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## Sentencing in Murder Cases – A Comparison of Judicial Response in India and Germany

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*The legal systems in India and Germany exhibit stark differences between the adversarial system and the inquisitorial system. While India's adversarial system involves prosecution and defense presenting their cases independently, Germany's inquisitorial system relies on judges taking an active role in the investigation. However, structured criminal justice frameworks, underpin both systems with India relying on the Indian Penal Code and the Code of Criminal Procedure, and Germany using the German Criminal Code and the German Code of Criminal Procedure, reflecting their respective legal traditions. 'Murder' refers to the intentional killing of another person, often requiring a clear intent or 'mens rea' element in common-law systems. This contrasts with civil law systems, which categorize all wrongful killings as homicide, with varying penalties based on the specific circumstances. The historical use of the death penalty for murder has evolved, influenced by religious texts like the Old Testament. In modern times, life imprisonment is considered a more humane alternative, but the death penalty persists in some jurisdictions, such as India.*

**Keywords:** *murder, death penalty, homicide.*

## INTRODUCTION

The term 'murder' refers to the intentional death of another person or a homicide that takes place because of another major crime. Murder has heavier penalties, including the possibility of the death penalty or life imprisonment. In common-law systems, the existence of intent, often known as 'malice aforethought' or '*mens rea*' is a necessary element to classify a killing as murder. This includes circumstances where intent can be inferred from the extraordinarily reckless or dangerous nature of the act, such as 'transferred intent' where someone who means to kill one person accidentally kills another.<sup>1</sup>

All wrongful killings are classified as one offense called homicide in civil law legal systems. The severity of the punishments depends on the specifics of the conduct and varies from nation to nation. Civil law systems of the European tradition distinguish between intentional and other felony murders on the one hand, and careless, negligent, and provoked killings on the other, much like the division in common law of the Anglo-American tradition. Differentiating between socially harmful behaviour, which demonstrates a purpose to kill and behaviour that is merely reckless is the main factor impacting sentences across all legal systems.<sup>2</sup>

It's interesting to note that while the idea of murder is generally recognized across cultures and societies, there can be significant variation in how the most severe penalty is perceived. The application of the death sentence has been a common response to murder throughout history. In general, the religious texts pertaining to ancient times have had a significant impact on contemporary moral and legal systems but do not offer additional perspectives or possibilities.<sup>3</sup> For example, the following passage is derived from the Old Testament- "*He who strikes a man, so that he dies, shall be surely put to death.*"

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<sup>1</sup> J.E. Luebering, 'Murder' (*Encyclopedia Britannica*, 26 April 2023) <<https://www.britannica.com/topic/murder-crime>> accessed 15 September 2023

<sup>2</sup> *Ibid*

<sup>3</sup> Paromita Chattoraj and Bernd Dieter Meier, 'Legal Responses and Sentencing in Murder Cases- A Comparison of Law and Judicial Reactions in India and Germany' (2017) 29 *Criminal Law Forum* <<https://doi.org/10.1007/s10609-017-9326-7>> accessed 16 September 2023

The death sentence is not considered an unequivocal method of retribution in modern times. This method has been substituted in some regions of the world with life imprisonment, which is seen as a more 'humane' option. On the other hand, the death sentence still exists in some circumstances, such as the current Penal Code of India.<sup>4</sup> Furthermore, some nations believe that a sentence of life in prison is an appropriate punishment for murder; Norway's maximum sentence of 21 years is a notable example.<sup>5</sup>

## RESEARCH QUESTIONS

1. What are the differences between Indian and German sentencing notions and standards for murder cases?
2. What aspects does the Judiciary in India and Germany consider while making decisions with respect to sentencing in murder cases?

## RATIONALE FOR COMPARATIVE ANALYSIS

There are historical differences when we talk about India and Germany for instance in India, we have an adversarial system whereas in Germany we can observe the presence of the inquisitorial system. The prosecution and defense present their cases on their own accord in the adversarial system, which is frequently utilized in common law nations like the United States and India. A fair judge or jury then renders a judgement based on the facts and arguments. The inquisitorial system, which is common in nations with civil law like France and Germany, entails the judge taking an active role in the investigation, questioning witnesses, and gathering evidence. The goal is to jointly discover the truth. These systems adhere to various ideologies regarding the use of evidence, the function of attorneys, and the quest for justice. Even though after all this we are able to strike for the several similarities that are present between the two legal systems. Firstly, the presence of a formally structured criminal justice system supported by the two

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<sup>4</sup> Somya Deshwal, 'Death Penalty: Contemporary Issues' (*Indian National Bar Association*) <<https://www.indianbarassociation.org/death-penalty-contemporary-issues>> accessed 15 September 2023

<sup>5</sup> Caitlin McBride, 'Twenty-One Years for Mass Murder: What the World Can Learn from Norway's Short Sentencing Laws' (*Michigan State University*, 04 October 2018) <<https://www.msuilr.org/msuilr-legalforum-blogs/2018/10/4/twenty-one-years-for-mass-murder-what-the-world-can-learn-from-norways-short-sentencing-laws>> accessed 15 September 2023

legislations respectively. When we deal with the Indian system of criminal justice, the two legislations that come forward are the Indian Penal Code, 1860 (IPC) and the Code of Criminal Procedure, 1974 (Cr.P.C.) whereas when we look at Germany, the two codifications that deal with their criminal justice system are the German Criminal Code of 1871 (GCC) and the German Code of Criminal Procedure of 1877.<sup>6</sup>

The German legal codes have undergone several alterations and adaptations in reaction to changes in social, economic, and technical environments, much like their counterparts in India. German procedural law was formed in 1987, whereas the substantive legislation was passed in 1998. Another more significant similarity has to do with the imposition of sentences in addition to these formal ones. The substantive legislation in both countries offers little direction for the sentencing process.<sup>7</sup>

The Hon'ble Apex Court in *Alister Anthony Pareira v State of Maharashtra*<sup>8</sup> observed that- "*...Sentencing is an important task in the matters of crime. One of the prime objectives of criminal law is the imposition of appropriate, adequate, just and proportionate sentences commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.*"

In Germany, one section that explains the justification for sentencing judgments is included in the substantive law, which also specifies a range of punishments for each offence. Section 46 (1) of the German Criminal Code states that- "*The guilt of the offender is the basis for sentencing. The*

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<sup>6</sup> Hon'ble Mr. Justice Shamsul Islam Jafri, 'Administration of Criminal Justice in India' (*High Court of Judicature at Allahabad*) <[https://www.allahabadhighcourt.in/event/admin\\_of\\_criminal\\_justice\\_in\\_india.html](https://www.allahabadhighcourt.in/event/admin_of_criminal_justice_in_india.html)> accessed 15 September 2023

<sup>7</sup> Chatteraj (n 3)

<sup>8</sup> *Alister Anthony Pareira v State of Maharashtra* (2012) 2 SCC 648

*effects which the sentence can be expected to have on the offender's future life in society shall be taken into account.*"<sup>9</sup>

The courts theoretically have a great deal of discretion in determining sentences in both India and Germany. Aside from the limitations imposed by the law, these decisions lack exact definitions. In Germany and India, sentencing guidelines that carry legal obligations do not exist; rather, the self-regulation and the laws implemented by the relevant appellate courts serve as the primary factors. Therefore, it would seem to be most beneficial to learn more about the statutory restrictions and the way that the judiciary in both countries exercises its discretion.<sup>10</sup>

## **SENTENCING PRACTICES: LEGAL FRAMEWORK IN INDIA**

**Defining Murder in Indian Context** - Chapter XVI of the Indian Penal Code, which deals with offenses involving harm to the human body, provides details about crimes including 'culpable homicide' and 'murder'. The importance of protecting and defending life and liberty, which are the two most important and fundamental rights protected by Article 21 of the Indian Constitution, is unequivocally highlighted in this chapter. Every murder is indeed a culpable homicide, but the opposite is not necessarily true. The difference between these two classifications has continually presented a challenging issue for the courts ever since the Indian Penal Code (IPC) came into effect. Even if the applicable Code sections indicate a clear separation of instances into two groups, the actual application frequently causes problems for the courts. This ambiguity arises when it becomes challenging to discern from the available evidence whether the perpetrator's intent was solely to inflict bodily harm, which would not amount to murder, or if there was a distinct intention to end the victim's life, which would indeed constitute a clear case of murder.<sup>11</sup> In the case of *A.P. v R. Punnayya*<sup>12</sup>, the Hon'ble Supreme Court of India referred to culpable homicide as a genus whereas murder as its species.

<sup>9</sup> German Criminal Code 1998, s 46(1)

<sup>10</sup> Chatteraj (n 3)

<sup>11</sup> Pushkraj Deshpande, 'Difference between Murder and Culpable Homicide' (*Mondaq*, 02 October 2020) <<https://www.mondaq.com/india/crime/988662/difference-between-murder-and-culpable-homicide>> accessed 14 September 2023

<sup>12</sup> *A.P. v R. Punnayya* (1976) 4 SCC 382

**Penalties for the Offence:** Penalties for the crime of culpable homicide are outlined in Section 304 of the IPC. The punishments for the crime of murder as described in Section 300 are laid forth in Section 302. The death sentence or life in prison combined with a fine is the legal punishment for murder.<sup>13</sup>

The Indian Penal Code (IPC) acknowledges Three degrees of culpable homicide. First, there is the lowest degree of culpable homicide, which happens as an act is carried out knowing that it may cause death but without having any such intention to do so or to create injuries that may end in death. This offense may be punishable with imprisonment for a maximum period of ten years, a fine or both.<sup>14</sup> Second, culpable homicide of the middle degree is punishable by up to 10 years in prison or by a life sentence, with the possibility of an additional fine, if the act that resulted in the death was done to do so or to cause bodily harm that is likely to do so.<sup>15</sup> Lastly, culpable homicide of the gravest kind or murder that is subject to the death penalty or a life sentence, with the possibility of an additional fine.<sup>16</sup>

The IPC imposes the death sentence in case of a murder, and after a horrifying gang rape in the year 2013 in the city of New Delhi, specific provisions pertaining to offenses against women underwent amendment. Hon'ble Apex Court of India in the case of *Dhananjay Chatterjee v State of West Bengal*<sup>17</sup> stated the following- *"The measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenseless and unprotected state of the victim. The imposition of appropriate punishment is the manner in which the courts respond to society's cry for justice against criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime."*

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<sup>13</sup> Syed Atif and Bushra Hasan, 'Culpable Homicide and Murder- The Overlapping Offences' (2017) 3(11) Journal on Contemporary Issues of Law <<https://www.scribd.com/document/423063915/Syed-Bushra>> accessed 15 September 2023

<sup>14</sup> Indian Penal Code 1860, s 304

<sup>15</sup> *Ibid*

<sup>16</sup> Indian Penal Code 1860, s 302.

<sup>17</sup> *Dhananjay Chatterjee v State of West Bengal* (1994) 2 SCC 220

In *Bachan Singh v State of Punjab*<sup>18</sup>, the constitutional validity of the death penalty was put to a test before the Hon'ble Apex Court and a constitutional bench of the Hon'ble Apex Court with a majority of 4:1 held that in cases of murder where there is a conviction, the rule is life imprisonment and death penalty is an exception which can only be awarded in the 'rarest of rare cases'. In *Machchi Singh v State of Punjab*<sup>19</sup>, the Supreme Court of India had an opportunity to explain the constituents of the *rarest of rare cases*, where the adjudicating court opines that with respect to the crime at hand, there is something uncommon that would render the punishment of life imprisonment as inadequate and thus, there is a need to call for the award of the death penalty.

In another case of *Lehna v State of Haryana*,<sup>20</sup> the Supreme Court went on to say that the 'rarest of rare' crimes are those that severely affect the community's collective conscience, particularly when murders exhibit extreme brutality, grotesqueness, satanic nature, disgusting qualities, or complete depravity. This includes killings carried out of pure malice and greed, such as financial gain-driven assassinations, deaths of people from underprivileged populations, bride burning, or the murder of a spouse to remarry following an adulterous affair. It also covers circumstances in which a whole family, multiple members of a neighborhood, or locality has been murdered, as well as the murder of weak people like children, elderly people, or fragile women, especially when it betrays the regard or confidence these victims had for the offender.

The choice to inflict the death penalty is left up to the discretion of the judiciary, and in several cases that fit the aforementioned definition, the courts decide against doing so. For instance, in the case of *Ram Anup Singh v State of Bihar*<sup>21</sup>, the accused has killed every member of their family, the court decided to sentence him to life in prison without the chance of release or commutation for a minimum of 20 years. Whereas on the other hand in the landmark judgement of *Mohd. Ajmal Amir Kasab v State of Maharashtra*<sup>22</sup>, the main perpetrator of the terrorist assault in Mumbai

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<sup>18</sup> *Bachan Singh v State of Punjab* AIR 1982 SC 1325

<sup>19</sup> *Machchi Singh v State of Punjab* AIR 1983 SC 957

<sup>20</sup> *Lehna v State of Haryana* (2002) 3 SCC 76

<sup>21</sup> *Ram Anup Singh v State of Bihar* (2002) 2 SCC 868

<sup>22</sup> *Mohd. Ajmal Amir Kasab v State of Maharashtra* (2012) 9 SCC 1

on 26 November 2008, was given the death penalty in reaction to widespread public outrage, and his sentence was executed in 2012.

Section 54 of the Indian Penal Code read with Section 433(a) of the Criminal Procedure Code provides the power to the government to commute the sentence; here the authority that has such a power is the appropriate government. Section 55 of the Indian Penal Code read with Section 433 A and Section 433(b) allows the said government to reduce the life sentence to a maximum of 14 years in prison. In the cases of *Gopal Vinayak Godse v State of Maharashtra*<sup>23</sup> and *Ashok Kumar v Union of India*<sup>24</sup>, the constitutional bench of the Hon'ble Apex Court observed that "...the sentence of imprisonment for life is not for any definite period and the imprisonment for life must, prima facie, be treated as imprisonment for the whole of the remaining period of the convict person's natural life."

Before 2015 when a juvenile commits a murder, he could have only been detained for a maximum period of three years at special homes for juveniles. However, post Nirbhaya case, the new law provided that within the range of 16 to 18 years, a juvenile may be handled as an adult in cases of heinous offenses, if the J.J. (Juvenile Justice) Board makes such determinations.<sup>25</sup>

The death penalty is typically reduced on appeal, and even in cases when the Supreme Court upholds the death penalty, the Indian Constitution gives those convicted the ability to ask the President of India and/or the State Governor for a pardon. According to Article 72 of the Indian Constitution, the President has the authority to commute sentences, suspend sentences, issue reprieves, or remit punishment to those who have been convicted of offenses. As a result, even though the IPC includes the death sentence as a form of punishment, extremely few people undergo an execution. Only three people have been put to death since 2000; one was for a 2004 offense involving murder and rape of a child, and the rest two were found guilty of numerous murder-related terrorist activities and were killed in 2012 and 2015, respectively.<sup>26</sup>

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<sup>23</sup> *Gopal Vinayak Godse v State of Maharashtra* AIR 1961 SC 600

<sup>24</sup> *Ashok Kumar v Union of India* (1991) 3 SCC 498

<sup>25</sup> Chatteraj (n 3)

<sup>26</sup> *Ibid*



**Sentencing Practices: Legal Framework in Germany:** As per German law, there is a presence of two kinds of unlawful killings- homicide and murder. Homicide or 'Totschlag' is the basic offense and is considered to be a less serious crime, the criteria are satisfied when without any valid justification an individual kills another and possesses the intent or the awareness that the death of the other person is an inevitable or probable outcome of their actions. It is punishable with imprisonment of five to fifteen years.<sup>27</sup>

Murder or 'Mord' is described as homicides that seem especially damnable. This damnability may originate from the killer's intent, the methods used, or the reason for the killing. This concept was introduced to the German laws by the Nazi government and it still exists today. Compared to Indian law (Section 302 IPC), the most prominent distinction lies in the fact that German law does not include the death penalty as a punishment for murder cases. As per Article 102 of German Basic Law, which is the German Constitution, the death penalty was abolished as a reaction to World War II. Although the European Convention on Human Rights (ECHR) allowed it in 1950, the death penalty was eliminated in several countries that were part of the convention through the 6th and 13th amendments to the Convention, partly in 1998 and ultimately in 2003. There is general agreement that the 13th protocol essentially nullified the death penalty clause found in Article 2(1) of the ECHR.<sup>28</sup>

Since 1970, the surveys conducted in Germany portray that the people supporting the death penalty are lesser in number as compared to those who disagree with it. Life in imprisonment is the only and sole mandatory punishment for murder in German law. The legal system does, however, have rules that allow the courts to commute a life sentence in certain situations. If a young person commits a crime, one of these scenarios is provided. Young adults (18–21 years) and juveniles (14–18 years) are treated differently under German law. According to section 18 (1) of the Youth Court Law, which applies to juveniles, murder is punishable by up to 10 years. The court must determine whether general criminal law or youth law should be applied when dealing with young adults.

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<sup>27</sup> German Criminal Code 1998, s 212

<sup>28</sup> *Al Saadoon and Mufdhi v United Kingdom* App 61498/08

There are other circumstances under which the mandatory and exclusive sentence of life in prison may be lessened, including:

- If the crime was not successfully finished by the perpetrator.<sup>29</sup>
- If even though they were legally accountable for the outcome not happening, they failed to prevent the death of another person even though they did not actively commit the murder.<sup>30</sup>
- If the offender didn't realize that what they were doing was wrong.<sup>31</sup>
- If the person was acting with less responsibility<sup>32</sup> or duress.<sup>33</sup>
- If they were merely an assist in the crime.<sup>34</sup>

The term ranges from three to fifteen years in prison if the judge decides that the punishment will be reduced.<sup>35</sup> The aforementioned legal alternatives to life imprisonment in murder cases are quite significant in real-world situations.

The German Federal Constitutional Court ruled in 1977 that even in cases of life imprisonment, all convicted individuals had to have the opportunity to regain their freedom; as a result, it was the responsibility of the legislature to establish the requirements and the process for such release. As a result of this decision, Parliament introduced provisions in 1981 that delineated the criteria for early release. Today, an individual sentenced to life imprisonment can be released if four conditions are fulfilled: a minimum of fifteen years of the sentence must have been served, the extraordinary gravity of the offender's guilt does not necessitate the continuation of the punishment, the release aligns with public safety concerns, and the convicted individual provides their consent.<sup>36</sup>

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<sup>29</sup> German Criminal Code 1998, s 23(2)

<sup>30</sup> German Criminal Code 1998, s 13(2)

<sup>31</sup> German Criminal Code 1998, s 17

<sup>32</sup> German Criminal Code 1998, s 21

<sup>33</sup> German Criminal Code 1998, s 35(1)

<sup>34</sup> German Criminal Code 1998, s 27(2)

<sup>35</sup> Chatteraj and Meier (n 3)

<sup>36</sup> German Criminal Code 1998, s 57(1)

The second condition (the specific nature of the offense) entails the fundamental tenet of German sentencing law, which reads, 'The guilt of the offender is the basis for sentencing.'<sup>37</sup> The court determination of the specific seriousness of the offender's guilt in accordance with section 57a (1) GCC is thus a step in the sentence procedure and is conducted in accordance with the identical rules outlined in section 46 GCC for all other situations.

In 1992, the German Federal Constitutional Court determined that the assessment of the specific gravity of the convicted person's guilt falls within the purview of the adjudicating courts, even though this provision is technically a component of the legislation governing sentence execution.<sup>38</sup> A few years later, the Federal Court of Justice offered examples of the exceptionally graveness of guilt. These circumstances include those in which there are several victims, there are several murders, or the accused murderer also commits other serious crimes.<sup>39</sup>

## COMPARATIVE ANALYSIS IN CERTAIN CASES

**A. Honour Killings:** In the case of *Vikas Yadav v State of U.P & Ors.*,<sup>40</sup> the deceased was having a love affair with a girl belonging to the 'upper caste' and the father of the girl was an influential politician. The brothers of the girl were against the relationship. In 2002, the deceased was abducted and his burnt body was recovered by the police. The trial court awarded a life imprisonment and a fine of one lakh each for the murder. The State then filed an appeal to enhance the life imprisonment to the death penalty before the Hon'ble High Court which was dismissed but the imprisonment was increased to twenty-five years for murder and five for destroying the evidence. An appeal to the Hon'ble apex court was made by the convicts, the Supreme Court, in this case, held that - "...this case highlighted the issue of 'honour killing' as, according to the court, a seminal ground for imposing on the two accused persons the fixed term sentence of twenty-five years for murder."<sup>41</sup>

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<sup>37</sup> German Criminal Code 1998, s 46(1)

<sup>38</sup> *Ibid*

<sup>39</sup> *Ibid*

<sup>40</sup> *Vikas Yadav v State of U P & Ors* Crim App No 1531/2015

<sup>41</sup> *Ibid*

In India, it's not typical to impose fixed sentences, but in this particular murder case, the Courts wanted to send a powerful message because of the unique and grave nature of the crime.

In Germany, honour killings are a relatively infrequent occurrence. According to a study conducted by the Federal Criminal Police Office, there were a maximum of 78 cases of honor killings in Germany during the ten years from 1996 to 2005. Many of these cases were challenging to distinguish from other forms of passionate acts resulting in the killing of female partners.<sup>42</sup> A more recent example that can be used as an illustration occurred in 2013 and was heard before the Hagen Regional Court.

In this instance, two guys were accused of killing. One of them was the female victim's 16-year-old brother, and the other was her 47-year-old uncle. Although the younger generation, which included the victim, was born in Germany, they all belonged to the same family, which was originally from Syria. She fell in love and started dating a Turkish man, which was something that her family greatly disapproved of. They put her under severe restraints, demanding that she only leave the house when escorted by the dependable members of the family. The victim decided to leave her house and move in with her lover. After her father passed away, she later went back to live with her mother, but she eventually found sanctuary in a women's shelter. Her 16-year-old brother served as the family's head while her father was away. Tragically, her brother tricked her into a trap, which resulted in a tragic shooting, along with an uncle who had travelled from Finland specifically for this occasion. Due to their actions being motivated by 'otherwise base motives' the Hagen regional court found both murderers guilty of their crimes. The Court found that the moral principles of the German society which constitute a majority, not just some of it that come from a varied cultural background, may be used as the exclusive yardstick for judging the motivations of the offenders.<sup>43</sup>

**B. Sexually Motivated Murders:** It's vital to distinguish between two situations: the first is when a perpetrator kills the victim knowingly and purposefully after committing rape, which is a type

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<sup>42</sup> Dietrich Oberwittler and Julia Kasselt, *Ehrenmorde in Deutschland 1996 – 2005* (Luchterhand, 2011)

<sup>43</sup> *Ibid*

of murder; the second is when the victim dies as a result of the rape. If there was no knowledge or desire to kill the victim in the second scenario, the killing might not be regarded as murder.

In the *Hareesh Mohandas Rajput v State of Maharashtra*<sup>44</sup> case, the offender, an alcoholic, raped a 10-year-old girl before killing her and keeping her remains beneath his bed. In this instance, the lower Court gave the murderer a sentence of life imprisonment and a ten-year sentence for rape. The State went for an appeal where the Hon'ble High Court enhanced the sentence to the death penalty. Further, the convict preferred an appeal before the Hon'ble Apex Court where the court held that in lieu of the precedent set by the *Bachan Singh*<sup>45</sup> case and the *Machchi Singh* case,<sup>46</sup> this case does not fall within the category of 'rarest of rare' case as a result the death penalty was set aside.

German law distinguishes between cases of murder where there is an explicit intention or knowledge on the part of the perpetrator that the death of the victim will be a definite or probable result of an act that was sexually motivated<sup>47</sup> and cases where the perpetrator acts negligently in regard to the victim's life. This distinction is similar to that made by Indian law.

In a case, the defendant was a habitual offender, several of which were for rape and sexual assault. He had been released from prison two months prior to the murder after serving a two-year sentence for sexually abusing an 11-year-old child. An elderly, 58-year-old woman with mental impairment was the murder victim. She was persuaded to the perpetrator's home, where he attempted to rape her. He planned to kill the victim to cover up the attempt after she resisted. He repeatedly stabbed a knife into her throat while choking her, causing her to bleed to death. He received a life sentence after the court found him guilty of murder. He was also found guilty of attempted rape and received a seven-year prison term and an incapacitation order was also passed. A court-issued incapacitation order will take effect following the completion of the

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<sup>44</sup> *Hareesh Mohandas Rajput v State of Maharashtra* (2011) 12 SCC 56

<sup>45</sup> *Bachan Singh v State of Punjab* AIR 1980 SC 898

<sup>46</sup> *Machhi Singh & Ors v State of Punjab* AIR 1983 SC 957

<sup>47</sup> German Criminal Code 1998, s 211

prison term. This means that the convicted person cannot be freed from custody unless there is a good faith belief that they won't commit any more crimes.<sup>48</sup>

**C. Killings in Domestic Violence:** In India, the tragic phenomenon known as 'dowry death' describes how a newlywed woman may experience harassment or assault from her husband and in-laws as a result of not having enough dowry, which frequently results in her death. Laws designed to stop dowry-related abuses still don't completely stop these events. Such fatalities are viewed as a severe societal problem since they are a reflection of ingrained gender disparities and cultural norms. Dowry killings are specifically addressed in the Indian Penal Code, and anyone proven guilty may face harsh penalties.

In the infamous *Sushil Sharma v State (NCT of Delhi)*<sup>49</sup> case, also referred to as the 'tandoor case' the accused entered the house and saw that his spouse was on a phone call. She stopped the conversation, but when called upon the same number, the phone call was picked up by a former batchmate of his spouse. He shot her with his pistol, took her body to the restaurant, chopped it into several pieces and then he attempted to burn those pieces. Due to the murder's severe brutality, the trial court imposed the death punishment, and the conviction was upheld by the High Court of Delhi. The Hon'ble Apex Court of India lowered the capital punishment to life imprisonment after hearing the appeal, the court observed that the convict tried to dispose of the evidence by burning the body and not killing her in that manner.

Although domestic violence murders are a well-known occurrence, there is no provision in Germany for such crimes as dowry death (Section 304B IPC). When we talk about the crime ratio in Germany, women make up more than half of those who have been killed or 55.1% of victims in 2015. Additionally, 29.6% of all victims or nearly one-third are female family members.<sup>50</sup>

In one case, the culprit, a 33-year-old man, shared an apartment with his fiancée, who was approximately the same age and lived with his parents. The offender had a history of using substances and liquor; his blood alcohol content was 2.04% on the day of the incident. The

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<sup>48</sup> German Criminal Code 1998, s 67(2)

<sup>49</sup> *Sushil Sharma v State (NCT of Delhi)* (2014) 4 SCC 317

<sup>50</sup> Chattoraj (n 3)

accused severely battered and sexually assaulted his partner on the day of the crime. The victim's terrible injuries caused her death. Based upon all the evidences and circumstances, the court found that the accused killed his companion brutally and for 'otherwise base motives' the defendant was found guilty of murder. He was handed a punishment of life imprisonment, and it was determined by the court that the gravity of his guilt was of a serious degree.

## CONCLUSION

Comparing the criminal justice systems of India and Germany presents a significant challenge due to their deeply entrenched differences in multiple contexts including but not limited to historical, social, and legal contexts. These disparities go beyond these stated distinctions between written laws and their practical implementation. In India, a diverse and populous nation with a rich history, the legal landscape reflects a blend of ancient traditions, colonial legacies, and modern legal reforms. The social dynamics and economic conditions vary widely across the country, contributing to complexities in criminal sentencing. On the other hand, Germany, with its well-established legal framework and Western European values, operates within a different cultural and historical milieu. Its legal system emphasizes principles of fairness, proportionality, and rehabilitation, reflecting a distinct approach to criminal justice.

The distinction between murder and homicide in India lies in the level of culpability, dependent on the proximity of death resulting from the act of killing. Courts primarily consider the perpetrator's awareness and intent regarding the likelihood of impending death when making this assessment. In Germany, the key determinant distinguishing murder from homicide is the assessment of moral damnability. This judgment of particular damnability can arise from various factors, including the killer's motives, the methods employed, or the intended victim. It encompasses an evaluation of the underlying motivations, the means employed in the act, and the chosen target, collectively forming the criteria that differentiate a murder, characterized by a higher degree of moral culpability, from a standard homicide. This distinction helps establish the severity of the crime and guides the legal response, including the appropriate sentencing and penalties under German law.

It becomes clear that there are some significant similarities between both the justice systems when considering the role of punishment in murder cases. The role of punishment in both nations to send a message to the general public, including the victims' loved ones, appears to be its main function. The conviction and severity of the punishment send a strong message when a killer is found guilty and sentenced. This message has several functions: it expresses society's disgust with the crime, provides some closure and justice to the victim's family, discourages potential criminals, and confirms the fundamentals of law and order. Punishment is used in this fashion to exact social retribution, deter crime, and reinforce the moral principles espoused by the legal system.

For both nations, deciding between the death penalty and a lengthy prison term can be a complex and weighty matter. It depends not only on their legal traditions but also on the degree to which they respect cultural values and human rights. These decisions involve deeply considering the principles of justice, ethics, and the preservation of individual rights, acknowledging the profound impact they have on both the convicted individuals and society at large. Balancing these factors ensures that the punishment chosen aligns with the values and priorities upheld within their respective legal systems and cultures.

The most glaring difference between India and Germany is undoubtedly the availability of the death penalty as a potential, though unlikely, outcome of murder. Although it's evident that capital punishment is not subject to legal criticism in India, as opposed to Germany, due to India's non-membership in an internationally binding convention that abolishes this type of punishment. It seems that the need for stringent penalties is, in reality, a reflection of what policymakers and segments of the public perceive as essential within a specific society. This consideration underscores the dynamic interplay between legal policies, public sentiment, and societal norms in shaping the approach to punishment within a given community.