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## Capital Punishment a Boon or A Bane?

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*A famous saying by Respected Mahatma Gandhi goes, “An eyes for an eye would make the whole world blind”.<sup>1</sup> This means that if we punish the person we assume is cruel in the same way they treat, we shall eventually become as wicked as we are punishing, which states violence cannot be resolved by violence itself it needs a non-violent measure.<sup>2</sup> But in the present time, this principle has not been the way of getting justice as the crimes are advancing and are turning heinous day by day. Capital punishment is the severe punishment given to the person accused of the most serious and most violent crimes. Not only in India but worldwide, the punishment works this way. The person accused of a crime must face the consequences of his wrongdoing. Capital punishment is viewed both ways, where one includes that the wrongdoer gets his punishment and is a lesson to the other individuals.<sup>3</sup> In society, the accused will be punished with grave consequences whereas, on the other aspect of this, the accused must be innocent and might have been framed with such consequences in case of which this type of punishment should be abolished everywhere. Capital punishment must be given as such consequence when the crime is severe and falls under the category of the rarest cases.*

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<sup>1</sup> ‘An Eye for an eye makes the whole world blind’ (Bob Desautels, 27 March 2019)

<<https://www.bobdesautels.com/blog/2019/3/27/an-eye-for-an-eye-makes-the-whole-world-blind-nbspnbspnbspnbspnbspnbspnbsp-mahatma-gandhi-nbsp>> accessed 21 June 2024

<sup>2</sup> Divya Sharma, ‘Capital Punishment: A Bane or Boon’ (The Law Blog, 09 November 2016)

<<https://thelawblog.in/2016/11/09/capital-punishment-a-bane-or-boon>> accessed 21 June 2024

<sup>3</sup> Rachit Sharma, ‘Capital Punishment: A Boon r Bane’ (Brillopedia, 20 June 2021)

<<https://www.brillopedia.net/post/capital-punishment-a-boon-or-a-bane>> accessed 21 June 2024

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## INTRODUCTION

Capital punishment is such type of punishment provided for an offence that is grave, heinous, and detestable, which varies from country to country, gravity and seriousness of the nature of the crime, and from age to age. The capital sentence, according to the jurisprudence of laws, means the punishment for death. There lies a small difference between capital punishment and extrajudicial executions, which are not under the preview of law, which is established under the principles of the retributive theory. Punishments make the regulations more enforceable and a measure to curb crime in society. Previously, under section 53, there were provisions as to different types of punishment, which included the death penalty in The Indian Penal Code, 1860, but now in Bharatiya Nyaya Sanhita under section 4(a)<sup>4</sup> and section 70,<sup>5</sup> it still talks about the inclusion of capital punishment has not banned it as one of the roughest ways in India's judicial system to punish the serious offenders. The validity of a Death sentence is challenged before the Supreme Court of India court, where three landmark cases were decided based on whether capital punishment should be abolished or not.

The Landmark Supreme Court cases include, firstly, the case of **Jagmohan Singh v State of Uttar Pradesh**.<sup>6</sup> Where the court held the death sentence constitutionally valid, in another case, **Bachan Singh v State of Punjab**,<sup>7</sup> the concept of the rarest of the rare cases was generated and the validity of the death sentence is only an option after life imprisonment, further in the case of **Macchi Singh v State of Punjab**,<sup>8</sup> The 5 parameters as to the rarest of the rare cases were said by the learned court and having an opinion of all other biases, debates, being objectionable this situation had almost led to the abolishment of the death sentence in India.

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<sup>4</sup> Bharatiya Nyaya Sanhita 2023, s 4(a)

<sup>5</sup> '[Comparative Study] Bharatiya Nyaya Sanhita 2023 (BNS) & Indian Penal Code 1860 (IPC)' (*Taxmann*, 08 January 2024 <<https://www.taxmann.com/post/blog/comparative-study-bharatiya-nyaya-sanhita-bns-indian-penal-code-ipc>> accessed 22 June 2024

<sup>6</sup> *Jagmohan Singh v State of Uttar Pradesh* (1973) 1 SCC 20

<sup>7</sup> *Bachan Singh v State of Punjab* (1980) 2 SCC 684

<sup>8</sup> *Machhi Singh v State of Punjab* (1983) 3 SCC 470

## RECEPTIONIST PERSPECTIVE ON CAPITAL PUNISHMENT

From the perspective of the people who take capital punishment, one of the retention theories states that for a crime-free society to exist, we must strictly maintain capital punishment, as there is no punishment as harsh as this one. According to Grotius, 'The infliction of ill suffered for an ill done',<sup>9</sup> which means punishment is the reflection of the wrongdoing by the offender. The opinion of the abolitionists remains that it is not actually a crime deterrent and is based mostly on ideas of humanitarian and moral grounds of the accused person. We must also take into consideration that the crime on the victim's side cannot be justified by not taking matters on the death penalty but on moral grounds.

The Indian Judiciary has decided certain cases which are impressionable. But this is a positive aspect of punishment as it lessens the number of offenders repeating it. Almost Currently, 55 countries have still instilled the death penalty according to statistics from Amnesty International in the year 2022, out of which 9<sup>10</sup> countries have kept the capital punishment to most extreme cases and 23 countries have kept them for use later on.<sup>11</sup> The leading countries include China, Iran, Saudi Arabia, Egypt, the U.S., etc. The death penalty or capital punishment is a retentive theory that includes major arguments. Firstly, crimes fall under the circumference of national sovereignty and are eliminated from the human rights law. Secondly, this affects the crime commission, which is being done or is committed at a larger scale to a situation of halt. Many researchers, studies, and experiments have shown that the reasons stated have worked as a retention against the commission of such crimes using the method of capital punishment.<sup>12</sup> From the view of sociological and ideological, it is clear that the different religions in India are ambiguous about the matter. The four theories of punishment talk about the punishment given to the offenders depending on the circumstances of the crime. This method of curbing crimes

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<sup>9</sup> Antara Roy, 'Crime and Punishment in Modern India' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-10429-crime-and-punishment-in-modern-india.html>> accessed 15 July 2024

<sup>10</sup> 'How many countries still have the death penalty, and how many people are executed' *BBC* (London, 25 January 2024) <<https://www.bbc.com/news/world-45835584>> accessed 15 July 2024

<sup>11</sup> *Ibid*

<sup>12</sup> 'Capital Punishment- An International Perspective' (*Law Corner*, 24 July 2020) <<https://lawcorner.in/capital-punishment-an-international-perspective/>> accessed 15 July 2024

helps remove dangerous criminals from society and the punishment for taking someone else life is that the life of the offender must also be forfeited. The concept of capital punishment is one such practice that will balance the good over the evil concept.

For the safety and welfare of the citizens, the offenders of heinous crimes need to be put to death so that the convicted killers cannot take another innocent life again. Capital punishment justifies the victim's plea for a long awaiting justice. Everyone should be treated equally by the law, so they must ensure that the criminals get more and not less of what the victim side has faced loss due to the act of crime done. The criminals must and should get what they deserve but in an appropriate manner.

### **ABOLITIONIST VIEW OF CAPITAL PUNISHMENT**

The view of abolitionists is such that the people's opinion is that imposing the death penalty is like a miscarriage of justice. The reality is such that one life cannot be brought back, so punishing the accused with the death penalty is not justified in any manner. This shows that this portrays the view of hate, anger, and revenge, which is not the best cure for bringing justice. There must be a high chance that an innocent may be hanged or punished or be wrongly imposed by the death penalty. It is the moral obligation of society to protect human life. In reality, there is no clear evidence that the death penalty can be a measure of deterrence against violent crime.

There is no such requirement of imposing the death penalty to protect the public from criminals, and it is also not necessary to establish the statement "they get what they deserve". The death penalty wastes lives as he might be an innocent life and his wrong could be corrected and justice be delivered to him along with money it is more expensive to execute a person than imprisonment because the person could be rehabilitated and could be brought back to society as a new person. The life of every person is precious and society must preserve it. The Protection of Life and Personal Liberty under Article 21 is guaranteed to all the citizens of India, which<sup>13</sup> Includes that no person shall be deprived of his life or personal liberty and a state must not be allowed to take a life very easily. The death penalty sometimes becomes very unjust because innocent people are inflicted upon because they have low funds to appear in courts, nor do they

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<sup>13</sup> Constitution of India 1950, art 21

have connections to get bailed out. The prisoners in jail must be rehabilitated before leaving them into society because they need proper training and therapy to change them into a new personality and the death penalty is harsh and extreme. There might be some people in prisoners who are incapable of deterrence as they are suffering from mental illness or are sick. Any way of retribution theory is immoral and displays the idea of revenge and hatred.<sup>14</sup>

We must not practice the theory of hatred and revenge, which is the eye for an eye theory, but must follow up with the reformatory form of justice, which is much more productive than this type of method to deal with criminals. Capital punishment is an unethical form of punishing a criminal as it shows the barbaric way of punishment, as killing a person for the reason of crime is not at all unjustified. Now, the use of syringes for executing death is a part of capital punishment and the prisoners are executed along the gross trail with no substantial evidence of the performed crime. The death penalty is often discriminatory, where mostly the innocent and socially backward classes are wrongly accused and have no monetary support to hire lawyers to defend their case or be heard from their justice and are eventually executed.<sup>15</sup>

## COMPARISON BETWEEN COUNTRIES OTHER THAN INDIA REGARDING CAPITAL PUNISHMENT

Capital punishment as a form of punishment can vary from countries. Some countries have kept these types of punishment to deter serious and heinous crimes but some countries have abolished the theory of capital punishment. Let's view these in broad detail.

**United States:**<sup>16</sup> This state allows capital punishment in 27 states of the U.S. The death penalty can vary from country to country and state to state but most death penalties in these 27 states

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<sup>14</sup> 'Arguments in Favour & Against Capital Punishment' (*Aishwarya Sandeep*, 26 October 2021)  
<<https://aishwaryasandeep.in/arguments-in-favour-against-capital-punishment/#:~:text=Safety%20and%20Welfare%20the%20citizens,killers%20do%20not%20kill%20again.>>  
accessed 23 June 2024

<sup>15</sup> '[Burning Issue] Debate over Capital Punishment' (*Civils Daily*, 19 March 2022)  
<<https://www.civilsdaily.com/burning-issue-debate-over-capital-punishment/>> accessed 23 June 2024

<sup>16</sup> Archak Das, 'Capital Punishment- Pros and Cons: when can it be justified' (*Legal Vidhiya*, 06 May 2023)  
<<https://legalvidhiya.com/capital-punishment-pros-and-cons-when-can-it-be-justified/>> accessed 07 October 2024

are done by the use of lethal injection, which is the use of harmful chemicals in the form of medicine to give the death penalty to the prisoner.

**China:** In China, the most prevalent punishment since the 16<sup>th</sup> Century is the death penalty. They consider capital punishment as the ultimate form of punishment. They have, by far and large, the greatest number of executions in the whole world, as the correct figures are kept confidential. In this country, capital punishment is given using methods of legal injection, some parts of which use the method of firing squads along with the execution in public.

**Iran:** Capital punishment in Iran is governed mostly by Islamic laws and also has a score of higher executions with offences connected to drug matters. Their methods of giving capital punishment include stoning the person in public, hanging, and often by the fire squads.

**Saudi Arabia:** Capital punishment is governed by the strict implementation of Islamic Laws and the method of punishing the offenders is by beheading them in public.

**Japan:** Japan has a long history of executions and the use of capital punishment and uses the death penalty for committing crimes in murder and treason, executing process is by hanging the offender person.

**Canada:** The country of Canada has made changes by abolishing the death penalty in the year 1998 and, as an exception, performs capital punishment only in the matter of offenses committed under the military. Records of no capital punishment have been<sup>17</sup> made since 1962 and continue to date.

**Sri Lanka:** In Sri Lanka, the prime minister abolished capital punishment was abolished in the year 1956. After this, it was reintroduced in the year 1959. And lastly, it was abolished in the year 1976.

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<sup>17</sup> P. Mari Gowda, 'Capital Punishment- A Contemporary Comprehensive Criminological Study' (PhD Theses, University of Mysore 2022)

**North Korea:** The method of execution in this country is by hanging and dismemberment. Overall, we can see that countries have still used capital punishment for serious crimes, but there are still countries that have completely abolished capital punishment.

## **LAWS INVOLVED**

While giving the death penalty includes previous codes of the Indian Penal Code 1860<sup>18</sup> and Code of Criminal Procedure 1973<sup>19</sup> and presently Bharatiya Nyaya Sanhita 2023<sup>20</sup> and Bharatiya Nagarik Suraksha Sanhita 2023<sup>21</sup>.

Previously when the Indian Penal Code was implemented, then the death penalty was for offenses such as Murder, Abetment of suicide by a minor, threatening to give false evidence, treason, and waging war.

Presently, in Bharatiya Nyaya Sanhita, the offences have been limited to the death penalty which includes terrorism, Mob Lynching which adds the murder or grievous hurt being done by five or more people, and lastly, organised crimes such as extortion, kidnapping, killing by contract, scams relating to finance, land grabbing and cybercrimes.

Previously, there were clauses relating to the death penalty in the Code of Criminal Procedure, but presently, no specific changes regarding capital punishment but other matters in Bharatiya Nagarik Suraksha Sanhita.

### **Other provisions following up with the death penalty include:**

- Unlawful Activities Prevention Act 1967<sup>22</sup>
- Defense and Internal Security of India Act 1971<sup>23</sup>
- Narcotics Drugs and Psychotropic Substances (Prevention) Act 1985<sup>24</sup>

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<sup>18</sup> Indian Penal Code 1860

<sup>19</sup> Code of Criminal Procedure 1973

<sup>20</sup> Bharatiya Nyaya Sanhita 2023

<sup>21</sup> Bharatiya Nagarik Suraksha Sanhita 2023

<sup>22</sup> Unlawful Activities Prevention Act 1967

<sup>23</sup> Defense and Internal Security of India Act 1971

<sup>24</sup> Narcotics Drugs and Psychotropic Substances (Prevention) Act 1985

- Explosive Substances Act 1908<sup>25</sup> etc.

## ANALYSIS

The fight for opinions has no end. Some think this must be abolished based on humanitarian grounds, whereas the other objects that it must not be abolished in any manner. Sometimes, the case of the death penalty seems to be fundamental and necessary for justifying a serious crime, which is not acceptable in society.<sup>26</sup> According to the international trends, it is mostly in favour of the abolition of capital punishment and year by year, and countries are moving towards the policy of abolishing capital punishment. But a country like India should not be compared to any of the countries in the world as our social, economic and political situations are very different to the countries who have already abolished them. In India, there is a need for the application of the rarest of the rare cases concept. In a few circumstances, it becomes compulsory to give a death sentence and a scheme, rehabilitation and economic help, and mental support to the victims or their family members. The theory of deterrence proves effective when, as soon as the crime is done, punishment is received and in case of serious and heinous crimes, speedy investigation, fast-track trials, and earlier judgments would prove the efficiency of the Indian Judicial System.<sup>27</sup>

## CONCLUSION

At present time, the rate of the death penalty is being declined even though it is still permitted by the law. To a person, the most precious is his or her life, when another person tries to put that life in danger, then the person is punished by the strong hands of the state. It is the duty of the judiciary that the sentencing punishes the crime of the criminal and the victim is satisfied with the justice served. For a Criminal Justice System to function properly, it needs all theories of punishment to support the crimes involved and every theory has its pros and cons we must see more of the positive side than the negative side so that justice is served. Not the death penalty

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<sup>25</sup> Explosive Substances Act 1908

<sup>26</sup> S. Shruthi Taarana and M. Kannappan, 'A Critical Analysis on Capital Punishments Boon or Bane' (2018) 119(17) International Journal of Pure and Applied Mathematics 1349

<sup>27</sup> 'Death Penalty' (*Drishti IAS*, 12 February 2020) <<https://www.drishtias.com/daily-news-editorials/death-penalty-2>> accessed 22 June 2024



but the crime committed by the offender must be considered barbaric and value the lives of innocent people who are law-abiding citizens of the country.<sup>28</sup> In my opinion, a fair trial must be done so that no innocent is punished, and after all the investigation and matters to court, the crime co, committed must be such that it is immoral, heinous, and shameful to society and must be punished with the strict punishment of death penalty and hanged till death so that the justice of the country prevails and no other dares to commit such crime again and also the justice is served to the victim. Otherwise, if the situation is such that the crimes have been reduced to least minimum, we can abolish the death penalty otherwise, this is not the right time to abolish the death penalty. The Indian Judicial system must be strict, just, and fair in all the decisions it makes now and in the future.

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<sup>28</sup> Mamta Mahajan, 'Right to Life and Capital Punishment: A Study of Judicial Discretion' (PhD Theses, Panjab University 2007)