
CAPITAL PUNISHMENT: A COMPARATIVE ANALYSIS BETWEEN INDIA, UK AND USA

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ABSTRACT

Capital punishment is the highest form of punishment of any country. It is important for any court to give their decision regarding the death penalty on what is morally and ethically right rather than considering public opinions and sentiments. The debate about the justifiability of the death penalty raises questions about justice, ethics and human rights. The world is divided in its opinion about the justifiability of the death penalty.

This research paper provides a comparative analysis of the capital punishment in India, the UK and the USA. The study presents the philosophical side of capital punishment through examining its history and ethical values. It explores the legal framework governing death penalty of the three nations while focusing on India's approach in giving capital punishment in cases of murder and Rape. The paper also emphasises on the constitutionality of the death penalty, addressing its compatibility with fundamental rights.

The research also presents the study of the UK's abolition of capital punishment and the role of Human Rights act in it. In the US's context, the paper discusses challenges related to fairness, inconsistency, delays, biases and economic disparities in giving capital punishment. The research highlights the complex and multifaceted issue of capital punishment, giving a balanced understanding of its philosophical, legal and societal aspects in the diverse nations.

INTRODUCTION

Capital punishment has been a topic of debate since the last decade. Different countries have different notions regarding capital punishment which contradicts each other. There has been a global rise in the crime level and India is a part of it. Having a justice system that is fair, and the imposition of punishment in appropriate and proportionate manner is necessary.

It is important to analyse the reasoning why death penalty is still existing. Execution has been existing in the society since ancient times. Back then the death penalty was not backed up by any philosophical idea, but it was based on the idea that, death can be the harshest and ultimate punishment provided to any person. The rulers used death punishment as a tool for deterrence to bring obedience among people to follow the rules and regulations.

According to the data of Amnesty international's report, around three-quarters nations of the world have abolished capital punishment by the year 2022. Recently Sierra Leone, Kazakhstan, New Guinea, Papua, and Central African Republic have discontinued the capital punishment for all the nature of crimes. Death penalty have almost been abolished in 112 countries. On the flip side Times of India have reported that Indian Trial Courts have given death sentence to 165 persons in 2022 which is the highest number of death sentences given in last 20 years. The number of people given death sentence have risen from 146 in 2021

Now, when we consider the psychological aspect of it, we can't always predict any person's future behaviour based on his/her past. But on the other hand, the Aristotelian believers would argue that everyone should be given what they deserve. Retributivists would support them and go even further saying that when someone murders another human being, they deserve to be killed in return. This brings up the dilemma that is the death penalty, justifiable or not. This can be answered through the lens of reciprocity, consequences, human rights and legal perspective.

RESEARCH OBJECTIVES

- To provide a comparative analysis of historical, philosophical and ethical foundations of death penalty in India, the UK and the USA.
- To understand the legal framework governing the practice of death

penalty in three nations.

- To evaluate the constitutionality of the death penalty in India with reference to prominent case laws.
- To analyse the reasons behind discontinuation of the death penalty in the UK; further, to study the concerns of fairness, biases and delays in giving the death penalty in the USA.

RESEARCH QUESTIONS

- What are the foundations on which India, the UK and the USA shaped their approaches for capital punishment over time?
- What is the legal framework of the three countries in governing the practice of death penalty?
- To what extent the judicial precedents supports the constitutionality of capital punishment in India.
- What factors lead to abolishment of the death penalty in the UK and what are the concerns in the USA regarding capital punishment?

RESEARCH METHODOLOGY

The research used a doctrinal research methodology relying on the existing legal framework, case laws and international conventions. It involves analysis and synthesis of legal texts and precedents related to punishment in India, the UK and the USA. The research incorporates analysis to evaluate the reasons behind the abolition of the death sentencing in the UK and concerns of application of the death penalty in the USA, based on available scholarly articles, reports and legal documents.

LITERATURE REVIEW

- Sanjeev P. Sahini and Mohita Junnarkar, ‘The Death Penalty: perspectives from India and Beyond’, Springer Publications

-This book discusses global and Indian views on capital punishment, highlighting ethical, legal, and social dimensions

- Daniel LaChance, “Executing Freedom: The Cultural Life of Capital Punishment in the United States”, The University of Chicago Press

-This book explores the cultural and historical aspect of capital punishment in the USA.

- Jeffrey Reiman and Louis P. Pojman, “The Death Penalty: For and Against”, Rowman & Littlefield Publication

-This book offers argument both for and against the death penalty providing a balanced view.

DEATH PENALTY IN INDIA

The capital punishment’s jurisprudence in India is based on two ideas; deterrence theory and reform theory. Deterrence theory is used to discourage people from doing crimes. If the individuals would know that they will face brutal punishments when they commit crime, they will deter before doing anything illegal. So when, death punishment is given to any criminal, it makes others fear and think twice before doing anything of the same nature. The supports of the deterrence theory would believe that capital punishment is justifiable.

On the other hand, there is reformatory theory. It is where offenders are given an opportunity for reformation. This would mean that when someone has committed a crime and he is punished for it, he should be given a second chance to become a law-abiding person. There should be opportunities like education, counselling or similar programs to help them become a productive member of society.

In India, the death penalty is given in very rare scenarios as a deterrence. A judge makes the decision to give death penalty by evaluating the intensity of crime. It is given for aggravated murder, rape resulting in murder or any severe form of rape, treason, espionage, drug trafficking and military offences.

DEATH PENALTY IN THE CASES OF MURDER

Section 302 of IPC says that “murder shall be punished with death or life imprisonment with

fine”. It is up to the judge to decide between both on the basis of severity of the murder. In the case of Machhi Singh, Justice Thakur while speaking for the forum affirmed the ‘RAREST OF RARE’ doctrine in the cases involving capital punishment gave certain guidelines such as:

- **EXTREME BRUTALITY:** In the cases of murder which is carried out in brutal form, death penalty could be given. Such acts of crime shock and anger the community. Acts like burning alive, cruelty or inhumane torture resulting in death can be considered as brutal forms of murder.
- **DEPRAVED MOTIVE:** When there is a selfish motive for commission of a murder that shows evil intent will be a valid reason for giving death punishment. Such murder can involve killing by an assassin, murder to inherit property, etc.
- **SOCIALLY DESPICABLE CRIMES:** Nature of crimes which are considered as socially reprehensible like murder for dowry, bride burning, witch hunting, untouchability, etc.
- **THE MAGNITUDE OF CRIME:** When the crime involves murder of multiple people like murdering a family or people from any community.
- **IDENTITY OF VICTIM:** The personality of a victim can be taken into account when deciding on cases of death penalty. If the victim is defenceless, or vulnerable it would be fair to give death punishment.

These guidelines ensure that the capital punishment shall only be given only in “Rarest of Rare” circumstances which involves factors like brutality, social outrage and vulnerability of the crime.

The debate on punishing criminals with execution is very old. In 1949, Nathuram Godse and Narayan Apte were given death sentence for the assassination of Mahatma Gandhi. The death sentence was executed before the completion of the trial. The execution of Godse was accepted by the public as his crimes were explicit, but there are arguments for the innocence of Apte. It is being argued that sentencing Narayan Apte is not case of rarest of rare doctrine. Also, the hardships of Apte’s family heated the arguments. The credibility of such arguments are not testable. The people who support the belief that the death sentencing should be abolished say

that the state should execute the guilty but cannot punish the family.

An example of aggravated form of murder in India could be the 1983 Bombay terrorist attack case. It was one of the most violent terrorist attacks in India as well as the world. The attack involved 12 coordinated bombing in Mumbai. Dawood Ibrahim, was the mastermind behind the attack.

Yakub Memon was one of the members involved in the attack. He was sentenced to death in 2007 which was executed in 2015. Indians significantly supported the decision of the court, primarily due to the seriousness of the crime and atrocities it left behind.

However, international opinion was different. There were critics that included international organisations such as Amnesty International. They raised issues regarding the use of capital sentencing in the case and otherwise also. They had an opinion that death penalty is often applied arbitrarily. Such decision could be influenced by other inconsistent factors and not the severity of crime. It also argued that death penalty is used disproportionately against poor.

In essence, this case and the debate surrounding it tries to highlight the debate about death penalty which have gained attention globally. Some people advocating for its abolition because of concerns about fairness and bias in its application.

DEATH PENALTY IN CASES OF RAPE

Rape is a kind of crime which is more than the act itself. Along with the act it has social significance and implications. Rape laws are made not only considering the conspiracy behind it but also the social consequences of the act.

Considering section 42 of the Protection of Children from Sexual Acts (POSCO) Act, it says that if a child below the age of 12 years is raped the criminal shall be executed to death. Such law is not made considering only the severity of the case, but also the social repercussions of it.

Also, vulnerability of the victim is considered while giving the punishment. If a person commits rape with a 12-year-old child and another commits it with 16 years old, there will be a difference in punishment granted, which is not just arbitrary but based on the vulnerability

and capability of victim to defend itself. The law always protects those who are vulnerable in the society. The concept behind this is that stricter laws will deter the potential offenders.

However, an ethical question can be brought up; do people stop committing crimes because they fear harsh punishment or do they develop an understanding that it is morally wrong? This question not only applies to the death penalty, but also to every other law. Some critics believe that any legal system which is based on the philosophy that “Do this or face consequence” is coercive in nature. However, people support of the practice of capital punishment would say that it is justifiable to generate a deterring effect in society to lower the crime rate like executing the culprits of the “Nirbhaya Rape case” in 2012.

CONSTITUTIONALITY OF DEATH PENALTY

The right to life is granted to every individual by the constitution of India. However, like every other fundamental right it is not absolute. It is subject to withdrawal by the procedure established by law. People who favour abolishment of death penalty believe that it infringes right to life of individuals. They believe that taking an individual's life is incompatible with the principles of respecting and preserving life.

However, it is essential to understand that even the right to life, as important it is, has its own limitations. The constitution recognises the limitation in itself and states that it could be taken away by the procedure established by law.

Further, in article 14 of the constitution it is given “there shall be equality before law and equal protection of law”. It implies that states, to achieve equality can choose to do discriminations between different groups of people. Capital punishment on the face of it, seems to be against right to life and equality, nevertheless it is a contested fact that there is no provision in the constitution which renders death penalty as unconstitutional.

In the Jagmohan Singh case, the constitutional bench of the supreme court unanimously held constitutional validity of the capital punishment in India. The judges held that capital punishment is not violative of any fundamental rights. In this case, the constitutionality of capital punishment was challenged on the grounds that it violates fundamental rights of equality, freedom and life. It was also held that judges have a choice in deciding on the basis of the case the brutality involved in the crime to give capital punishment or life imprisonment.

In “Rajendra Prasad case justice Iyer expressed that capital punishment is violative of fundamental rights like article 14, 19 and 21. He further highlighted that death penalty should be given with two requirements, firstly, there should be a reasoned decision and secondly, the capital punishment shall be imposed in rarest of rare case.

The question of constitutionality of capital punishment was again taken up in the famous case of Bachan Singh”. The judges disagreed with justice Iyer’s expression in Rajendra Prasad case. It was held by the court that there is nothing unconstitutional in using capital punishment interchangeably with life imprisonment if court have an opinion that the case is of rarest of rare nature. It further, held that “public order” observed in clause (2) and (4) of article is different from “law and order”.

There is another case of “Deena vs. Union of India” where the constitutional validity of section 354(5) of Indian Penal Code was challenged. It was argued that the mode mentioned in the section was barbaric and cruel and therefore it violates article 21. The court held that the mode of execution mentioned in section is fair, just and reasonable.

In a supreme court case”, the court repealed “section 303 of Indian Penal Code” as it was violative of certain fundamental rights. The crime given in the provision was punishable with death penalty with no alternative punishment which did not give the discretionary power to the judiciary to choose between life imprisonment and capital punishment. The section was held to be unfair and unreasonable to take a person’s life.

ABOLISHMENT OF DEATH PENALTY IN UNITED KINGDOM

The British had a severe policy of capital punishment in India which was not the same in Britain. UK’s policy toward capital punishment was lenient since the 1957 Homicide Act. The act limited the number of executions in a year. The Act was later replaced by the Murder (Abolition of Death Penalty) Act 1965. It significantly restricted the capital punishment to four crimes that is treason, piracy involving violence, espionage and arson in dockyard.

Even though UK had legal framework for capital punishment, it had been out of practice since a long time. Not a single person was executed in UK since the last execution in 1964. This shift in the practice of death sentencing reflected the changing attitude of UK government and growing consensus against its use among the people.

“The European Commission on Human Rights” (ECHR) introduced a protocol which was supported by UK. This protocol abolished the capital punishment barring the situations of war or the threat of war.

Further, Human Rights act 1998 was passed in line of “European Convention on Human Rights”. It explicitly safeguards right to life. Article 2 of ECHR says “everyone’s right to life shall be protected by law and no one shall be intentionally deprived of their life except in the execution of a sentence of a court following conviction of a crime for which the death penalty is provided by law”. Human Rights act did not expressly abolish the capital punishment in UK but it made its application practically impossible. It gave right to individuals to challenge any decision of court or any act of public authority which was not in line with ECHR that includes prohibition of death penalty. It gave people advocating for abolishment of death penalty to claim right to life under article 2 of ECHR. The human rights act made any existing laws rendering death penalty inoperative and restricts the government to make any new law that permits the death penalty.

In the 2004 amendment, the 13th protocol totally ruled out capital punishment from the British legal system. The protocol says that “convinced that everyone’s right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings”

The debate of justifiability of capital punishment still prevails in the society even though many countries have abolished it. For example, in the UK, a survey was conducted and it was observed that 70% people supported capital punishment. It is the country in which capital punishment is abolished, still a majority of people support it. A group of people believes that criminals have a tendency to commit more crimes even after serving their punishment. The problem with such approach is that it is difficult for the law to punish someone for the crime they might do or not do in the future. The uncertainty is the main reason death penalty was abolished in the UK.

CAPITAL PUNISHMENT IN A LIBERTARIAN NATION LIKE THE USA

The United States of America is a libertarian country. The capital punishment goes against the libertarian principles like right to life and right to freedom. Ironically, libertarian principles guide America’s policy making, still the death penalty is not yet abolished there. In the US,

capital punishment is awarded for heinous crimes like treason, drug trafficking, murder and attempting to kill judicial officers.

“Chapter 228 of Title 18” of the United States Code lays out the provisions about the serious crimes in which death penalty could be used. Such crimes are sharing defence related information with foreign state (section 794), committing treason (section 2381) and under section 3593 when any person murders someone, caused injuries which leads to death, or engage in actions which puts someone’s life at risk. However, there are mitigating factors mentioned in section 3592 like when the defendant cannot understand the nature of crime, considerable pressure on him, having no prior history of crime, mentally unstable, and other circumstantial factors.

People in the US have concerns regarding fairness, inconsistency and delays in awarding the death penalty. These concerns are aggravated when many other nations have abolished capital punishment. The major concern is that the decision of giving a death penalty is not always reliable. There are times when people have been executed when proven innocent later. People also raise concerns about the biases in giving the death penalty. There are certain groups of people from different races, genders etc. which face higher punishments as death penalties than others. Economic hardships also make the process difficult for people. The original purpose of a death penalty is compromised when there is a delay in giving death penalty or actually executing the convict.

In *Furman v. Georgia*, eighth constitution amendment was discussed. The amendment states that, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”. This amendment abolished death penalty in the state in 1972. In the case it was highlighted that there was discrimination on the racial basis in the grant of capital punishment. Negroes in the USA were awarded higher propensity of execution, even they are in minority there. Also, white people who are commuted are much higher than the blacks. Amongst multiple reasons for such discrimination, money and politics could be primary reasons. Another reason for more capital punishment for the black population could be circumstances like poverty and social discrimination which gives them motivation to get themselves involved in crimes like murders, drug trafficking etc. Such circumstantial factors raise another theory for debate, is it legally permissible to impose a death sentence on an individual for a crime they committed as a result of external circumstances that pushed them into it?

CONCLUSION

The issue of justifiability of death sentence remains a matter of debate around the world. The analysis of policies regarding capital punishment in India, the UK and the United States sheds light on the diversified approach of different nations regarding it.

In the UK the shift towards abolition of death penalty shows the societal attitude and commitment for upholding human rights. Legal reforms such as Human Rights act and European Convention on Human Rights have rendered capital punishment inoperative in the UK. The transition showcases human rights considerations in shaping the UK's policies towards capital punishment.

On the other hand, the US being a libertarian nation still retains the death penalty despite the raising concerns about fairness, transparency and biases in its application. Racial and economic disparities further heat the matter raising concerns about reliability and morality of capital punishment.

In India, execution is only done in the "rarest of the rare" cases which involves brutality or crime that shocks the community. The legal framework combines both deterrence and reform theory balancing punishment and rehabilitation. There has been a rise in instances of brutality, rape and terrorism in India, which makes it necessary to have a deterrent punishment against crime. Fear of the ultimate punishment can discourage potential criminals and contribute to public safety. In acts of terrorism or serial killings, life imprisonment may not adequately address the severity of crime and ensure justice to the families of victims. To evaluate justifiability of capital punishment, a sophisticated and inclusive approach that considers a balance between deterrence and human rights should be adopted.

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