for which it is currently authorized.”

The *“Indian Penal Code of 1860 and the Code of Criminal Procedure of 1898”* were two colonial-era legislation that the Republic of India enacted after gaining its independence. Six penalties, including the death penalty, were imposed by the IPC.[[13]](#footnote-13)

**Offences punishable with death penalty**

In India there are several offence which are punishable by death sentence being last resort, it is important to remember that whenever Capital Punishment has been awarded “its imposition is subject to Judicial discretion”, here are list of several legislative acts under which acts committed by person may lead to death penalty as a form of punishment.

**Indian Penal Code, 1860**

In IPC, there are total of 13 offences against which death penalty has been awarded some of the sections are, Section 121 of IPC which talks about *“Treason for waging war against Government of India”*, section 132 which talks about abetment of rebellion (actually committed), section 194 of IPC which talks about providing with or fabricating false evidence with intending to to obtain a conviction of a capital offence, apart from that there are other offences that has been defined under *“Murder (section 302), Abetment of Suicide**of a minor or insane person (section 305), Rape and injury which causes death or leaves a women in a persistent vegetative state (section 376A)”* etc., against which death penalty has been awarded.[[14]](#footnote-14)

**The Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989**

Execution of an innocent member of Schedule Caste or Schedule Tribes by forging evidence leading to their conviction.[[15]](#footnote-15)

**The Commission of Sati (Prevention) Act, 1987**

If any individual have been found, directly or indirectly involved in the commission of Sati will be punishable with extent to death penalty under this act.[[16]](#footnote-16)

**Narcotics Drugs and Psychotropic substance (NDPS) Act, 1985**

In 1898, the death penalty made its first appearance in the NDPS Act when a mandatory death sentence was added for those found guilty of drug offenses more than once as per Section 31A of the NDPS Act.[[17]](#footnote-17)

Apart from that there are other acts in which death penalty has been awarded, In military, if any member of military forces who have committed several offences under military laws, especially that may hamper national security, can be awarded death sentence according to ***“Army Act, 1950, Air Force Act, 1950 and Navy Act, 1957”.***

**Offenders who are relieved from Death Penalty**

As mentioned under IPC, any person who is mentally incapable to understand or comprehend the nature of crime he/she is committed, will be considered as intellectually disabled, and is exempted from death penalty.

As per Indian law, any person below the age of 18 years committed a crime (such as murder, rape etc.) is exempted from death penalty.

As per Section 416 of the CrPC, *“if the high court finds that a woman who has been awarded the death sentence is pregnant then such sentence can be postponed or commuted to life imprisonment.”* As hanging a pregnant women leads to the death of the child inside her womb. The child hasn’t committed any wrong and doesn’t deserve to die due to offence committed by her mother. That’s why pregnant women has been exempted from death penalty under Indian law.

**Clemency power**

After death sentence has been upheld by Supreme Court, and the defendant appeal has been rejected by the court then the doomed person may next present a *“mercy petition”* to both the state governor and the president of India.

As per *Articles 72 and 161 o*f the Constitution, which gave President and Governors power *“to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the sentence of any person convicted of any offence.”* Clemency powers can be used for many different reasons and in many different situations, but it is also act as the last line of defense if there is any judicial error or a miscarriage of justice.

The Ministry of Home Affairs, and Government of India, devised the *“Procedure Regarding Petitions for Mercy in Death Sentence Cases”* to provide direction to State Governments and jail officials on the pleas for mercy from prisoners on death row. In *“Shatrughan Chauhan v. Union of India (2014)”*, the Supreme Court summarized these regulations.[[18]](#footnote-18)

**Arguments: Favouring Continuation of Death Penalty**

The proponents of death penalty argues that death penalty help in preventing further occurencess of heinous offences. It goes without saying that a person will not engage in certain behaviour when he is aware that he would certainly face severe consequences and that the cost of such behaviour greatly outweighs the benefit. Hence it will lead to discouraging of future occurencess by imposing the worst punishment for heinous offences. They further argue that, In India, death sentences are not carried out based on a lack of proof, reason, or logic. As was already mentioned, the death penalty is used only in “Rarest of rarest” cases. Even if the death sentence is carried out, the defendant is allowed to plead for mercy, and if necessary, the death sentence can be altered to life imprisonment due to unjust delay. When asked about violation of “Human Rights” owing to death penalty, proponents argue that a potential threat of Convicted criminal to society cannot be disregarded under the pretense of human rights. Giving human rights to someone who has lost all sense of humanity is also ludicrous. This is especially true for criminals who are stubborn and don’t want to change. Due to the heinous acts they have committed, which endanger innocent people, these criminals do not have a right to life. Similarly when ask about moral aspect of death penalty, proponent argues that, if the death penalty is abolished because it is immoral, that is the same as treating offenders like animals with no sense of morality who must be excused from even the most heinous crimes they have done.

**Arguments: Favouring Abolishment of Death Penalty**

On contrary Critics of death penalty argue that there are more chances of people from marginalized and poor section of society suffering from the menace of death penalty due to lack of adequate resources and knowledge. The poor, minorities, and members of racial, ethnic, political, and religious communities often receive the death penalty disproportionately. According to the “Death Penalty India Report 2016 (DPIR)” from the “National Law University of Delhi”, around 75% of all convicts who receive the death penalty in India are from socio-economically disadvantaged communities such as “Dalits, OBCs and religious minorities”[[19]](#footnote-19). An essential factor to consider while assessing the justice of the death penalty's administration in India is the quality of legal representation available to those who have been given a death sentence. Understanding the type of legal representation that convicts got throughout all phases of the judicial process is critical given the socioeconomic profile of those who have been given a death sentence. *“I have yet to see a death case among the dozen coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial... People who are well represented at trial do not get the death penalty”* said Justice Ruth Bader. [[20]](#footnote-20) A fifth of those who have been given the death penalty by trial courts were acquitted between 2000-2014 by the Supreme Court and other high courts. That amounts to 443 people who have given death sentences but whose innocence was later proven.[[21]](#footnote-21) Furthermore, the deterrent effect of the death penalty is not what its proponents claim it to be. The United Nations General Assembly stated in “UN General Assembly Resolution 65/206” that “there is no reliable evidence of the deterrent value of the death penalty”. It is important to note that a growing number of law enforcement professionals in several states that have the death penalty seriously question the effectiveness of the death penalty in deterring crime. Politicians and influential people have a duty to emphasize how the death penalty is incompatible with respect for human rights and dignity. However, there are ways to stop crime that are more effective.

**Law commission Reports on Death Penalty**

**35th Report**

The Law Commission examined the death penalty for the very first time in India and issued its 35th Report, which recommended that it be kept in place as it is now. It stated that, *“As an experiment, the death penalty may be abolished once so that it can be re-introduced again after completion of the experiment, but that after looking to certain possibilities on the issue, it is suggested that capital punishment must be retained as it is in the country.”* However, as is further explored in this section, in 2015 commission believe that the time has come for India to proceed toward the elimination of the death sentence.[[22]](#footnote-22)

**187th Report**

In 2003, the Law Commission of India issued its 187th report dealing with the death penalty. This report discussed secondary topics including how the death penalty should be carried out, but neglected to address the key question of whether the death penalty is constitutional. The Supreme Court agreed with the Law Commission that the method of execution should be certain, humane, speedy and dignified and that it must give dignity to the prisoner.

**262nd Report**

The 262nd report on the issue of death penalty in India was issued in August 2015 by the Law Commission of India chaired by Justice A.P. Shah. It was proposed that all crimes – except crimes related to terrorism and acts of war – should be exempt from the death penalty. The Commission believed that the time had come for India to move towards abolition of the death penalty, guided by the expanded and deepened scope of the right to life, strengthen due process protections in state-individual interactions, and embrace the norms of morality and human dignity enshrined in the Constitution.

**Constitutionality of Death Penalty**

As per records, till December 31, 2020, there were total of 404 persons on death row, with “Uttar Pradesh being on top with most number (59), followed by Maharashtra (45), and Madhya Pradesh (37)”. The state of Andhra Pradesh has two of the fewest people on death row.[[23]](#footnote-23) Every person in India has the fundamental right to life and liberty, which is guaranteed by *“Article 21 of the Indian Constitution”*. It continues by stating that until a legal process is followed, no one's life or personal freedom can be taken from them. This has been taken legally to imply that the state may take someone's life by passing a law if a procedure is just and legitimate. It has occasionally been argued that the death penalty is unconstitutional. In the 1973 case of “*Jagmohan Singh v. State of Uttar Pradesh”*, the death sentence was first challenged stating that it infringed upon a person's fundamental *“Right to life under Article 21 of the Indian Constitution”.* The death sentence regarded constitutionally valid and does not contravene any of the Constitution's Articles, the five-judge Apex Court majority ruled in its decision. Additionally, it was discovered that the decision between the death-penalty and life-imprisonment had been reached after careful consideration of all the necessary information and the nature of the crime as it had been presented during the trial.[[24]](#footnote-24) According to Justice Krishna Iyer in “*Rajendra Prasad v. State of Uttar Pradesh (1979)”,* the death sentence is a deliberate breach of Articles 14, 19, and 21 of our Constitution.[[25]](#footnote-25) The historic “*Bacchan Singh v. State of Punjab (1980)”* ruling, which also ordered the death penalty in some situations, established the “rarest of rare doctrine.” By 4:1 ratio, the Supreme Court maintained the validity of the death sentence in this case, but it also created a rule requiring that it only be used in the most serious offenses. Justice Bhagwati, the judge who dissented, declared that “If [the Act] provides for the imposition of the death penalty as an alternative to the life sentence, it is ultra vires and void as a violation of Articles 14 and 21 of the Constitution because it provides no legislative guidance as to when a life sentence should be permitted to be extinguished by the imposition of a death sentence.”[[26]](#footnote-26)

**International Perspective**

October 10th was designated as *“International Day against the Death Penalty”* in 2003 by the World Coalition. Among the non-governmental and international organizations that support it are the “United Nations, Amnesty International, and the European Union”. It focuses on a different topic each year, bringing attention to issues including living conditions, mental health, poverty, and drugs, all of which are connected to the death penalty. The United Nations advocated in 2007” that all of its member nations eliminate the death penalty for all crimes. This concept has been rejected by a number of nations, including the United States and India. According to the *“Death Penalty Information Center”,* the death penalty is no longer used or authorized in over “70% of the world's nations. Amnesty International estimates that “108 nations out of 144 nations will have abolished the death penalty in law or practice by the year 2020”, respectively, for all crimes. ”By refraining from carrying out any executions in the past 10 years, 28 countries have essentially abolished the death penalty; 55 other nations continue use it for non-violent offenses.[[27]](#footnote-27) In 54 countries around the world, 1,477 persons have received death sentences, according to Amnesty International. Additionally, 483 executions were reported in 18 other countries. “The countries that carried out the most executions were Iran, China, Iraq, Saudi Arabia, and Egypt.[[28]](#footnote-28) However, it is important to remember that secrecy inhibits accurate reporting of killings, and hundreds more executions may occur annually. Among the 55 nations still enforcing the death sentence are the following: “*Bangladesh, China, Egypt, Ethiopia, India, Indonesia, Iran, Japan, Nigeria, Saudi Arabia, South Korea, Sri Lanka, Taiwan, and the United States.””*[[29]](#footnote-29)

**Conclusion**

In India, the discussion surrounding the death penalty is multifaceted and extends past mere assessments of crime severity and judicial bias. The report, "Death Penalty India," emphasizes the importance of fully comprehending the death penalty in India and engaging in informed discussions on the topic. Among the findings is that the death penalty in India is fraught with issues like arbitrary enforcement and systemic shortcomings. Additionally, a large percentage of individuals on death row are from socioeconomically disadvantaged communities. Debates surrounding the death penalty have endured for centuries, with proponents of both its abolition and retention presenting philosophical arguments. Proponents of retention of death penalty argue that it serve as a deterrent and help in prevention of crime and also provide justice to the victims and to their families. According to them for certain heinous crime such as murder, rape, terrorism etc. death penalty is appropriate punishment. As with everything else in life, there are always two sides to every argument - including capital punishment. Those who do not support death sentences often point out concerns surrounding how our judicial system operates. They question how fair it can be when an error can mean taking someone's life away incorrectly? Such mistakes may lead to irreversible harm being done by executing innocent individuals as seen before while highlighting underlying dysfunctionality in our justice sector at large. Furthermore, they stress on how cruel this kind of treatment is – where taking away someone’s right to life constitutes an unconstitutional and inhuman act. In certain circumstances, the Indian Penal Code permits the use of the death penalty; however, the Indian legal system is inconsistent and unclear regarding its implementation. The courts have set rigid standards for the death penalty's application, but at the same time have expressed apprehension toward its inadequate and partial application, which has resulted in a call for closer examination of cases that may warrant its use. The contentious nature of capital punishment sees public opinion in India split, highlighting the intricacies of society and diverse viewpoints. Personal beliefs, culture, and religion are just some of the many factors molding individual perspectives. Additionally, varying analyses and opinions on the effectiveness of the death penalty as a deterrent add to the ongoing debate.

The debate on the death penalty extends far beyond just the legal and moral aspects, but also on socio-political factors such as governance, human rights, and the changing role of the state in providing justice. As India faces ongoing difficulties in addressing crime and repercussions, it is imperative to have a thorough and inclusive discussion that considers all the facets of the death penalty. The contentious debate on the death penalty in India continues to persist with fervent arguments being presented from both sides. In order to adapt to a changing society, it is crucial that we consistently appraise the equity, effectiveness, and morality of capital punishment, weighing the requirement for justice against the fundamental principles of human rights and rightful legal procedure. With profound analysis and informed dialogue, India can successfully navigate the complexities that surround the death penalty and endeavour to create a more unbiased and fair society.

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