
CONSTITUTIONAL MORALITY AND THE DEATH PENALTY: RECONCILING HUMAN DIGNITY WITH STATE SOVEREIGNTY

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ABSTRACT

This piece analyzes the constitutional and ethical challenges surrounding capital punishment interrogating whether the death penalty is compatible with human dignity, justice, and the rule of law. Based on comparative constitutional jurisprudence, international human rights treaties, and case law from India, South Africa, the United States, Pakistan, and Saudi Arabia, it explores how the death penalty engages the constitutional right to life, the right to equality before the law, and the right to procedural fairness. The analysis places the argument within the realm of constitutional morality, which recognise how courts and institutions struggle to balance concepts of state sovereignty, public order, or populist sentiment with the imperative of human dignity. The article argues that systemic flaws such as poor legal representation, socio-economic inequalities, miscarriages of justice, and political interference undermine the legitimacy of capital punishment and risk turning it into an instrument of state exploitation rather than justice. Through interaction with such doctrines as the "rarest of rare" in India and the abolitionist approach in *S v Makwanyane and Another*, this research emphasises the judiciary's role in mediating between constitutional ideals and practical realities. Finally, it argues that the legitimacy of a criminal justice system rests not on how harshly punishment is administered, but rather on its adherence to fairness, proportionality, and respect for human dignity. The piece demands an agenda of reform based on constitutional morality, restorative justice, and international human rights standards, gradually moving towards abolition while providing assurance of immediate procedural protections where capital punishment continues.

Capital punishment, more widely known as the death penalty, remains one of the most profound and polemical convergences between the powers of the state and the liberties of the citizen.¹ As one of the most torturous and time enduring legal sanctions, the death penalty still poses rather abstract and intricate questions regarding the essence of ‘justice’, ‘proportionality’, ‘deterrence’ as well as the intrinsic value of ‘human life’.² Although an increasing number of jurisdictions are moving towards abolition owing to fairness, humanity and international legal obligations, capital punishment is still prevalent in certain jurisdictions, not only as a punishment for gravely criminal acts, but for the so called protection of the security interests of the state. This, to some extent, is because the legal irrationality of the former, and the questioned received notions of justice in the latter, rested on the divided idealisms of society, retribution, the ethos of scarcely prevalent human rights legalism, and the so called enlightened legalism of the human rights orthodoxy.³

These days, capital punishment has come under renewed scrutiny by legal academics for a multitude of reasons, one of which is its application under human rights.⁴ Wrongfully convicted individuals, poorly trained investigators, no legal representation, and racist stereotypes and biases (whether obvious or hidden) all highlight that death sentences, without legal rights and protections from proper due processes, represent punishment meted out to the weak and the poor.⁵ Disputed death sentences, on the other hand, cause executions, and other capital punishment remedies, to be especially chilling, and raise tremendous new ethical and moral dilemmas. Both issues, capital punishment and ethics, have been hotly debated and fought over, because the existing country's policies, which are circumscribed by people's sentiments to address capital punishment and ethics and legal policies in the given country, are fundamentally intertwined with human rights and other borders. This particular pain we synthesised discussed the dilemmas every country faces in the context of their respective attitudes towards the human right concern of the death penalty. In dealing with the treaties and constitutional constructs in world comparative law along with international legal human rights documents, this concern is

¹ Amnesty International, Human Rights v. The Death Penalty (AI Index ACT 50/13/98, December 1998).

² Aniket Bhardwaj and Ashiwarya Pandey, ‘Capital Punishment and Article 21 (Right to Life)’ (2025) International Journal of Legal Research <https://www.ijllr.com/post/capital-punishment-and-article-21-right-to-life> accessed 18 September 2025.

³ Office of the United Nations High Commissioner for Human Rights, Death penalty (UN OHCHR) <https://www.ohchr.org/en/topic/death-penalty> accessed 18 September 2025.

⁴ The Death Penalty Information Center, ‘Human Rights’ (2025) <https://deathpenaltyinfo.org/policy-issues/policy/human-rights> accessed 18 September 2025.

⁵ Philip Alston, ‘Miscarriages of Justice and Exceptional Procedures in the War on Terrorism’ (2019) CEPS Publications <https://www.ceps.eu/ceps-publications/miscarriages-justice-and-exceptional-procedures-war-against-terrorism/> accessed 18 September 2025.

tackled in the context of terrorism, the politicisation of miscarriages of justice, and the judicial process. This study aims at establishing the degree of the justice system in which the practice of capital punishment is implemented, in sufficiency to the principle of justice, equity, dignity and legal order which an achieved legal system rests upon.

The death penalty implicates one of the most elemental rights protected by domestic constitutions and international human rights treaties: the right to life.⁶ The Universal Declaration of Human Rights (UDHR), in Article 3 states, "everyone has the right to life, liberty and security of person" and the International Covenant on Civil and Political Rights (ICCPR) recognises the right to life in Article 6 and allows for a death penalty only in a lawful manner and where necessary but reasonable safeguards are put in place.⁷ The Covenant obligates Member States to ensure that if capital punishment were to exist, it would take place only under law and there would be no arbitrary deprivation of life, and the ability to seek due process and fair treatment.

Along with the sanctity of life and specifically, the sanctity of innocent life is a consideration; the integrity of a legal proceeding is another important consideration on the legitimacy of capital punishment. Protections associated with a fair process competent and effective legal representation, the ability to present evidence and the ability to appeal your conviction should not regarded as mere procedural formalities, but rather appropriate protections with the goal of preserving judicial fact finding and assuring if challenged or litigated those judicial decisions comport with justice. Yet, social science and many other empirical studies suggest that the protections afforded to us by the right to a fair trial are seldom afforded to most members and their representation in the court room leading to disproportionate punishments, false accusations, wrongful convictions and systemic biases that disregard the established international agreements of the guarantee of equality before the law. Apart from the principle of due process, cruel, inhuman, or degrading treatment, forms one of the major themes of the human rights debate concerning the death penalty. The UDHR and ICCPR in Articles 5 and 7 maintain that individuals must be protected from torture and degrading treatment. In particular, the extended isolation of death row, non-transparency of the execution process, and psychological effects related to an imminent execution, at the very least, make for significant moral and legal arguments in favour of restrictive conditions or abolition. The principle of

⁶ Office of the United Nations High Commissioner for Human Rights, Death penalty (UN OHCHR).

⁷ Amnesty International, Human Rights v. The Death Penalty (1998).

equal treatment and equality before law articulated in Article 26 of the ICCPR is often not honoured in the practice of capital punishment.⁸ Researchers and case studies have shown an overrepresentation of poor and minority people and political dissidents on death row. These disparities not only indicate systemic dimensions in criminal justice systems that impact capital sentencing, but they also reflect discrimination in the implementation of the law itself for cases that should be blind to these considerations.

To respond to these issues, contemporary human rights courts increasingly desire a limited interpretation of the relevant boundaries of capital punishment with some limited safeguards for accountability and fairness. International and regional human rights courts like the United Nations Human Rights Committee (UNHRC) have universally called for change and commonly have suggested eliminating capital punishment altogether. These changes indicate a move toward a global normative order in which the sacredness of life, justice in procedure, and human dignity would be cherished more than retribution based rationales that had been supporting state authorised killing for decades.

The conflict between the right to life, procedural fairness and the validity of punishment which has come out clearly when investigating the global landscape of the state's Mate. In the law and practice reported by historical, cultural and political contexts, there are huge variations in the courts. Data gathered by the United Nations indicates that, in fact, two-thirds of countries have abolished the death penalty either in law or in practice, and in relation to abolitionist states, normative decisions have been predicated on concepts of human dignity, incorrectness, and changing standards of civilised justice. As examples, an European Union (EU) wide prohibition against capital punishment and the South African Constitutional Court ruling in *S v Makwanyane and Another* demonstrates how constitutional commitments to equality, dignity and procedural fairness have transmitted a legal response to capital punishment.⁹

Regional reference makes interaction complicated because international human rights organizations argue for eradication or, at a very least, strict security measures, all reference issues, including terrorism pressure, political populism, and social approaches that have been valid for generations, continue to slow, or prevent meaningful legislative and judicial improvements. Judicial systems have tried to balance capital punishment (as a process) against

⁸ General Assembly, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 26.

⁹ *S v Makwanyane and Another* (CCT 3/94) ZACC 3; 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC).

fairness and fixed process rights in various courts, and have often been diverse and controversial against regional pressures. These separate comparative positions support the notion that the death penalty is not just a legal equipment around which no political will, judicial validity, public morality and other issues of citizenship boundaries can be raised. Continuous division between elimination and retention practices indicates that it is not easy to achieve relative harmony between the obligation of maintaining human dignity and has the right to life against the duties of the state to maintain public system and public safety. In general, support for or against the death penalty is not based on legal definition, but is based on institutional moral, political and institutional references that maintain jurisdiction. While international human rights treaties offer useful standard resources, the position of the capital punishment law, when applied to the house, is always mediation through a complex constellation of socio-political, cultural and institutional realities. The Indian case presents an example of tension in the game. *Bachan Singh vs. The court in the state of Punjab* attempted to limit the application of capital punishment through the construction of "rarest of rare", which gave a framework while demonstrating the norms of the proposal and fixed process.¹⁰ On the other side of the spectrum, a long-term time outline in the exit system justice process, limited access to competent defence lawyers, and the standard of morality will reduce the standard of morality from a meaningful criminal law, especially as a tool for accountability in terms of terrorism, but to increase opportunities for incorrect confidence.

On the other hand, the United States is a separate situation, where death sentence is still valid in many states, even after reviewing its constitutionalism. The cases of *Furman V Georgia* and *Greg V Georgia* increase efforts to reduce arbitrariness and develop the process, which is not possible after the court's decision in *Greg*, but statistically, the death sentence is implemented in such a way that racial and economic inequalities matter.¹¹ The death penalty is allowed with religious or political justification in the Middle Eastern states, in which no judicial review or law standards are limited to the rules and very low procedural security, which raises questions about compliance with the International Human Rights Act.

In contrast, the Constitutional Court of South Africa at *SV Makwanyane*, based on dignity and guarantee of life, unconstitutionally terminated it. The case is an ideal example of the explanation of the active court of a constitutional provision that re-develops domestic laws with

¹⁰ *Bachan Singh v State of Punjab* (1980) 2 SCC 684 (SC).

¹¹ *Furman v Georgia* 408 US 238 (1972).

the ideas of human rights, reinforcing fairness, equality and the predominance of the inherent value of human life.

In these various situations, states will frequently appeal to claims of national security, law and order, or moral reasoning to provide continued use or rationalise the imposition of capital punishment, especially for terrorist and serious crimes. However, those compelling claims could easily mask underlying institutional bias and procedural failures that could call into question the legitimacy and fairness of the death penalty and the effects of execution on the individuals involved. The death penalty is also unique, as it is the only irreversible human consequence to the families of those executed and the family of the victim of the crime, who suffer from psychological harm for years following incarceration, stigma in the role of execution, and for bundles of years prior experience in filling out the court answer to perceived psychological injury and flooding the system with complexity regarding sentencing and fairness in the process and data.

These matters promote our dispute that the death penalty can contest an election even if it is legally supported in itself. The concern here is beyond standard stress between the interests of the state and the rights of individuals this includes restoring integrity in courts, effectively ordering the power of the fixed process and ensuring access to justice. The ways in which the state and courts respond to the death penalty shows the predominance of royal legal logic and institutional accountability to honour human dignity in complex national contexts, which leads to death penalty. Examples presented here suggest that the issues of capital punishment are compared to showing laws. The legal process, inadequate legal representation, socio-economic status inequality and political partnership compounds weaken public confidence in the legal system to implement the law impartially and fairly in delay in unjust injustice. Constant enforcement mechanisms and capital punishment are the absence of effective judicial inspection of punishment which only enhances structural issues that legally fragmented governance with courts and often rejects dissatisfied implementation and situation for security that either follow arbitrary or discriminatory.

These fundamental challenges will be addressed only when we support the establishment of an overall reform agenda that gives constitutional guarantee of rights with sanctioned standards of human rights equipment. Again, to say that we can do procedural fixed procedure, the real will not inspire anyone we can make the procedural fixed process real:

- 1) Ensuring access to the competent lawyer with adequate resources,
- 2) refining judicial aspects (of appeal and execution), and
- 3) Improvement in transparency and accountability regarding punishment practices to reduce arbitrary ability.

In addition, there should be an interim process that aligns domestic law with international equipment and obligations, providing protection of human rights such as ICCPR, which increases other general values for fixed process, equal protection and life, and real, applied obligations. The punishment of life with rehabilitation and restoration elements, such as options of chaos, can capture methods of justice that balance community interests and human dignity. In addition, the state has been organized to respond to socio-economic inequality-as it is important, it is also important, when warrant is done, when warrant is done when the state is a warrant for law enforcement and a court actor. For example, decorating options such as life, rehabilitation and restoration practices in jail can reduce options that can help maintain social interests with human respect. In addition, state reactions to reduce the essential socio-economic inequalities such as state-funded legal representation and training on the prejudice vested for potential gamblers, judges and prosecutors are also allowed to punish the capital, where discrimination, prejudice and arbitrary are administered.

The success of these reforms will rely on cooperation between legal doctors, educational institutions and civil society organizations. The ability for strategic litigation, order advocacy as well as comprehensive consciousness to provide a catalyst with the practice of using courts and related decisions to the expert consciousness as well as the need to follow the principles of comprehensive consciousness and system institutions and the principles of accountability, along with the practices of using courts and related decisions. Lowering the difference between the operational realities in standard commitments and a series of various domains can help create a justice system that enhances the rule of law accepting the personality and equal value of all people.

The death penalty is not only about procedural safety measures and legislative practices, as it belongs to moral issues, constitutional principles and the approach to justice of society. This argument mainly revolves around the idea of conflicting objectives for punishment and is to work in increasing death for the purpose of the state. For example, supporters of retaliation

argue that death is a morally justified response to inhuman conduct on the basis of proportionality, while opponents ask whether whatever death should be preventive or social good. Alternatively, there are arguments found in utilitarian-based arguments related to death penalties that generally hinge on the idea that the death penalty prevents crimes by fear of the unknown- typically lacking data. Restorative justice - focusing on healing, accountability, and rehabilitation is a far better alternative to the death penalty concerning the challenges to the primary purpose of punishment.

The constitutional guarantees and international human rights documents based for example, on Article 6 of the ICCPR suggest that the value of life poses a challenge to the legitimacy of enforcing the death penalty.¹² If the state is using the irreversible power to take away a human life, it has to accept the moral responsibility chiefly of ensuring that its use of that authority is exercised as carefully, openly and fairly as possible. Courts are now trying to engage with this dilemma in their judgments, trying to balance the public's call for punishment with the constitutional commitments of equality, dignity and due process. The evolving doctrine of constitutional morality reinforces the idea that punishment cannot be conceived without a reference to moral questions, deciding cases based on an abstract notion of human rights and justice. The ramifications of capital punishment are wider than merely pinpointing the perpetrator, but instead mobilising a community of victims, their families, and society. Although there are many people who say that the execution helps closure grieving families and allows the society to declare its condemnation of barbaric acts, existing research suggests that media frenzy, neglect and political impression of capital decrease increase the trauma and ambition. To add it, social loss, defensive representation, and official discrimination often leads to excessive punishment of marginal communities, which reduces confidence in justice. The public discourse, almost entirely designed with emotional sensitivity and political rhetoric, presents the punishment as a north, while roughly avoids any idea and continues psychological and social influences of governmentally support. Therefore, we should turn to better practices of human dignity; A one that tries to understand and accept the differences, justice and treatment differences.

What capital punishment prevents crime, in fact, is an empirical question. The preventive is usually offered as justification for death penalty. Research studying crime rates in many courts

¹² UN General Assembly, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6.

suggests that crime is shaped by factors of macro structural elements such as poverty, education, or policing practices that are much widespread compared to the presence or absence of a capital punishment law in individual courts. The preventive is that some people argue a social made decline when security measures are inadequate and prejudice in punishment. The preventive hides enough inequalities in the system rather than correcting one. Above and below, they indicate a worrying question whether those execution is justified constitutionally or morally, especially when there is factoring in problematic investigation practices, prejudices, or socio-economic factors.

Judicial accountability is more than analysis of the law's words; The courts have the obligation to incorporate punishment obligations with constitutional values and moral values. The decision in SV Makwanyane is an example of how courts can make laws with their decisions, but these decisions can be based on the perceptions of human dignity, fairness and equality. The judicial argument reported by the beliefs of constitutional ethics assumes that the death penalty is not only a method of law and order, but an important way to claim the value, or lack of society for life. The nuances are not only disturbed by creating an understanding of the laws of legal interpretation, but can also try appropriate to ensure that justice has been provided with compassion and integrity. All this leads to the conclusion that capital punishment is more than a legal process, its social meaning as a social meaning as moral decisions and changes to justice. Because nature is neutralized among judges, legalists and civil society should move forward carefully and ask themselves that security and prevention should come at the cost of fairness, dignity and life rights.

Some of the recent incidents in Pakistan, India and Saudi Arabia have been highlighted that the moral issues and procedural failures involving capital punishment as a punishment for law punishment are found in the modern system of law. For example, Pakistan has paid considerable attention to cases with known death sentence based on human rights reports focusing on matters related to terrorism and political opposition, often there is often no proper procedure. This is related to the fact that confession is obtained through force inquiries, lack of legal consultation and bad belief appeals. These factors negatively affect the fairness in a test through the mitigation of institutional bias, and represent the violation of the obligations of human rights relative to the appointed procedure with the law of violation of law.

India's experience has uniformly highlighted the conflict between constitutional ideals and

social pressure. In cases of high-profile terrorism, which include the work done during or against national institutions, procedural security measures have often broken up through delayed delays, limited access to a competent defence, and enhanced the media's attention by creating a public sentiment demanding a rigorous punishment. Although the Supreme Court in *Bachan Singh vs. State of Punjab* intended to ban the scope of capital punishment for examples "rarest of rare" examples, procedural deficiencies and socio-political intervention remain in making proportional and fair consequences the best. These cases underline how public outrage, and political campaigns can displace judicial integrity, and the results are always more harmful to the marginalized groups.

Saudi Arabia's continuous application for death sentence is a matter of great concern from a human rights point of view, especially it applies to implement both national security and religious laws. The state has been executed in large volumes without late transparency and clearly any concrete compliance with the fixed process. Reports of persons including children are going on the death line without a proper legal lawyer. These policies have been condemned by the international community to disregard a clear disregard for the international norms of procedural justice and create a judicial environment, where the safety of life is secondary to political and religious power. Finally, they eradicate faith in the judicial system of Saudi Arabia and reflect some very serious shortcomings on their behalf about the commitment to universally accepted human rights standards.

Together, these cases suggest that the death penalty is subject to current political events, social injustice and incomplete legal systems, as unlike an external body. Failure of institutions in these countries reflect the need for constitutional guarantee, international human rights standards and reforms on the basis of sound judicial practice. They also show that the death sentence drives the ability to convert into a state of exploitation rather than a system in the absence of strong security measures. The experiences of Saudi Arabia, India and Pakistan are clearly reminding that the validity of the death penalty should be fought strictly from the point of view of justice, dignity and law; It cannot be established only on the basis of legislative authority.

Experiences of Pakistan, India and Saudi Arabia highlight permanent systemic deficiencies and political pressures, but also underline a new approach to criminal justice and a new approach to guiding principles of fairness, dignity and equality. The global community has rapidly sought

to solve this inconsistency through standard and soft law devices. The United Nations General Assembly (UNGA) has described a developing international understanding on the incompatibility of capital punishment with the advance levels of human rights, the interpretation of the Human Rights Committee (HRC) on ICCPR and the law of the regional human rights courts. Although it is true that these devices do not always have the strength of law, they still play a role in shaping national conversations that in turn causes those who in turn support the death penalty to protect or change their practices in the international spotlight.

In addition, it is a matter that we see a very powerful role in the discussion of capital punishment from the judiciary. The courts in constitutional democratic settings have been a large extent, which is using the principles of constitutional morality, proportional and human dignity in evaluation of death penalty in relation to large constitutional issues. In its judgment at *SV Makwanyane*, the South African Constitutional Court also gave an excellent example of how judicial interpretation has been written in law books to bring domestic law in accordance with fundamental rights. For example, the "rarest of rare" principle in *Bachan Singh* seems to have an attempt to include Capricorn even if the final practice suggests that the principle has been inconsistently maintained. Despite this, the 'principle of judicial activism highlights the ability of the judiciary only to go beyond legal interpretation seated as the champion of constitutional principles in the face of populist and political headwind. In doing so, interest in finding options for capital punishment has also intensified. For example, with the right to review the punishment after a scheduled time, the outline for life imprisonment, rehabilitation punishment and restorative justice provides practical framework that allows for accountability without violation of the right to life rights. These current solutions that put in side retrieval in favour of reintegration, which we note that the Justice has been achieved by not taking life completely but instead of promoting the conditions of responsibility, repair and treatment. In addition, we see that advanced forensic technologies such as Deoxyribosenucleic Acid (DNA) analysis have brought more accuracy for criminal examination which has improved the results of cases. In addition, it is there that no system is free from prejudice or error. The issue of durability of capital punishment means that we have a lot of price to pay in case of a single unsuccessful judicial result.

One has been taken as a whole that says about these events, we see that which is ahead to the retention states, is not in protecting the death penalty, which is as a simple tool of detention but the step of correction is in a step by the model. Reducing its limit for extraordinary cases,

strengthening procedural security, making proper use for justice and working towards gradually eradication are practically the major steps yet. In addition, it is necessary for this process which public opinion is balanced with constitutional morality which is to say that we do not give more fairness, equality and dignity to the discovery of law and order.

As it is divided all over the world on the death penalty it continues that we are away from reaching any consensus on the issue but it still confirms that a clear pattern sets towards its elimination, the dialogue between international human rights norms, judicial creativity and reformist policy agenda testifies to a legal order which is prepared to accept a permanent state's name. Finally, a criminal justice system validity is not determined how serious the punishment is. This depends on the commitment to fully proper procedures and the adherence to constitutional values. Therefore, in real sense we can say that the death penalty is not so much about justice because it is an examination that a society is actually dedicated to human dignity, fairness and human life. For constitutional democrats who are trying to read themselves in a fast integrated world, the death penalty does not mean that it stops the crime, but can it co-existence with one of the basic principles of justice, on which the legal order has been made on.

In the final analysis, the presence of capital punishment elsewhere tells us that it acts as a punishment tool, where constitutional loyalty ends and lacks institutional capacity. Debates in India, Pakistan and Saudi Arabia show that the death penalty acts not only at the intangible level but also in a political and cultural context that often interferes with fairness and uniformity. And while the reform agenda is animated by human rights and constitutional principles, continue to challenge the old fairs, in fact a path towards elimination even a path to meaningful procedural reforms is paved with some resistance. But even this fight speaks the movement of law as a tool of justice, not as vengeance. The correct test of the rule of law is not how it handles the guilty, but it protects the values that serve to protect us all.