

PERSPECTIVE OF DEATH PENALTY AND HUMAN RIGHTS LAW IN INDIA AND AROUND THE WORLD

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ABSTRACT

Because it opens the door to many feelings and connections in the natural cycle, human life plays a pivotal function in society. That might be one of the things that sets human existence apart from the lives of other species in this everlasting planet. Although the death penalty has been abolished formally or de facto in many countries, it is still contentious for moral, political, legal, and practical reasons to apply it in other countries, including those in our own area. This rule not only better safeguards human rights, but it also reflects the evolution of the law. This report includes data from nations that have abolished the death penalty and analyses the activities of international organisations throughout the globe to end capital punishment. The researcher has used a wide variety of credible and impartial sources, data, and subjective assessments to support or refute a certain hypothesis. The researcher has used a number of examples and quotations to support his argument. In addition, this study will analyse the growing movement to abolish the death penalty over the last several decades. It will analyse new challenges to the death penalty and trace the history of capital punishment as a human rights problem on the world stage. In addition, it includes the author's opinions and reasons about human rights legislation and the death sentence.

Keywords: *Punishment, Laws, Death, Crime, Penalty.*

I. INTRODUCTION

Human life serves an important role in society because it provides access to a wide range of emotions and relationships in the natural cycle. That could be one of the characteristics that distinguishes our life from that of other creatures on this eternal planet. The state taking someone's life for a major offence in conformity with established legal processes is the most basic definition of the death sentence. However, the death penalty is not a creation of the contemporary day; it has a long and illustrious history that dates back to antiquity and seems to have perpetual staying power. Every human society throughout history has a set protocol. The 21st century has given rise to something unique: a public acknowledgement that the death penalty should be abolished, backed by logical arguments and a set of standards for when it should be used.¹ This subject has been the subject of a heated political discussion as a result of the abolishment of the death penalty in several developing countries. India, a well-known developing country, has not yet secured an agreement to abolish the death sentence, but it has

¹ **David T Johnson (2008), The death penalty in Asia: Introduction to a Special Issue of Punishment & Society, Punishment & Society 10(2):99-102, DOI: 0.1177/1462474507087193**

done so under very unusual circumstances. The death penalty is a key component of the American criminal justice system despite several laws and sanctions. One of the main causes of the issues that contemporary society is now confronting is the execution of criminals.

The death penalty, often known as capital punishment, is the worst punishment that may be meted out to a criminal, and it is reserved for the most heinous, cruel, and vile of offences.².

II. UNDERSTANDING THE DEATH PENALTY AS A HUMAN RIGHTS VIOLATION

Amnesty International opposes the death penalty on the grounds that it is inhumane and violates two of the most basic human rights: the right to life and the right to be free from harsh, barbaric, and degrading punishment. "The Universal Declaration of Human Rights, as well as other international and regional human rights documents, and state constitutions and legislation, all acknowledge both of these rights." When law enforcement officers are in imminent danger and must act to protect themselves or others, or when a nation is at war, the taking of a life may be justified in the name of defending life and the state. Although deadly action may be necessary, it is nonetheless governed by human rights and humanitarian law norms to prevent misuse. More than two-thirds of humanity resides in nations with a death penalty, and the four most populous countries (the People's Republic of China, India, the United States, and Indonesia) are among those that continue to use it.³ As of early 2016, 65 nations still had a death penalty statute on the books, while 103 had abolished the practise altogether. Meanwhile, 6 had abolished it for all but the most heinous of crimes, and 30 retained it but seldom or never used it.

But the death penalty isn't used to protect people from imminent danger. It's when a prisoner is killed on purpose for punishment, even when there are alternative options. Torture is obviously very harsh. In the same way that torture breaks a person down to their very core, an execution is a brutal attack on a person who has already been made defenceless by the state. The brutality of the death penalty is not only on display at the actual execution, but also in the years leading up to it, when the condemned individual must live with the knowledge that he or she will soon be killed by the state. No matter how heinous the act for which the prisoner has been condemned, this level of brutality is unacceptable and cannot be justified. How can it be acceptable for public authorities to assault not only the body or the intellect, but the very life, of a prisoner, if it is forbidden to expose the prisoner to electric shocks and mock executions? One of the most terrifying types of torture is the threat of death.⁴ They forbid it because it constitutes torture. How is it legal for a prisoner to face the same danger in the form of a death sentence, which has been issued by a court and must be carried out by the prison authorities? The death sentence is terrible not just to the person on death row, but also to his or her loved ones, the prison staff, and the government personnel responsible for carrying out the execution.

² Gordon Hawkins, Roger Hood, *Research Interest* (2008). *The Death Penalty: A Worldwide Perspective*. *The American Journal of Comparative Law* 39(3):615 DOI: 10.2307/840773

³ Frank Zimring, David T Johnson (2008). *Law, society, and capital punishment in Asia*. *Punishment & Society* 10(2):103-115. DOI: 10.1177/1462474507087194

⁴ Chris Cunneen (2011), *Fear: Crime and Punishment*

The duty of an executioner may be very upsetting, even horrific, as shown by reports from all across the globe. The death sentence may provide challenging moral challenges for judges, prosecutors, and other authorities if their positions in carrying it out are at odds with their own ethical beliefs. Most arguments against capital punishment centre on two human rights: the right to life and the right to be free from harsh, inhuman, or degrading treatment. However, the death penalty violates other civil liberties as well.

One of the most fundamental foundations of human rights legislation is that nations must acknowledge the right to life, and the death sentence is a direct violation of this principle. Human rights groups and the United Nations General Assembly have both urged for an end to the death sentence on the grounds that it violates internationally recognised human rights.⁵ "The convention is rapidly heading toward a stance in favour of global abolition."

An examination grounded in human rights must always begin and finish with the premise that capital punishment violates universally accepted standards of decency. Its implementation often violates other fundamental rights in addition to the right to life. There is a growing agreement that the 'death row phenomenon' is a violation of the ban against torture under international human rights law, and that the death sentence itself is a violation of the prohibition against cruel, inhuman, or degrading treatment. More importantly, the principle of nondiscrimination is often violated when the death sentence is imposed in a biased manner. The death sentence is widely seen as an abuse of human rights in many regions of the globe today. This realisation has helped accelerate the global movement to abolish the death penalty; 35 years ago, only 16 nations had abolished the death sentence for all crimes; now, that number stands at 104. In addition, 35 of the remaining states have abolitionist legislation in place, meaning they have not carried out an execution in at least ten years. The number of nations with confirmed executions in 2010 was rather small, at only 23. Several nations are responsible for the vast majority of global executions each year, and the United States is one of them. It is estimated that 220 individuals were executed in the United States between 2007 and 2011. Only Saudi Arabia, Yemen, North Korea, Iran, and China execute more often than the United States.

III. WORLDWIDE ABOLITION OF DEATH PENALTY

In 1986, 46 countries had abolished the death penalty for ordinary crimes. Sixteen years later, the number of countries in the same category had almost doubled to 89.⁶ Furthermore, 22 additional nations have ceased actual executions, bringing the total number of countries without the death penalty to 111, significantly greater than the 84 countries that still have the death sentence in effect. The pace at which nations abolish the death sentence has climbed from 1.5 per year (1965–1988) to 4 per year (1989–1995), or almost three times as many, as observed by Roger Hood in his book on global changes in the death penalty. William Schabas, an expert on international law, has pointed out that fifty years ago, there were almost no abolitionist governments, hence the concept of abolition was unknown.⁷

⁵ Report Special Officer of the United Nations on arbitrary execution and shortened proceedings

⁶ See Amnesty International, 'Facts and Figures on the Death Penalty,'

⁷ R. Hood, *The Death Penalty: A World-wide Perspective* 8 (2d edit. 1996).

This is a shocking change for a society where the death penalty has been common for millennia. Despite legal abolition of the death penalty dating back to 1867 in Venezuela and 1870 in the Netherlands and even earlier in the state of Michigan (1846), much of the drive towards eradication of capital punishment has been relatively recent.

Human Rights as a Basis for Abolition and Reform

Increasing numbers of nations have done away with the death penalty, although there are many other explanations for this trend. It was a larger concept of human rights for certain countries. The final remnants of Spain's death penalty were abolished in 1995, when the country declared that 'the death penalty has no place in the general criminal system of modern, civilised society.' Similarly, Switzerland no longer uses capital punishment since it is 'a gross breach of the right to life and dignity.' The South African Constitutional Court's historic ruling abolishing capital punishment under the new constitution was written by Justice Chaskalson, who said: 'The most fundamental human rights are the rights to life and respect for one's person. The State must show this in all it does, including its treatment of offenders.'⁸

However, governments that rely heavily on the death sentence are resistant to the idea that this practise should be recognised as a human rights violation. In 1994, while the UN General Assembly was debating a proposal to limit the death sentence and support a moratorium on executions, Singapore argued that 'capital punishment is not a human rights problem.' Ultimately, the resolution was defeated because 74 nations did not cast votes for or against it.

However, the death penalty is becoming a major concern for human rights groups in a growing number of nations. 'Abolition of the death penalty contributes to the improvement of human dignity and to the gradual development of human rights,' reads a resolution passed by the United Nations High Commission for Human Rights in 1997.⁹ "That resolution was strengthened in subsequent resolutions by a call for a restriction of offenses for which the death penalty can be imposed and for a moratorium on all executions, leading eventually to abolition."¹⁰

The question of whether or not to abolish the death penalty is not considered as a purely domestic one. A large number of European nations, along with Canada, Mexico, and South Africa, have refused to extradite individuals to places like the United States on the grounds that they would be subject to the death sentence if they are. Unless the United States takes action on the death penalty, the Council of Europe has threatened to suspend its observer status. 18 Recently, Mexico launched a programme to help its citizens who are facing the death sentence in the United States. As will be elaborated upon below, in most cases, these Mexican nationals were denied the protections guaranteed to them by the Vienna Convention on Consular Relations. Paraguay and Germany both took their citizens facing death in the United States to the International Court of Justice in The Hague because of this breach.

⁸ Makwanyane and Mchunu v. The State, 16 HRLJ 154 (Const. Ct. of S. Africa 1995)

⁹ United Nations High Commission for Human Rights Resolution, E/CN.4/1997/12

¹⁰ L. Rohter, 'In the Caribbean, Support Growing for the Death Penalty,' N.Y. Times, Oct. 4, 1998, at 14.

IV. FUNCTIONING AND CONSTITUTIONAL VALIDITY OF DEATH PENALTY IN INDIAN CONTEXT

Since its inception, the practise of capital punishment has evolved and expanded to include a wide variety of different kinds of punishment. The Indian Penal Code, 1860 (IPC) is the Public Law and substantive Criminal Law that regulates offences and penalties in the Indian context. The death penalty and life in prison are both options under Section 53 of the Indian Penal Code. The use of the death sentence is now sanctioned under Indian law.¹¹ "Capital punishment¹² has been declared to serious offences. Indian judiciary declares this, by giving importance to its constitution, where Article 21 of the Indian constitution is 'protection of life and personal liberty'. Nothing in this article may be construed to prohibit the use of any other technique recognised by law. According to this article, all Indian citizens have the legal right to live. The Indian Penal Code (IPC) allows for the death penalty to be used in cases of criminal conspiracy, murder, waging war against the government, abetment of mutiny, dacoity with murder, and anti-terrorism.¹³" The Indian President has the authority to commute a death sentence, according the country's constitution. When a case involves the death penalty or capital punishment, this article prompts the judges to reconsider their original decision. Another constitutional provision, Article 14, guarantees 'equality before the law and equal protection of the laws,' which indicates that no one may be treated unfairly unless doing so is necessary to promote equality. Art. 14's commitment to equality is echoed in the Constitution's introductory text. "Therefore, it would seem that the death penalty is incompatible with the concept of human dignity." It is an undeniable truth that nowhere in India's constitution does it state that the death penalty is illegal, and yet there are sections in the constitution that seem to permit the possibility of the death penalty. The validity of the death penalty may be challenged, however, based on various articles in the constitution, including the preamble, the Fundamental Rights, and the Directive Principles. Execution is reserved for a small subset of really heinous criminals.¹⁴ After taking another person's life or committing a very severe crime, one's own life is in danger of being taken away at any moment. "The core idea is that we all have an unalienable right to live, and that no one has the right to take it away from anybody else without paying the ultimate price with his own life." The fact that the death penalty is still present in Indian criminal legislation is seen as inherently unjust by many lawyers and academics. It is argued here that these eminent jurists fail to appreciate the reality that not even the right to life is unquestionable. The Supreme Court of India has repeatedly ruled that the death penalty under the Indian Penal Code is lawful. There have been several arguments for and against the death penalty, and there are also two possible angles from which to examine the Constitutionality of the death penalty. The first issue is whether the death penalty itself violates the constitution and thus cannot be used in any circumstance. Thus, the issue is whether or not death punishment may be granted for any crime and via any method. Second, even if the death penalty in and of itself is not unconstitutional, the question remains as to whether or not the death penalty as set

¹¹ Gopal Gandhi. *Abolishing the Death Penalty: why India say no to capital punishment*. Published by Indira international centre.2016.

¹² *Capital Punishment in India* by Dr. Subhash C. Gupta, 2000

¹³ Milan vaishnav. *When crime pays : Money and Muscle in Indian politics*. Harper Collins Publications.2017.

¹⁴ Reena Mary George. *Prisoners voices from Death Row: Indian Experiences*. Published by Routledge.2016.

forth in the Indian Penal Code is unconstitutional, given that the provisions of the Indian Penal Code forwarding capital punishment are in violation of certain provisions of the constitution. These two points of view may need to be separated in order to get perspective on the topic at hand.¹⁵.

V. PROSPECTS OF DEATH PENALTY IN THE INTERNATIONAL LAW

The right to live is a natural and fundamental human right recognized in core documents of international human rights law. "Specifically, Article 3 of the Universal Declaration of Human Rights (UDHR) in 1948 states: 'Everyone has the right to live, to have freedom and to be personal safety'. Article 6 of the International Convention on Civil and Political Rights (ICCPR)¹⁶ in 1966 concretizes Article 3 UDHR, which states: There is a universal right to life." This privilege requires legal safeguards. "The taking of anyone's life must be based on objective criteria, not on prejudice or hatred." A number of other international human rights agreements, such as the Convention on the Rights of the Child, the Convention on the Prevention and Punishment of Genocide, etc., also protect the right to life. Human Rights Committee discussions have focused on the right to life's essence, definition, and history (HRC - an agency established under the ICCPR to oversee the implementation of this convention by member states). No.6 General Remarks (adopted at the 16th session in 1982), the key points can be summarized as follow¹⁷s:

- The right to live is 'a human supreme right that in any circumstance, even in the state of emergency, cannot derogation the performance ...'.
- The right to live is broader than only protecting one's own life; it also encompasses measures to preserve the human race. According to this theory, for nations to fulfil their responsibility to ensure its citizens have the right to life, they must take action to end preventable causes of death, such as hunger and sickness. That entails taking both proactive and reactive steps to protect the lives of people, particularly those in the lowest socioeconomic strata.
- War crimes and other major crimes, such as genocide or crimes against humanity, are a regular danger to people's right to life. Consequently, protecting against these offences is equivalent to defending the right to life. According to this view, Article 6's protection of the right to life is intertwined with Article 20's prohibition on actions that promote war, inspire hate, or result in acts of violence.
- Preventing violent crimes that endanger or kill human life is crucial in protecting that right. "All subjects, including state agencies and officials, shall be held accountable for the arbitrary taking of human lives, and the member states should take the necessary

¹⁵ Banerjee, Adhip & Khatana, Dr. (2021). Capital Punishment in India: Is it Time to Outstrip it? (IJLMH PUBLISHED). 10.1732/IJLMH.25617.

¹⁶ **International Covenant on Civil and Political Rights, 999 UNTS 171 (1976), at Art. 6**

¹⁷ **International Covenant on Civil and Political Rights, 999 UNTS 171 (1976), at Art. 6**

precautions to avoid and punish such acts." As a consequence, member states have a duty to devise methods and programmes that lead to concrete outcomes in the fight against and investigation of abduction and disappearance, both of which are recognised as forms of deprivation of the right to life.

General Comment No. 14 (23rd session, 1984) was also approved by HRC with regards to the right to life, restating the significance of respecting Article 6 of the ICCPR under all circumstances and reaffirming the right to life as the foundation of all human rights. Human Rights Council (HRC) believes that all forms of conflict are crimes against humanity and calls on nations to prohibit the development, testing, production, stockpiling, deployment, and use of nuclear weapons.¹⁸

The right to life is rooted in the principle that governments shouldn't take people's lives unless absolutely necessary. "To be clear, the right to life is not an absolute right, but it is the highest and most important human right and must be upheld at all times, especially in times of national emergency (as mentioned in General remark No. 6 of the HRC) (for example right cannot be taken away under all circumstances). The fact that the ICCPR (Article 6)¹⁹ still provides the death penalty is a clear proof of that, because the death penalty is essentially a deprivation of the right to live of an individual, but only when applied arbitrarily, it would be considered an arbitrarily international human rights law." While the United Nations vigorously advocated for its member states to ratify the First Protocol to the ICCPR on the Abolition of the Death Penalty (1989), this ratification was not required but rather voluntary. As a deterrent and punishment for offenders, the death penalty is not prohibited under international human rights legislation. "However, nations are encouraged to reduce and eventually eliminate the death sentence." The right to life, as well as all other human rights, are protected against arbitrary breaches by means of international human rights legislation, which provides highly explicit and thorough limitations on the boundaries of the conduct of law enforcement agents. However, in accordance with international human rights legislation and the criminal law of countries, death caused by the necessary use of force to defend one's own and/or those of another person who is threatened by the murdered person is not deemed a breach of the right to life. Furthermore, the use of fatal force in criminal arrests, repression, or insurrection is not seen as a breach of the right to life if it is authorised and justified.

In general, the death sentence is permitted under international law. 'In countries where the death penalty has not been abolished, it is only allowed to apply this penalty to serious crimes most are based on the law prevailing at the time the crime was committed and must not be inconsistent with the provisions of this Convention and the Convention on the Prevention and Punishment of Genocide,' states paragraph 2 of the International Convention on Civil and Political Rights (ICCPR). To put it simply, a court's ruling must be final and binding for the

¹⁸ International Commission of Jurists, note 63, at 68, § vi.

¹⁹ Article 6 (2) ICCPR: In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

death sentence to be carried out. Although in this regard, in 1989²⁰, The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) called for the abolition of capital punishment, and was adopted by the United Nations General Assembly. However, the Protocol was only a recommendation and was not intended to be legally binding on all members.²¹ In conclusion, the elimination of the death penalty has not yet become a universally binding legal requirement.

The states that have not abolished the death sentence cannot use it capriciously even if they have the option to do so. Although the ICCPR Convention's Article 6 acknowledges the use of capital punishment, it immediately places restrictions on its use, stating, 'Only the death sentence may be applied to the most heinous offences.' In reality, nations do not agree on a single definition or scale for crime's 'risk.' The 'most severe crime' may nevertheless be defined by its scope using the exclusion technique. In 1984, the United Nations Economic and Social Council (ECOSOC) issued a document guaranteeing the rights of people who had been given death sentences. The first guarantee stated, 'In countries the death penalty still remains, which applies only to the most serious offences, which are understood as crimes committed intentionally, causing fatal or particularly serious consequences.' What's more, the first warrant referred to above has restrictions that 'exclude the possibility of applying the death penalty to economic crimes and those that do not have direct victims or to active religious activities or political nature, including activities of treason, espionage, and other actions that constitute its behaviour abstract.'

Furthermore, the relevant object restricts the death penalty as follows: 'The death penalty is not authorised to be imposed to criminals under the age of 18 and not to execute the death penalty against pregnant women,'²² 'International law prohibits the application of the death penalty to people with intellectual and mental disabilities, pregnant women and mothers nursing infants.'²³

For those facing the death penalty, international law also provides a range of judicial warranties to guarantee their fundamental rights as well as fairness, accuracy²⁴. The judicial guarantees include not carrying out the death penalty until all of the necessary actions have been completed, humane treatment of those on death row, and the ability to petition for parole at any time during a prisoner's sentence.

VI. CONCLUSION

²⁰ 5UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 15 December 1989, A/RES/44/128, Article 7 (1), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>.

²¹ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, Article 6, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

²² Clause 3 - article 6 of the ICCPR Convention

²³ Report Special Officer of the United Nations on arbitrary execution and shortened proceedings

²⁴ Rights of those facing the death penalty - OHCHR. <https://www.ohchr.org/en/professionalinterest/pages/deathpenalty.aspx>.

It is still the case that certain legal systems lack objectivity and, at times, fail to provide a fair trial. In order to get confessions from the accused, torture may be utilised. There are also inequalities between the accused, particularly when it comes to obtaining legal representation; for instance, some accused may be wealthy and may have senior lawyers experienced in defending them in serious cases, which may result in a failure to prove the charge and a consequent lack of a death sentence. Sometimes the opposite party can't afford to do this. Unbalanced distribution of power in the court system. Military and state security courts, which operate outside of the normal judicial system, have their own processes and are known for their efficiency. If the accused or his counsel don't have enough time to defend and establish his innocence, the State's safety and security might be compromised. For crimes that aren't considered to be "very severe" or 'politically motivated,' the death penalty has been extended in a number of nations. For those who disagree with authority, the death penalty has become a safe haven.²⁵. Executions should be carried out in secrecy, not in public view, and with as little agony and suffering as possible for the condemned.

The death sentence is often the subject of nationalistic controversy. It's important to factor in the global context. As such, nations may benefit by studying the practises of others. The public's and society's views on torture have changed throughout time. The thumbscrews and rack have been abolished as constitutionally sanctioned interrogation and punishment tools. The guillotine, the garrotte, and the noose have joined other mediaeval tools of torture at the museum as attitudes regarding the death sentence shift. Abolition can only happen with the support of political leaders with the guts to stand up for human rights. The elimination of the death penalty is a necessary condition of respect for human rights. One cannot have a government that upholds human rights while still keeping the death penalty in place.

The thought that 'No one has right to take away one's life' should be kept in the back of everyone's mind, except in cases when it is mandated by law. The inability to adequately investigate the roots of crime in the modern era has led to a number of problems with the death sentence in the present day. Death penalty use is being questioned nowadays. The death sentence has been abolished in the vast majority of nations, yet it bears repeating that in today's society, where each man is responsible for his own actions, it remains an absolute need. We need severe penalties to deter would-be criminals so that society's safety and tranquilly are not jeopardised or disrupted. "Hundreds of thousands of innocent people cannot be risked for the sake of one criminal who has no place in a civilised society." Therefore, the State cannot allow him or her to live. Therefore, the use of the death penalty must be maintained.

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²⁵ Ratanlal & Dhirajlal, *The Indian Penal Code* (edited by Dr. Versha Vahini), (ed.1st), Lexis Nexis, Haryana, 2014

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