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## JUSTICE OR INJUSTICE? THE DEBATE SURROUNDING CAPITAL PUNISHMENT AND HUMAN RIGHTS

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### ABSTRACT

*Seeking revenge leads to a world of darkness as everyone ends up losing  
their sight.*

- Mahatma Gandhi

Reclaiming what was stolen from you is simply about opening people's eyes instead of blinding them. The government or court of a country imposes the capital punishment, also known as the death penalty, on a criminal. Each country has its own set of laws and regulations regarding the same. Worldwide, the death penalty is a controversial issue, not only in India. Monarchs once used the death penalty to instill fear in their subjects and demonstrate their power.

As time passed, the death penalty transitioned from monarchies to democracies, evolving in its application. Some people believe that the death penalty violates human rights because death is an inevitable event, and people have a claim to basic rights.

There are contrasting attitudes on the subject, just as there are divergent viewpoints regarding whether the death penalty is compatible with human rights.

Utilitarian, practical, and moral considerations come into play with regard to the death penalty. Morally speaking, irrespective of human rights considerations, taking someone's life is inherently wrong, and harsh punishment should be reserved for the most heinous criminals, making the death penalty justified.

Maintaining a moral equilibrium between crime and punishment is crucial for safeguarding human rights within society. Individuals who commit serious offenses pose a significant danger to the community, and their liberty can lead to violations of the rights of the broader population.

If criminals are forgiven or shielded in the name of human rights, it will

diminish society's capacity to uphold justice, as human rights apply to everyone, not just the offender. Rights are for everyone, and to get those rights here comes the duty to understand that every person has their rights, and to get those rights, you cannot harm or take the rights of other individuals.

**Keywords:** Human Rights, Capital Punishment, Justice, Society, Crime, community, Offenders, Victim

## INTRODUCTION

*Evil is evil even if all are for it, and good is good even if all are against it.*

-William Penn

Human rights refer to basic rights or the universal rights that all people have regardless of their caste, creed, gender, background, and many more. Human rights are based on the principle of equality, dignity, and mutual respect for everyone, as everyone in this world is treated equally and nobody has the right to violate the rights of other individuals.

Capital punishment is given by the government or the court of a country for a crime committed. In other words, capital punishment is the killing of a person who committed a crime. It is given for the most serious crimes because it is the most severe form of punishment.<sup>1</sup>

To understand anything further, we need to understand why capital punishment raises a significant human rights concern.

In earlier times, when there was no law and no government, the rich people of the society oppressed the poor people of the society. People were discriminated against based on caste, creed, gender, race, sex; when the kings were ruling and only rich people would get all the privileges in the society. At that time, capital punishment was often used against the most vulnerable people in society which including people with mental disabilities, poor people, and people of religious and ethnic Minorities.

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<sup>1</sup> Parul Saxena, Capital Punishment and human rights perspective, Legal Service India E-journal [8 August 2020]  
<https://www.legalserviceindia.com/legal/article-4440-capital-punishment-and-human-rights-perspective-.html>

So, in earlier times, due to these kinds of discrimination and social disparity that prevailed in the society, capital punishment was the ultimate denial of human rights because it takes an innocent life, and the right to a fair trial is not given to the marginalized sector of society.

### **RESEARCH PROBLEM –**

1. Does capital punishment inherently violate the right to life and various rights that were mentioned under human rights law?
2. With the increase in crime rates in society, is it still right to say that capital punishment violates human rights? Is international law fair law regarding capital punishment and human rights?

### **SCOPE –**

1. To deal with the concept that why capital punishment raises significant human rights concerns.
2. To evaluate the International and Indian laws on capital punishment.
3. To conclude with proper recommendations on the question “Does capital punishment violate human rights or not”?

### **RESEARCH METHODOLOGY –**

The researchers have adopted a doctrinal method for the purpose of collecting data. It includes books, articles, various law journals, and the internet. The material was collected and arranged in systematic order.

### **HISTORY OF CAPITAL PUNISHMENT –**

The term capital punishment comes from a Latin word, “caput,” which means head and originally means losing your head. The history of capital punishment is very complex. In ancient times every society has its methods for giving capital punishment as at that time it is mostly given for the crimes like murder because they follow the ancient legal principle **lex talionis** which means an eye for an eye, a tooth for a tooth and a life for a life and this principle

first occurred in the Babylonian code of Hammurabi in the 18<sup>th</sup> century BCE and codify 25 crimes for death penalty.<sup>2</sup>

At that time executions were public events attended by large crowds and the mutilated bodies were often displayed until they rotted. The purpose of doing this is to make people understand that if someone did such heinous crimes then they have to face the consequences of it. In 7<sup>th</sup> century the Draconian code of Athens made death penalty the only punishment for all crimes.

In the medieval times Hanging became the most common method of execution in Britain in the 10<sup>th</sup> century AD. In 16<sup>th</sup> century, Henry VIII's reign saw that 72,000 people were executed using the methods like boiling, burning at the stake, and many more.<sup>3</sup>

In modern times in the early 19<sup>th</sup> century many states of US reduced the number of crimes that carried the death penalty and built state penitentiaries (jail, lockup, house of correction) and after world war-II many European countries restricted the death penalty after signing the human rights treaties. After all this there comes the era of public oppression. In Nazi Germany, hanging, shooting was used as methods of capital punishment. Authoritarian states also used capital punishment as a tool of political oppression, such as during the Great Purge in the Soviet Union and the Cultural Revolution in China.

The history of capital punishment under Hindu law and Islamic law which shaped the viewpoints of lawmakers regarding human rights and capital punishment.

## **HINDU LAW -:**

The history of Hindu law goes back to ancient scriptures and law books. At that time in India death penalty is also permissible for theft and adultery. During the Mauryan period also (325BC to 320AD) the law of treason was developed and various acts of treason attracted the death penalty.<sup>4</sup>

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<sup>2</sup> Michael H. Reggio, History of the Death Penalty, Public broadcasting service, (September, 2021), <https://www.pbs.org/wgbh/frontline/article/history-of-the-death-penalty/>

<sup>3</sup> Richard Ward, A global history of execution and the criminal corpse, National Library of Medicine, (2015), <https://www.ncbi.nlm.nih.gov/books/NBK379343/>

<sup>4</sup> Aishwarya Agrawal, History of capital punishment in India, Law Bhoomi (September 20, 2024), <https://lawbhoomi.com/history-of-capital-punishment-in-india/#:~:text=Capital%20Punishment%20under%20Hindu%20Law,-Hindu%20law%20during&text=According%20to%20the%20Arthashastra%2C%20written,%2C%20murder%2C%20and%20high%20treason.>

But Hinduism believes in karma. As Hinduism always preaches ahimsa or non-violence and they always oppose killing, violence and revenge because of the belief that death is limited to the physical body and soul cannot be killed.

## **ISLAMIC LAW –**

The Quran states that the death penalty is permitted in certain cases, and that taking a life results in taking of one's own life. But in past capital punishment is carried out in Islamic countries for various reasons which includes refusing to convert to Islam, for breaking a treaty, adultery and many more.

In the 12th century, the Jewish legal scholar Moses Maimonides argued that it is better to acquit a thousand guilty people than to put one innocent person to death.

In today also Islamic countries has the highest rate of capital punishment because Sharia law is the strict law and in Islamic countries, they follow sharia law and it is termed to be a law of land and whoever violates those laws has no right to live and only punishment for the violation of those rights is the death penalty.

## **KINDS OF CAPITAL PUNISHMENT –**

In 55 countries around the world capital punishment is still practiced. The various kinds of methods used by the countries for giving capital punishment are-

1. **Lethal Injection** – The lethal injection is a capital punishment that is given by injecting a lethal substance into a person's body which causes the death of a person. It generally consists of three types of chemicals that are sodium pentotal which is an anesthetic, pancuronium bromide which is used to paralyse the prisoners and potassium chloride that is used to stop the heart. <sup>5</sup>

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<sup>5</sup> Katie Young , Death penalty : Method of Execution used around the world , Amnesty International Defending Human right , (10 August , 2015) , <https://www.amnesty.org.au/death-penalty-methods-of-execution-used-around-the-world/>

Countries	Crimes
United states	Murder, Treason, Kidnapping or killing of a government official, Genocide, Drug trafficking
China	Arson, Bombing, manslaughter, spreading poisons, Drug trafficking, Embezzlement, Crimes against national symbols and treasures
Thailand	Murder, Drug trafficking

2. **Electrocution** – It is only used in United states for capital punishment and in some states of United States. Electrocution is a process in which a metal electrode in the shape of a skullcap is applied to the prisoner's scalp and forehead over a sponge that has been wet with saline after they have been stripped naked and fastened to a chair. After that, the prisoner is blindfolded. The prisoner is repeatedly given shocks ranging from 500 to 2000 volts for around 30 seconds, or until they are pronounced dead.<sup>6</sup>

Country	Crimes
United States	Murder, Rape and other offenses

3. **Hanging** - One of the most popular hanging techniques is the "long drop." If the rope is too long, the prisoner may be beheaded; if it is too short, the prisoner may not strangle to death for up to 45 minutes. Some countries, like Iran, openly hang their guilty people using cranes. In other words, we can say that to hang someone simply is to put a rope around their neck and let their body to fall downward.

Countries	Crimes
Afghanistan	Murder, Adultery, Waging war against God, Apostasy.
India	Assassination, Terrorism, Rape and Murder
Pakistan	Blasphemy, Rape, Sexual intercourse outside of marriage, assault on the modesty of women, smuggling of drugs
Iran	Murder, Rape, Drug related charges, Propaganda against the state, Belonging to a banned organization
Japan	Murder, Kidnapping for ransom, Torture, Instigation of foreign aggression, Rape and Robbery resulting in Death

<sup>6</sup> Katie Young , Death penalty : Method of Execution used around the world , Amnesty International Defending Human right , (10 August , 2015) , <https://www.amnesty.org.au/death-penalty-methods-of-execution-used-around-the-world/>

4. **Shooting** - When firing squad executes a prisoner, they are usually strapped to a chair (if they are seated) or a pole (if they are standing), and their heads are covered with a black hood. The shooters, typically five or more, aim for the prisoner's heart from up to 20 feet away. The prisoner may slowly bleed to death if the shooters miss their target—whether on purpose or accidentally.

Countries	Crimes
China	Murder, Robbery, Rape, Kidnapping, Serious drug offences, Arson, Bombing, Hijacking aircraft
Saudi Arabia	Murder, Drug offences, Terrorist-related crimes, Rape, Blasphemy, Espionage, Homosexuality and armed robbery
Yemen	Murder, Terrorism, Rape, Drug Possession, Homosexuality, Adultery, Treason, Military related offenses, Consensual same-sex conduct

5. **Beheading**- Beheading is a method of carrying out the death penalty in which the victim's head is cut off from their body. It was considered an extremely respectable way to pass away by the ancient Greeks and Romans. The offender was whipped with rods and tied to a stake prior to execution. The only nation in the world that still practices beheading is Saudi Arabia. It is used in the following crimes in Saudi Arabia: Crime are Murder, Drug smuggling, Sexual crimes, Kidnapping, Sedition, Apostasy, Homosexuality, Espionage, Terrorism.

### Theories of capital punishment

Society is place where people reside and have own way of controlling or monitoring the public. Sanctions are nothing but the punishment and every society has its own way of providing the punishment. As stated by the Durkheim that the punishment is treated as the reaction of society against the offence committed. If the punishment is in proportionate response to the harm which caused to the society than the extent of punishment inflicted to be sorted out. There are various theories which are followed in regards to punishing the offenders:

**Deterrent theory:** Deter means to abstain from something. So, it abstains by punishing not only the criminals but also the people from committing the same offence in future. In the article written by the Daniel S. Nagin on the topic- Deterrence in the Twenty- first century clearly states that this theory should form worse fear in the minds of criminals of being caught rather

than the severe punishment.<sup>7</sup>

**Retributive theory:** The principle of this theory is “tooth for tooth, eye for eye and limb for limb.” It mainly focusses on punishing the offender with the same level of punishment to the seriousness of crime or it is all about that the thief to be deprived of property and murderer to be deprived of life.

**Preventive theory:** This theory is also known as disablement theory. Its main purpose is to prevent the offender from committing any further crime by segregating them from the society. It focuses on prevention of the crime rather than avenging the revenge against them.

**Reformative theory:** It is based on the principle laid down by the Mahatma Gandhi who is also known as father of reformative theory, states that “Condemn the sinner, not the sin.”<sup>8</sup> It basically means that the main aim of this theory is to reform the individual into orderly and law-abiding citizen. As by just committing any offence, the person cannot be treated inhumanly or like an animal.

### International Perspective

When the societies were forming to protect the interest of the people the capital punishment was major form of punishment as to get away with the enemies and protect common good. In 18<sup>th</sup> century B.C. in Code of King **Hammurabi of Babylon**, it was awarded for the 25 crimes but murder was not included in these crimes. It led to increase in death penalty in the Britain throughout the next two centuries and made a long-lasting impact on the colonies which lead to increase in crime rates and the establishment of death penalty in British colonies. Settlers of Europe brought this concept to America and it made a huge impact on the America's death penalty. Its first execution took place in **Jamestown, Virginia** in early 1608.

Due to absence of law, there was no uniformity for which the capital punishment is provided because it differs from country to country and individuals' rights were getting infringed. So, on December 10, 1948 at Palais de Chaillot, Paris a declaration was adopted by the United

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<sup>7</sup> Divyanshi Gupta, Theories of Punishment, Manupatra Articles, (February, 16, 2024), <https://articles.manupatra.com/article-details/Theories-of-punishment>

<sup>8</sup> Sucheta Pravin Kudale, Theories of Punishment, ipleaders blog, (April 20, 2023), <https://blog.ipleaders.in/theories-of-punishment/>



Nations General Assembly known as the Universal Declaration of Human Rights (**UDHR**) to protect the human rights.

This declaration consists of articles among which Article 1, 3 and 5 of the declaration deals with the concept of equality and dignity, right to life and security, to not subject anyone to torture or inhumane treatment or punishment respectively. It opposes the concept of capital punishment as taking someone's life in certain cases for which the simple prison can be enough for making people realise their wrongdoing.

Similarly, international treaties on human rights states that "every human being has the inherent right to life." Article 6 further states that "this right is protected by the law and no one shall be arbitrarily deprived of this right." Also, the countries which have not abolished the concept of death penalty may only be imposed for the serious crimes after the fair trial. The main aim of this treaty is to abolish the capital punishment in whole world as to protect the people dignity and right to life.<sup>9</sup>

These played a major part in raising the debate regarding the abolition of death penalty as both the declaration and treaty was in support of the abolition of capital punishment because it violates human right to life. Also, pregnant women, child below 18years and person with disability or mental illness were executed which is not considered as humane act.

There were many cases in support of capital punishment which were used to deter the crime.

In **Japan**, a man named Tomohiro Katō when 25 rammed a truck into the crowd of people in pedestrian zone in Tokyo's Akihabara district in 2008 and later stabbed the people with the knife which led to death of 36 people. In 2011, he was sentenced to death as the court considered the act to be inhumane and cruel. **Justice Furukwa** at time of ruling stated that "the abolishing of death penalty is inappropriate." Also, he stated that "there's no alternative punishment for those who commit extremely serious and heinous crimes."<sup>10</sup>

Similarly, **Pakistan** in Peshawar school case (2014) lifted the six-year moratorium on the executions. Supreme Court in this case upheld the death penalty of the convicts who are

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<sup>9</sup> Roger Hood and Carolyn Hoyle, The Death penalty : A worldwide perspective , Fifth addition , Yale Global Online, (2015) , <https://archive-yaleglobal.yale.edu/death-penalty-worldwide-perspective-fifth-edition>

<sup>10</sup> R Hood, Death Penalty: A Worldwide Perspective, office of justice programs, (1989), <https://ojp.gov/ncjrs/virtual-library/abstracts/death-penalty-world-wide-perspective>

involved. The court emphasized on the gravity of offense and need for the death sentence to deter any similar attacks.

### Indian Perspective

In context of India, there were many known personalities who supported the death sentence as a punishment in India to prevent the crime. **PM Narendra Modi** in 2013 gave the statement that “ if someone commits a crime than they should be punished....capital punishment is deterrent.” Even **Justice Uday Lalit** stated that “death penalty should be retained for rarest of rare case.” Not only them but **Manu smriti** which is the ancient Hindu text, provides for the ancient insights on the law and society. It consists of the capital punishment in certain offences which include: murder, adultery, theft, treason etc. but these were mainly for the Shudras and not for brahmins. Mode of execution were hanging, beheading, impalement, drowning.

It indicates that capital punishment existed in India from the ancient period. Even **Lord Macaulay** who drafted the Indian Penal Code in 1860 included the death penalty as legal punishment for heinous offences. Indian constitution also did not abolish the death penalty. Article 21 which provides for the fundamental rights ensures the right to life and liberty to all persons. It means if there is procedure which is fair and valid then the person can be deprived of the life in those cases.<sup>11</sup>

In **Jagmohan Singh v. State of Uttar Pradesh**, Court held that choice of death sentence is done in the accordance with procedure which is established by law. Judges make choice between death sentence and imprisonment of life by considering the circumstances and nature along with facts of offence during trial.

The doctrine of rarest of rare case was established in the case of **Bachan Singh v. State of Punjab** which mandated the death penalty in the certain cases. In this by the majority of 4:1 the constitutional validity of the death penalty was established for this case but also established the rule which require this punishment to be only awarded in the most extreme cases or serious crimes.

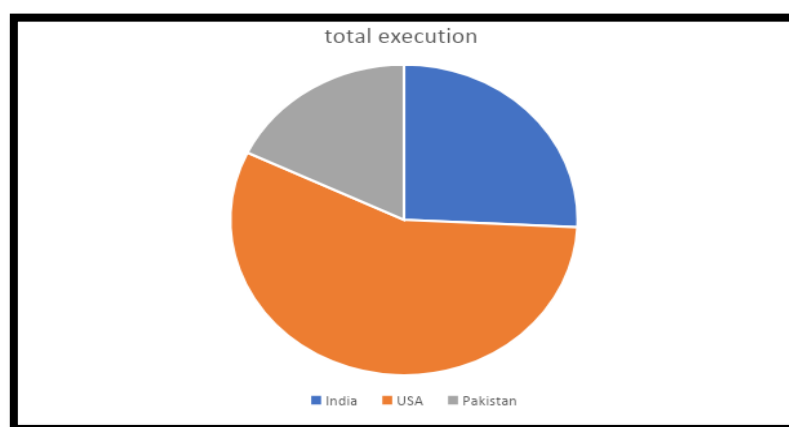
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<sup>11</sup> Anusha Arif, Contours of justice: human rights and constitutionality of capital punishment in India, Social policy research foundation, (February 8 , 2024) , <https://sprf.in/constitutionality-of-capital-punishment-in-india/#:~:text=In%20India%2C%20capital%20punishment%20remains,punishment%20or%20the%20death%20penalty.>

The first woman who was sentenced to death in independent India is **Rattan Bai Jain** on January 03, 1955 at Tihar Jail. Court stated that life is precious and same for all under article 21 of constitution and no one has any right to deprive any other person of their right to life but the person who does that can be given death penalty in violation of Article 21 by procedure established by law.<sup>12</sup>

These cases depict the importance of death penalty in the legal system as to deter the crime and form fear in minds of people of committing these offences. Even the criminal laws implemented in India provides the death sentence majorly for the offences which are serious in nature such as murder, waging war against government and rape etc. The POCSO Act also provides the death penalty for sexual offences which are against the minor.

### Data showing countries execution rates



This indicates that the United States has the highest number of executions, followed by India and Pakistan. In any nation, the fear of punishment plays a crucial role in making someone think thousands of times before breaking the law. However, in India, people lack fear—both law and of punishment—and as a result, the country's crime rate is rising. People in the United States of America dread both punishment and the law. Thus, fear of the law and punishment is essential for the protection of an individual's human rights.

### DOES CAPITAL PUNISHMENT VIOLATE HUMAN RIGHTS?

The world is divided into two parts some countries believes that capital punishment violates

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<sup>12</sup> Najamu Saqib, Dilraj Kaur. Capital punishment. Int J Law Justice Jurisprudence 2022;2(2):28-30.

human rights while other believes that capital punishment does not violates human rights. The lawmakers of the society also have different viewpoints on this debatable topic.

The thinkers in Favor of capital punishment are –

**Kautilya** believed that capital punishment was essential for public safety.

**Kiran Bedi** the first women IPS officer and the UN police advisor states that death penalty is necessary in certain cases to do justice in the society.

**Plato** believed that the death penalty was a way to purify society from crimes, which considered a “defilement.”

While on the other hand there were thinkers who had the contrary viewpoints regarding the same. **Cesare Beccaria** opposes capital punishment and he believes in the concept that torture should never be used against an accused whose guilt has not been officially established.

According to **Camus**, the death penalty has the unacceptable peculiarity of using ritual, justification, and language that appear legitimate to gently justify its extreme violence in front of society.

**Mahatma Gandhi** opposes capital punishment by saying that an eye for an makes the whole world blind. He believes that real power does not consist in the ability to inflict capital punishment upon the subjects, but in the will and the ability to protect the subjects against the world.

So, these shows the viewpoints of various thinkers regarding the capital punishment in which some are in Favor of capital punishment while others are against it. But time has changed and with time the society also changes. And now in present scenario the mindset of the society also changes.

With the change in time there is increase in the crime rates in the society so, is it still right to say that capital punishment violates human rights.

Capital punishment is considered very important as it creates fear in the minds of people that if they did something wrong, they must face the consequences of that wrong. If there is a fear in the society then a person thinks thousands of times before committing a crime.

To support our viewpoint there are case laws in which it was upheld that capital punishment is not a violation of human rights in certain grave and serious offences. The following cases are -

### **India –**

**Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012)** – The Supreme court in this case ruled that Kasab's primary offense was wage war against India. The court upheld the death sentence to Kasab for his role in 26/11 Mumbai terrorist attack in 2012.

### **Pakistan –**

**Muhammad Hussain** - Muhammad Hussain killed his senior officer in 2012 and was hung. Human rights advocates think that because he was found guilty in a military court, his case was unique. But apart from being a member in the military court Muhammad Hussain violates the human rights of an individual.

### **USA-**

**Gregg v. Georgia** - In 1976, Florida, Georgia, and Texas reintroduced the death penalty. The new legislation offered juries latitude in implementing the death penalty and clarified and impartially defined who could be eligible for it, according to the court, which held that the measures were constitutional.<sup>13</sup>

So, capital punishment is not a violation of human rights if it is given to the Individual who violates the human rights of other individual in case of serious offences. The person who commits rape, murder and any heinous crime have no right to life and such kinds of individuals should be hanged and there should be no sympathy for these kinds of people on the grounds of human rights.

## **SUGGESTIONS AND CONCLUSIONS**

1. Capital punishment is not a violation of human rights if it is given to the offenders of heinous crimes.

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<sup>13</sup> Brett Kavanaugh, Death penalty and criminal sentencing , supreme court cases , Justia U.S Supreme court (2021) , <https://supreme.justia.com/cases-by-topic/death-penalty-criminal-sentencing/>

2. Capital punishment put fear in the minds of the people that if they commit a certain crime, they must face the consequences of that crime .
3. Capital punishment should not be discriminated based on caste, creed, gender and many more.

Therefore, in order to maintain justice and protect human rights for present and future generations, it is necessary to not to fight for the rights of those who do not even deserve them, who do not even behave like members of society and who do not recognize that others are also humans. In such cases, the death penalty should be imposed because no one should be able to take away a person's freedom, equality, or rights from birth—not even another human being.