

Comparative Analysis of Death Penalty Laws Across Different Jurisdictions

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Abstract -This study has focused on the constitutionality of capital punishment, as well as its procedural components, including the concerns and discussions that judges and courts in India have while passing death sentences. Discuss the tenets and arguments put forward by contemporary penology about this matter. We have also been stressing the opinions of several jurists and legal scholars who possess extensive knowledge of both law and society. In order to arrive at the right justification based on relevant legal reasoning, we have also paid close attention to a number of landmark and historic rulings that have changed the current legal position.

Keywords: Capital Punishment, Punishment, Deterrent, Human Rights, Constitutional validity, Indian Penology, Execution

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INTRODUCTION

The alarming increase in crime rates throughout the world has reached India as well. It is evident that a criminal justice system that aims to be fair for everyone is necessary, and that a vital component of any legal code is the imposition of a punishment that is both suitable and proportional.

"The Code of Criminal Procedure of 1973," "The Indian Evidence Act" of 1872, and "The Indian Penal Code of 1860", are the principal statutes that regulate criminal law and punishment in India. Never lose sight of the distinction between a sentence and a punishment. Although they are related, it does not make them the same. "Sentences" are statements in judgments that outline the legal consequences of a certain offense, assuming we're talking about the term. Once put into place and codified, the same concept would be called "punishment." Therefore, the sentence is seen as the first stage in the process of imposing punishment.

Crime rates have recently risen in India, a nation that is both developing and experiencing rapid economic growth. To put an end to and prevent such crimes, India has enacted a plethora of laws. Strict punishments are necessary for deterring criminal behavior, and the purpose of punishment is to penalize the offender. The article will go into further detail about the topic of "sentencing" as a form of punishment.

There are two main justifications for imposing sanctions. Firstly, it serves as a deterrent to others

from engaging in wrongdoing by ensuring that those responsible for wrongdoing face consequences. The nature of the offense is a major factor in determining the severity of the punishment.

LITERATURE REVIEW

Hood (2012) This analysis of capital punishment, now in its fourth edition, updates its coverage to include recent global efforts to do away with the death sentence. Even among nations that still employ the death penalty, the majority have reduced the number of executions they carry out. There has been successful litigation challenging the constitutionality of obligatory death punishment and widespread calls to end the practice of applying the death sentence to juvenile offenders. More discussion of the possibility that China may limit and regulate the quantity of executions 'on the path to abolition' is included in this publication.

Jiang (2010) Students from the United States and Japan were the next most likely to favor the death sentence, with Chinese respondents ranking highest. Those in Japan and China were more inclined to think that the death penalty works as a deterrent than those in the United States. The respondents had different opinions on punishment. The conviction that innocent individuals are unfairly executed was most strongly held by students in the United States. Among Japanese and Chinese respondents, the death sentence was most strongly correlated with vengeance and deterrence in multivariate analyses. Students in both China

and Japan were more likely to be against the death sentence if they felt it was barbaric for the government to take someone's life. According to American respondents, the most compelling argument in favor of the death sentence was the desire for vengeance, while the most compelling argument against it was the brutality of executions.

Unnever, James. (2010). This study aimed to assess these data in order to determine whether there is a new "collective sensibility" toward the death penalty as a result of the abolition campaign or if there are significant differences in worldwide opinions against capital punishment. The study is based on the premise that abolition will be secure in the long run if the majority of people throughout the globe are against capital punishment. Based on the results, it's clear that opinions on the death penalty vary greatly between countries. Following an examination of the findings from the human rights and minority group threat assessments, the paper identifies five schisms in the death penalty's popularity.

Fleury-Steiner, Benjamin. (2012). As a kind of officially sanctioned punishment, the death sentence entails the intentional taking of a human life. Executions have been severely limited or outlawed in most nations throughout the globe in recent years. Significant political, social, and legal changes have accompanied the death penalty's abolition in several nations. However, in China, the world's foremost executioner, the European effort has had less success. Abolition of the death penalty is very difficult in China due to the country's complicated politicolegal system.

LEGAL FRAMEWORK AND JUDICIAL INTERPRETATION

There are a number of statutes and the Constitution that address capital punishment in India, but the Indian Penal Code (IPC) is the primary law. The Indian Penal Code (IPC) established the death sentence in 1860 for certain rape crimes, terrorism, and murder. Developed during India's colonial era, the IPC is a codification of both long-established customs and the legal concepts advanced by the British. Although the death penalty is not specifically mentioned in India's 1950 constitution, Articles 21 and 72 establish the necessary grounds for its application. The right to life and personal liberty are guaranteed in Article 21, which states that they cannot be taken away from a person except via the legal process. It often struck a balance between the state's authority to execute capital punishment and individual rights, and it has been at the heart of court review of death penalty cases.

Accordingly, seminal Supreme Court decisions bitmasked-shaped the legal understanding of capital punishment. The scope of the judgment was effectively restricted since it was based on weighing aggravating and mitigating factors. Cases that

followed expanded upon the theory, such as 1983's *State of Punjab vs. Machhi Singh*, which used the reasoning already stated, and 2009's *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, which expanded upon earlier case law to ensure sentencing consistency and equity. These rulings uphold the responsibility of the judiciary to ensure that the death sentence is used with caution and discretion.

There has clearly been a shift in perspective on the death penalty in India, as seen by recent legislative amendments and discussions. As more and more people become outraged by human rights breaches, false convictions, and the perceived arbitrariness of death sentences, the call to abolish the death penalty is gaining momentum. The suggestion highlights a new viewpoint that has started to form in human rights and legal circles: justice has to be made a little more compassionate. As a result of political and public pressure, the death sentence is still in place for some crimes, including very serious ones that endanger national security. In the midst of these tensions between tradition and modernity, legal reform in India is undergoing a sea change.

Fundamental to Indonesia's legal framework governing capital punishment is the country's Criminal Code and Constitution. Although the death penalty is not directly authorized by the Indonesian Constitution, it is implicitly permitted under certain circumstances under the Indonesian Criminal Code. Those found guilty of some heinous crimes, like as terrorism, drug trafficking, or planned murder, are to be punished with the death sentence according to the Criminal Code, which originally originated from Dutch colonial law. This legal foundation was further solidified by subsequent legislations that prescribed the death penalty for certain offenses, such as the Anti-Terrorism Law of 2003 and the Narcotics Law of 1997. When it comes to the domestic usage of the death sentence, Indonesian law is unique since it draws from both indigenous customary law and the Dutch legal system.

The horrific nature of the crimes committed and the need to prevent criminal behavior have led Indonesian courts to repeatedly uphold the constitutionality of the death penalty. For example, it was pointed up in the ruling in the case of *Zulfiqar Ali*, a Pakistani citizen convicted of drug trafficking, that Indonesia had a stringent position on major drug crimes. There was substantial proof of Ali's erroneous conviction and allegations of torture during questioning leading up to his 2005 conviction. In 2016, he was killed despite massive worldwide attention and support for his cause. Even though there has been a great deal of discussion and requests for mercy, this effectively establishes a solid precedent for the courts'

continued execution of the death penalty for drug-related crimes.

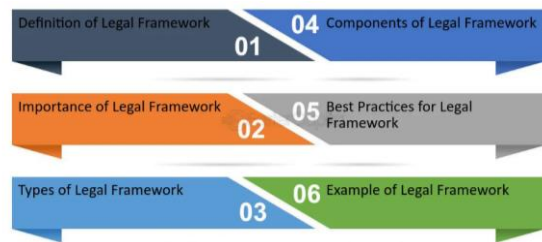


Figure 1: Legal Framework and Judicial Interpretation

THEORIES OF PUNISHMENT

This world is a society. Everyone must follow the rules laid down in the constitution and the laws of the land. Punishment is meted out to lawbreakers who disobey the rules. For this reason, the laws of every state have specific penalties for them. People have been punished since prehistoric times anytime they stray from the path of righteousness by doing damage to others, disobeying the norms, or otherwise upsetting the social harmony. So, in essence, five ideas of punishment have developed throughout the years.

Deterrent Theory:

"Deter" implies to refrain from doing something. The idea behind this hypothesis is that harsh punishments for criminals deter other members of society from committing crimes because they are afraid, they, too, would suffer punishment if caught. Serious penalties were imposed for minor infractions. When a person commits a crime like stealing, for example, they may have their hands hacked off or, in the case of a sexual criminal, their organs removed from their body. When a perpetrator commits the most heinous and distressing crime, however, this premise falls flat. On the one hand, there's the potentially harmful suggestion that, in moments of heightened emotion or haste, a harsh penalty may discourage the offender from thinking twice before committing another crime.

In *Phul Singh V. State of Haryana*, the Supreme Court said, "the prolonged association of lifers and others may be counterproductive; thus, we integrate deterrence with rehabilitation, resulting in the offender's sentence being reduced to 2 years of imprisonment."

Retributive Theory:

This signifies reciprocation. This is a kind of private retribution imposed on transgressors. It is predominantly referred to as "an eye for an eye," "a tooth for a tooth," and "a limb for a limb." This is an old method of punishment that involves inflicting a same degree of agony on the offender as was inflicted on the victim. This is implemented to ensure the perpetrator comprehends the extent of suffering

inflicted upon the victim, so deterring future transgressions. In this context, morality is irrelevant, particularly in the administration of sanctions. Certain acts, including as rape, theft, and murder, are both immoral and prohibited. However, offenses that cannot be classified as immoral, such as trafficking, have not been addressed in this theory about their punishment. It is a kind of retribution that is enacted. With the passage of time, this notion has evolved. This idea ultimately had no advantageous outcomes for either society or the victims. The notion that the retributive theory only mandates death punishment is a fallacy.

Preventive Theory:

Devoid of hands, he is incapable of doing the atrocity once again. The primary purpose of this notion is to prevent the perpetrator from committing the offense. Jurists critique this approach, asserting that it may be achieved via the rehabilitation of offenders, providing them an opportunity to reintegrate into society. This philosophy seeks to deter offenders from committing potential offenses. In *Dr. Jacob George vs. State of Kerala*, it was stated that the four types of punishment are distinctly different, necessitating their separate application.

Reformative Theory:

This idea provides the offender with a chance to amend their behavior. Wrongdoers are often rehabilitated to effect a change in their attitudes. It is posited that individuals are not inherently criminal from birth. Society or circumstances transform him/her into a criminal. At times, individuals resort to criminal activity for survival. Therefore, individuals should be given the opportunity for rehabilitation rather than subjected to punitive measures. Reformation is superior than punishment. This notion posits that by training or education, criminals may be rehabilitated into law-abiding citizens. It is mostly beneficial for adolescents. In our legal system, adolescents are given opportunities by being placed in reform centers.

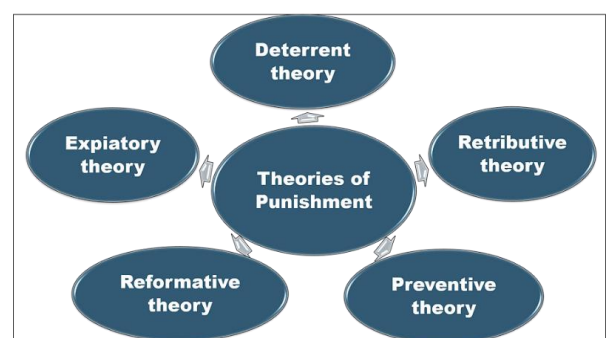


Figure 2: Theories of Punishment

CONSTITUTIONAL VALIDITY OF DEATH PENALTY

Numerous discussions exist over whether death punishment should be abolished in India. Numerous individuals advocate for its abolition, asserting that it lacks constitutional legality. The right to life and personal liberty is guaranteed under Article 21 of the Indian Constitution. When a criminal is punished, the state violates this right. In addition to protecting individual rights to life and liberty, Article 21 states that all court rulings must be based on the principles of due process. Accordingly, the process must be just and lawful before the state may strip the criminal of his or her right to life or personal liberty, as stated in Article 21 of the Indian Constitution. The death penalty is reserved for the most extreme and uncommon of crimes in India.

COMPARATIVE ANALYSIS OF CAPITAL PUNISHMENT IN OTHER COUNTRIES

The principle of retribution, "an eye for an eye," was established by Hammurabi, the Babylonian ruler, as part of one of the first and most comprehensive legal codes, advocating a kill or be killed philosophy. Numerous international organizations oppose capital punishment globally. This discussion elaborates on the regulations of capital punishment in various nations. Historically, hanging and firing squad were the primary methods of capital punishment, until some nations transitioned to the gas chamber and electric chair as more compassionate alternatives. Both methods were found to be inhumane, and now, lethal injection is recognized as an exceedingly unpleasant means of execution, prompting several jurisdictions to contemplate the reinstatement of traditional options such as hanging and firing squad.

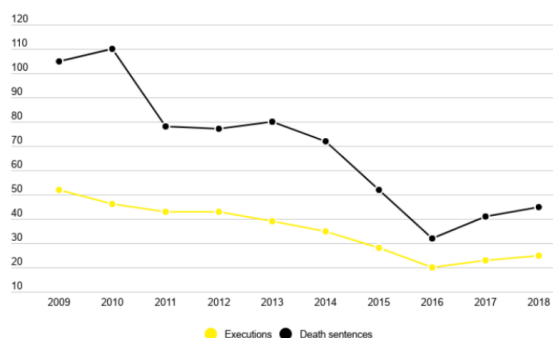


Figure 3: Capital Punishment in Other Countries

Analysis of Capital Punishment in USA

When compared to other democracies throughout the globe, the United States is alone in its use of capital punishment, because the majority of its states have adopted this policy. In the United States, death penalty is allowed in 30 states, with around 2,000 prisoners awaiting execution. The harm of life contradicts the liberal principles that prioritize life and liberty as essential rights. The United States of America, on the other hand, has done away with the

death penalty despite the effect of admirable libertarian ideas, according to the main factual study. The United States Code, Title 18, Chapter 228 addresses treason, drug trafficking on a large scale, murder, attempted murder, and crimes against judicial personnel. The death penalty is imposed for any offense under Section 794 (relating to the gathering and sharing of defense information with foreign entities) or Section 2381 (treason). Additionally, under Section 3593, if a perpetrator intentionally kills the victim, causes serious injury resulting in death, or directly participates in a murder or attempted murder, that individual may face capital punishment. Section 3592 outlines that a defendant may be sentenced similarly to another defendant for a crime committed with common purpose; nevertheless, prior records must be reviewed by the jury, along with considerations of mental disorder and the desire to kill the victim.

The constitutionality in the United States was a much-debated issue. The expressed questions were to its irresponsible, arbitrary, and unquantifiable delays, which are prevalent in most states in the US. The unreliability of the problems was compared to erroneous convictions, vindication bias, and related concerns. Race, gender, and inadequate financing contribute to the arbitrariness of capital defense. The delay in excessive implementation weakens its intended objective. A ruling is pending about the qualifications of capital jurors, as determined by the court. Research pertaining to prejudice indicates that execution punishment undoubtedly undermines the argument. The 8th Amendment of the U.S. Constitution extensively addresses this topic. It states that high fines, bail, or other forms of punishment should not be excessive or exceptional.

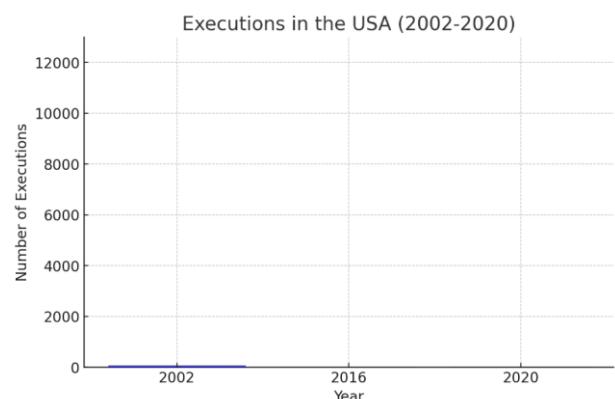


Figure 4: Capital Punishment in USA

Analysis of Capital Punishment in UK

Among the countries that do not use the death penalty, the United Kingdom is one. The British administration in India continued its policy of using the death penalty even after it left power. However, it was not followed in the UK. After the

Homicide Act of 1957, the British government became far more tolerant of capital punishment. Certain sorts of murder, such as murder in furtherance of theft or of a police officer, were barred from being executed under the Homicide Act. Two individuals were the last to be hung in Britain on August 13, 1964, in England. As part of their thievery plot, they had killed a cab driver. The death sentence was temporarily suspended for five years in 1965 under the Murder (Abolition of Death sentence) Act, but was subsequently made permanent in 1969. With the elimination of the death sentence for violent piracy and treason in 1988, Britain became an outright abolitionist nation. The 1998 Human Rights Act, which abolished capital punishment as well, broadly protected the right to life. The right to life of every person should be protected by legislation, as stated in Article 2 of the Human Rights Act.

However, the question of whether a murder warrants murder remains unanswered in Britain. The question was posed by the worldwide advocacy group. According to a British poll, 68% of the population supports the death penalty. The issue becomes murkier when considering the death punishment. A consequentialist might argue that a killer would commit further murders if they felt no fear after committing a significant crime.

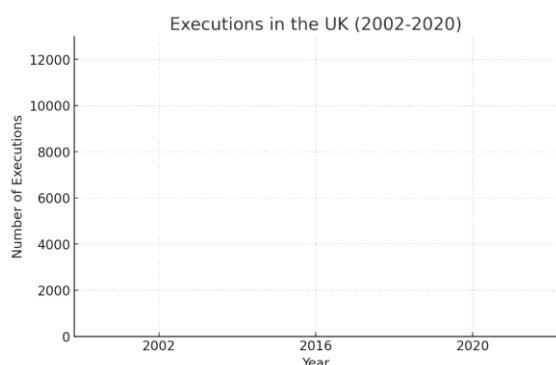


Figure 5: Capital Punishment in UK

Analysis of Capital Punishment in China

The world's most populous nation is China. China made use of the practice of the death penalty in China serves as an example for other countries. Annually, China carries out the death sentence for around 3,000 individuals. At this very moment, which is a lot—certainly more than the rest of the world put together—but China has consistently had more people killed in the previous 30 years than any other country. As part of their first "have been strike hard" campaign in 1983, they put 24,000 people to death in only eight months. These campaigns have been around for 30 years, but they have largely faded from public consciousness in recent years. Their original rationale was that judges should be told whether to kill or not to kill, which led to the death penalty being applied to 30,000 cases in the 1980s.

About 15,000 every year in the 1990s. The death penalty is imposed in China for 42 specific crimes. Among the 42 most prevalent crimes that carry the death sentence are betrayal of one's nation, armed revolt, rioting, and collaboration with the enemies of the country. Although the Chinese government makes great efforts to censor such derogatory content, the fact remains that the country's desire for executions is so great that it acquires a fleet of "death vans" that swiftly go to prisons and carry out executions efficiently at each visit.

China leads the way in terms of the number of deaths each year due to the mandatory death sentence for a variety of crimes, including embezzlement and the surrender of soldiers. Executions in China typically use fatal injection, while fire squads are sometimes employed. Execution by firing squad or fatal injection medicines at the scene of the crime is specified under article 252 of Chinese legislation. An execution ground is often located near the site of the execution in China if a person is to be killed by firing squad. It has three edges.

First execution site; second, armed police officers In the third local police region, inmates have been lawfully sent to a specific location for executions; the vans transport the bodies to this location; however, the vans do not carry firearms; all victims get deadly injections. In 2016, a staggering amount of over 2,000 individuals were killed in China, according to a charity located in the US that tracks these executions. In 2002, a group of individuals estimated that 12,000 people were sentenced to death. According to the foundation's analysis, the death penalty was upheld by the Supreme Court in 2007. At least 783 of the thousands of executions not included in the current data collection pertain to China's death sentences; the country continues to be the world's biggest executioner.

All of the data is classified as state secret in China. Execution of gang leader Liu Han, a multibillionaire, occurred in 2015. In terms of punishment, these numbers are higher than those of Asian nations, China, and North Korea, with the exception of the humanitarian approach.

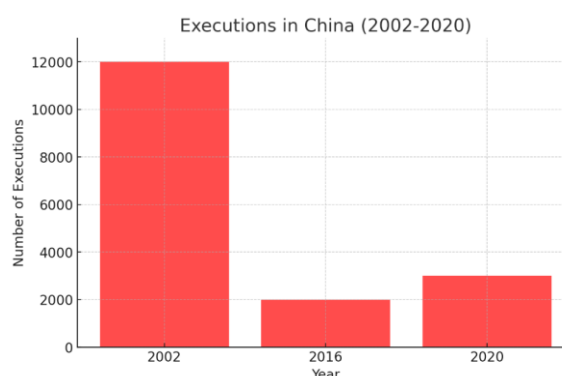


Figure 6: Capital Punishment in China

CONCLUSION

A total of 139 countries have recently done away with the death penalty because of how it violates basic human rights. An alternative to capital punishment may be a life sentence without the chance of release. However, the question arises: would the crime rate decrease if the death penalty is abolished? Truthfully, everyone dreads dying. The perpetrator of a horrific crime may consider the consequences of his actions before doing them. He hesitates before acting on his gut to do the crime since death is the worst dread a person can have. Therefore, that is why the death penalty should be legal: to deter criminal behavior, which leads to a more peaceful society overall. Punishment, therefore, serves as a means to an end reform, not vengeance. Its purpose is to make a person feel bad about themselves and their actions so that they might become a civilized, law-abiding, harmless member of society. So, it's imperative that we do everything in our power to bring a person back to life.

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