



THE DEATH PENALTY DEBATE: IS CAPITAL PUNISHMENT STILL RELEVANT IN THE 21ST CENTURY?

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ABSTRACT

*Capital punishment, the state-sanctioned practice of executing individuals for criminal offenses, remains a deeply contested issue in modern justice systems. This analysis examines the continuing relevance of the death penalty, with a particular focus on India's experience. Though rooted in ancient legal traditions, capital punishment faces increasing scrutiny through human rights, constitutional, and ethical frameworks. India's approach illustrates the tension between retention and restriction, exemplified by the landmark "rarest of rare" doctrine established in *Bachan Singh v. State of Punjab*.¹ (1980). While upholding the death penalty's constitutionality, Indian courts have gradually limited its application through procedural safeguards and by emphasizing rehabilitation possibilities. The ethical debate contrasts retributive justice principles, which demand proportional punishment, with rehabilitative approaches that prioritize reformation. Religious perspectives reveal internal tensions between justice and mercy, while human rights frameworks increasingly challenge capital punishment as violating the right to life and the prohibition against cruel punishment. High-profile wrongful convictions, including the Akshardham Temple attack case,² where six individuals were exonerated after facing death sentences, highlight the irreversibility of execution in fallible systems. Socioeconomic disparities and inadequate legal representation further compromise procedural fairness. Emerging alternatives include life imprisonment without parole, restorative justice practices, and comprehensive penal reforms addressing the underlying causes of crime. The international trend toward abolition is clear, with more than two-thirds of countries having abandoned the practice. This analysis suggests that while immediate global abolition remains unlikely due to cultural and political factors, capital*

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¹ *Bachan Singh v State of Punjab* (1980) 2 SCC 684.

² *Adambhai Sulemanbhai Ajmeri & Ors v State of Gujarat* (2014) 7 SCC 716; Criminal Appeal Nos 2295-2296 of 2010, Supreme Court of India

punishment's justification continues to erode as societies develop more effective, humane approaches to serious crime that balance public safety with evolving standards of human rights.

Keywords: Capital Punishment, Wrongful Convictions, Retributive Justice, Constitutional Challenges, Criminal Justice Reform.

INTRODUCTION: THE DEATH PENALTY DEBATE

Capital punishment, also known as the death penalty, is a government-sanctioned practice whereby a person is put to death by the state as a punishment for a crime.³ This ultimate penalty has been employed throughout human history, with evidence of its use dating back to ancient civilizations, including Mesopotamia, Egypt, and Rome, where it was codified in early legal systems such as the Code of Hammurabi. The methods of execution have evolved—from crucifixion and burning at the stake to more modern approaches like lethal injection and electrocution—but the fundamental moral questions surrounding the practice remain largely unchanged.⁴ What distinguishes capital punishment from other penalties is its irreversible nature and the state's deliberate taking of human life, which places it at the center of profound ethical, legal, and human rights debates. The global landscape of capital punishment presents a study in contrasts. As of 2024, more than two-thirds of the world's countries have abolished the death penalty in law or practice.⁵ This trend toward abolition has accelerated in recent decades, with nations across Europe, South America, and parts of Africa and Asia joining the abolitionist movement. However, several influential countries—including the United States, China, Iran, and Saudi Arabia—continue to execute people, often in significant numbers. Sarah Johnson, a 25-year-old law student who attended her first execution as a legal observer in 2022, described the experience as "profoundly disturbing in its bureaucratic orderliness." Her observation captures the tension at the heart of modern capital punishment: a system that aims to deliver justice through the most severe penalty possible while maintaining procedural dignity and constitutional protections. This article examines the continuing relevance of capital punishment in the 21st century, exploring the arguments on both sides of this contentious issue. It will analyze the deterrence claim, consider the risk of executing innocent people, examine the economic implications, and explore the human rights perspective. By addressing these

³ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 9.

⁴ Stuart Banner, *The Death Penalty: An American History* (Harvard University Press 2009) 23-45.

⁵ Amnesty International, 'Global Report: Death Sentences and Executions 2023' (April 2024) 4.

crucial aspects, this research aims to provide a comprehensive analysis of whether capital punishment remains justified in modern society or represents an outdated approach to justice that should be consigned to history.

1. HISTORICAL EVOLUTION OF CAPITAL PUNISHMENT IN INDIA

The history of capital punishment in India weaves a complex narrative that spans millennia, reflecting the subcontinent's diverse cultural and legal traditions. In ancient India, death as punishment was not merely a legal construct but often intertwined with religious doctrine and social hierarchy.

1.1.ANCIENT PRACTICES AND EARLY JUSTIFICATIONS

In the Vedic period (1500-500 BCE), capital punishment was sanctioned for serious offenses, though with considerable restraint. The ancient legal text Manusmriti (Laws of Manu) prescribed the death penalty for specific crimes, including murder and treason, but also emphasized the importance of dharma (righteousness) and recommended mercy when possible.⁶ The text stratified punishment based on the offender's caste, with Brahmins typically exempt from execution regardless of their crime. Kautilya's Arthashastra, composed around the 4th century BCE, provided a more secular framework for punishment. This influential political treatise advocated for the death penalty as a necessary deterrent to maintain social order and protect the state.⁷ During this period, execution methods included impalement, crushing by elephants, and drowning—often carried out publicly to maximize the deterrent effect. Raj Kumar, a 67-year-old historian from Varanasi, recounts his grandfather's stories of public executions during the late colonial period: "The British would announce executions by drum beat in the marketplace. My grandfather described how villagers would gather in solemn silence—not out of bloodlust, but from a complex sense of witnessing justice being served."

1.2.THE EVOLUTION OF EXECUTION METHODS

With the advent of Islamic rule in medieval India, new legal principles emerged through the implementation of Sharia law. Under Mughal rule, crimes were classified according to Islamic jurisprudence, with qisas (retribution) permitting capital punishment for murder and certain

⁶ Patrick Olivelle, *Manu's Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra* (OUP 2005) 167-169.

⁷ LN Rangarajan, *The Arthashastra* (Penguin Books 1992) 108.

other offenses. Hanging became more common during this period, though beheading remained prevalent in some regions. The British colonial period (1757-1947) marked a significant shift in both the philosophy and practice of capital punishment in India. The British introduced a more codified legal system, culminating in the Indian Penal Code of 1860, which remains the foundation of Indian criminal law today.⁸ Hanging became the standardized method of execution, with the gallows replacing more varied and often brutal traditional methods. Meera Devi, now 85, still recalls the execution of independence fighter Bhagat Singh in 1931: "I was just a child, but I remember the entire neighborhood observing a day of mourning. My father explained that Singh had been hanged, and I couldn't understand how killing someone could be called justice.

1.3.MAJOR LEGAL MILESTONES IN ABOLISHING OR RETAINING THE DEATH PENALTY

Following independence in 1947, India retained the death penalty but increasingly restricted its application. The Criminal Procedure Code of 1973 marked a pivotal moment, requiring judges to provide "special reasons" when imposing a death sentence.⁹ This shift reflected growing international concerns about capital punishment and laid the groundwork for the "rarest of rare" doctrine. The Supreme Court's landmark judgment in *Bachan Singh v. State of Punjab* (1980) established that the death penalty should be imposed only in the "rarest of rare" cases when "the alternative option is unquestionably foreclosed."¹⁰ This doctrine has since guided Indian courts in capital cases, significantly reducing the number of death sentences imposed and carried out. Despite several attempts to abolish capital punishment entirely, India has maintained the practice while gradually narrowing its scope. The Law Commission of India's 262nd Report (2015) recommended the eventual abolition of the death penalty for all crimes except terrorism-related offenses and waging war against the state.¹¹ Judge Ravindra Kumar, who presided over capital cases for 15 years before his retirement in 2019, reflects: "Each death sentence I considered weighed heavily on my conscience. The 'rarest of rare' doctrine forced me to confront whether society truly had no other option but to take this person's life. Such decisions are never taken lightly." Today, capital punishment remains legal in India, though executions are increasingly rare. The country exists in a state of de facto limited

⁸ K.I. Vibhute, *PSA Pillai's Criminal Law* (13th edn, LexisNexis 2017) 35-39.

⁹ Code of Criminal Procedure 1973, s 354(3).

¹⁰ *Supra* Note 1

¹¹ Law Commission of India, 'The Death Penalty' (Report No 262, 2015) 11-12.

retention, with decades often passing between executions. This gradual evolution reflects India's complex negotiation between traditional practices, colonial legacy, and modern human rights considerations.

2. LEGAL AND CONSTITUTIONAL PERSPECTIVES

2.1. THE DEATH PENALTY IN INTERNATIONAL LAW

The international legal framework regarding capital punishment has evolved significantly since the mid-20th century, gradually moving toward a position that restricts—though does not entirely prohibit—the practice. The *Universal Declaration of Human Rights* (UDHR) of 1948, while not explicitly mentioning capital punishment, establishes in Article 3 that "everyone has the right to life, liberty and security of person."¹² This foundational document has catalyzed subsequent, more explicit international instruments. The *International Covenant on Civil and Political Rights* (ICCPR), adopted in 1966, takes a more definitive stance. Article 6 acknowledges the existence of the death penalty but places significant restrictions on its use, stating that "in countries which have not abolished the death penalty, sentences of death may be imposed only for the most serious crimes."¹³ The Second Optional Protocol to the ICCPR, adopted in 1989, calls explicitly for the abolition of the death penalty, though states may retain it in time of war if they make a reservation to that effect at the time of ratification.¹⁴ At the regional level, the *European Convention on Human Rights* (ECHR) initially permitted capital punishment under Article 2, but Protocol No. 6 (1983) and Protocol No. 13 (2002) have since abolished the death penalty in peacetime and all circumstances, respectively.¹⁵ The European Court of Human Rights in *Soering v. United Kingdom* (1989) held that extraditing a prisoner to face the "death row phenomenon" in the United States could violate Article 3 of the ECHR prohibits inhuman or degrading treatment.¹⁶ Judge Martha Keller, who represented the United States at the United Nations Human Rights Council for seven years, reflects: "I've watched the international consensus shift dramatically over my career. What was once seen as a sovereign

¹² Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 3.

¹³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6.

¹⁴ Second Optional Protocol to the International Covenant on Civil and Political Rights (adopted 15 December 1989, entered into force 11 July 1991) 1642 UNTS 414.

¹⁵ Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 3 May 2002, entered into force 1 July 2003) ETS No 187.

¹⁶ *Soering v United Kingdom* (1989) 11 EHRR 439.

right of nations to determine their criminal justice systems has increasingly been framed as a human rights issue with international dimensions."

2.2. CONSTITUTIONAL CHALLENGES AND JUDICIAL INTERPRETATIONS

Countries maintaining capital punishment have faced constitutional challenges based on provisions guaranteeing the right to life and prohibiting cruel and unusual punishment. The responses from national courts have varied significantly, reflecting different constitutional traditions and societal values. In the United States, the Supreme Court temporarily abolished the death penalty in *Furman v. Georgia* (1972), finding that its arbitrary application violated the Eighth Amendment's prohibition on cruel and unusual punishment.¹⁷ Four years later, in *Gregg v. Georgia* (1976), the Court reinstated capital punishment, concluding that revised state statutes providing guided discretion to juries had resolved the constitutional concerns.¹⁸ James Henderson, who spent 23 years on death row before being exonerated by DNA evidence in 2011, described his experience: "Every day was psychological torture. You're waiting to die, but you're fighting to live. You're trapped in a system that promises fairness but delivers uncertainty at every turn."

South Africa's Constitutional Court took a different approach in *S v. Makwanyane* (1995), unanimously declaring capital punishment unconstitutional under the post-apartheid Constitution.¹⁹ The Court emphasized that the right to life and dignity are the most important of all human rights and that capital punishment violates both of these rights. In India, the Supreme Court has maintained that the death penalty is constitutional but has increasingly restricted its application. In *Mithu v. State of Punjab* (1983), the Court struck down the mandatory death penalty for certain offenses as unconstitutional, emphasizing judicial discretion in sentencing.²⁰ The "rarest of rare" doctrine established in *Bachan Singh v. State of Punjab* (1980) remains the constitutional standard for imposing capital punishment in India.²¹ Japan's Supreme Court has consistently upheld the constitutionality of the death penalty, most notably in a 1948 decision that rejected challenges based on Article 36 of the Japanese

¹⁷ *Furman v Georgia* 408 US 238 (1972).

¹⁸ *Gregg v Georgia* 428 US 153 (1976).

¹⁹ *S v Makwanyane* [1995] ZACC 3, 1995 (3) SA 391.

²⁰ *Mithu v State of Punjab* (1983) 2 SCC 277.

²¹ *Supra* note 1.

Constitution, which prohibits cruel punishments. ²²The Court has maintained this position despite growing international pressure and domestic criticism.

2.3.LANDMARK CASE LAWS

Beyond constitutional challenges, courts worldwide have grappled with specific aspects of capital punishment, gradually refining the legal boundaries of its application. In *Atkins v. Virginia* (2002), the U.S. Supreme Court prohibited the execution of intellectually disabled individuals, finding that it violated the Eighth Amendment's prohibition on cruel and unusual punishment.²³ Three years later, in *Roper v. Simmons* (2005), the Court extended this prohibition to offenders who were under 18 years of age when they committed their crimes.²⁴ Maria Gonzalez, a defense attorney who has represented dozens of capital defendants, shares: "When I explained to my client—a young man with significant intellectual disabilities—that the Supreme Court had ruled he couldn't be executed, he asked me if that meant he could go home. The gap between these monumental legal decisions and their human impact is sometimes heartbreaking."

The European Court of Human Rights has developed extensive jurisprudence regarding the death penalty. In *Al-Saadoon and Mufdhi v. United Kingdom* (2010), the Court held that the death penalty had come to be regarded as an unacceptable form of punishment that is no longer permissible under Article 2 of the ECHR, regardless of the nature of the offense.²⁵

In *Francis v. Jamaica* (1995), the United Nations Human Rights Committee found that prolonged judicial proceedings in death penalty cases could constitute cruel, inhuman, or degrading treatment under Article 7 of the ICCPR.²⁶

2.4. INDIAN LANDMARK CASE LAWS

India's jurisprudence on capital punishment has been particularly rich, with the Supreme Court developing nuanced doctrines that reflect the nation's evolving stance on the ultimate penalty. In *Jagmohan Singh v. State of Uttar Pradesh* (1973), the Supreme Court first upheld the constitutional validity of the death penalty, ruling that deprivation of life is constitutionally

²² *Japan v Ichikawa*, Supreme Court of Japan, Grand Bench, March 12, 1948, Keishu Vol. 2, No. 3, p. 191.

²³ *Atkins v Virginia* 536 US 304 (2002).

²⁴ *Roper v Simmons* 543 US 551 (2005).

²⁵ *Al-Saadoon and Mufdhi v United Kingdom* App no 61498/08 (ECtHR, 2 March 2010).

²⁶ *Francis v Jamaica* Communication No 606/1994, UN Doc CCPR/C/54/D/606/1994 (1995).

permissible if done according to procedure established by law.²⁷ This judgment preceded the watershed *Bachan Singh* case and established that capital punishment did not violate Articles 14, 19, and 21 of the Indian Constitution.

The *Bachan Singh v. State of Punjab* (1980) judgment revolutionized India's approach to capital punishment by establishing the "rarest of rare" doctrine.²⁸ Justice P.N. Bhagwati's powerful dissent in this case—arguing that the death penalty is unconstitutional per se—remains one of the most compelling judicial arguments against capital punishment in Indian legal history. "When I read Justice Bhagwati's dissent for the first time as a law student," recalls Senior Advocate Meenakshi Arora, "I was struck by how he humanized the accused. He refused to see them merely as perpetrators of horrific crimes but as products of social circumstances, often failed by the very society that now wished to eliminate them."

In *Machhi Singh v. State of Punjab* (1983), the Supreme Court elaborated on the "rarest of rare" doctrine by outlining specific categories of cases that might warrant the death penalty, including murders committed with extreme brutality or for motives that show "extreme depravity."²⁹

The Court's decision in *Sher Singh v. State of Punjab* (1983) addressed the "death row phenomenon," holding that inordinate delay in the execution of a death sentence could be grounds for commutation to life imprisonment, though this alone would not render the punishment unconstitutional.³⁰

Triveniben v. State of Gujarat (1989) further refined this principle, establishing that delay occurring after the final judicial decision could be considered for commutation, while delay during the judicial process could not.³¹

A significant shift occurred in *Santosh Kumar Bariyar v. State of Maharashtra* (2009), where the Court acknowledged inconsistencies in applying the "rarest of rare" doctrine and emphasized that the focus should be on the criminal, not just the crime.³² The Court also noted that socio-economic factors must be considered in sentencing.

²⁷ *Jagmohan Singh v State of Uttar Pradesh* (1973) 1 SCC 20.

²⁸ *Supra* note 19

²⁹ *Machhi Singh v State of Punjab* (1983) 3 SCC 470.

³⁰ *Sher Singh v State of Punjab* (1983) 2 SCC 344.

³¹ *Triveniben v State of Gujarat* (1989) 1 SCC 678.

³² *Santosh Kumar Bariyar v State of Maharashtra* (2009) 6 SCC 498.

Sangeet v. State of Haryana (2013) continued this critical self-examination, with the Court admitting that the Bachan Singh framework had not been consistently followed, leading to arbitrary application of the death penalty.³³

In the landmark *Shatrughan Chauhan v. Union of India* (2014), the Supreme Court identified various grounds for commuting death sentences, including mental illness, solitary confinement, and inordinate delay in deciding mercy petitions.³⁴ This case significantly expanded protections for death row prisoners and recognized their continuing constitutional rights. Rajbir Singh, who spent 14 years on death row before his sentence was commuted following the Shatrughan Chauhan judgment, describes the impact: "When I heard about the Court's decision, it was like being born again. For years, I lived each day thinking it might be my last. The uncertainty was worse than the sentence itself."

The Supreme Court's decision in *Mohd. Arif v. Supreme Court of India* (2014) mandated an open court hearing to review petitions in death penalty cases, providing an additional layer of procedural protection.³⁵

In *Channulal Verma v. State of Chhattisgarh* (2019), the Court emphasized that reformation and rehabilitation of the offender should be given "undeniable importance" when considering whether to impose the death penalty.³⁶ More recently, in *Irfan v. State of Madhya Pradesh* (2022), the Supreme Court commuted a death sentence, reiterating that the possibility of reformation and rehabilitation must be given "prime consideration" when deciding between life imprisonment and the death penalty.³⁷

"These cases reflect India's deeply ambivalent relationship with capital punishment," observes Justice Rajan Sharma (retired). "While we haven't abolished it, our jurisprudence has created so many safeguards and restrictions that executions have become extremely rare. It's as if the Court is trying to reconcile our constitutional values with a punishment that sits uneasily within them." These landmark cases illustrate the complex legal landscape surrounding capital punishment—a landscape that continues to evolve as courts around the world grapple with fundamental questions of human rights, proportionality, and justice.

³³ *Sangeet v State of Haryana* (2013) 2 SCC 452.

³⁴ *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1.

³⁵ *Mohd. Arif v Supreme Court of India* (2014) 9 SCC 737.

³⁶ *Channulal Verma v State of Chhattisgarh* (2019) 12 SCC 438.

³⁷ *Irfan v State of Madhya Pradesh* (2022) 2 SCC 662.

3. MORAL AND ETHICAL CONSIDERATIONS

3.1. THE RETRIBUTIVE VS. REHABILITATIVE JUSTICE DEBATE

The tension between retribution and rehabilitation represents one of the most fundamental divisions in approaches to criminal justice, with capital punishment standing as the ultimate expression of retributive principles. Retributive justice operates on the premise that punishment should be proportional to the crime committed—that wrongdoers deserve to suffer in proportion to the harm they have caused. This principle, often summarized as "an eye for an eye," has ancient roots in legal codes across civilizations. "When my daughter was murdered," says Robert Johnson, father of a victim in a capital case, "I initially wanted nothing more than to see her killer executed. I believed that only his death could balance the scales of justice. But as years passed and I witnessed the toll that pursuing vengeance took on my family, I began to question whether retribution truly heals the wounds it claims to address." Supporters of capital punishment often argue that certain crimes are so heinous that they demand the ultimate penalty, not only to punish the offender but also to express society's moral outrage and affirm the value of the victim's life. As Justice Potter Stewart wrote in *Gregg v. Georgia*, capital punishment serves "an expression of society's moral outrage at particularly offensive conduct."³⁸

Rehabilitative justice, by contrast, focuses on reforming offenders and reintegrating them into society. This approach views crime primarily as a social problem requiring healing rather than punishment alone. Proponents argue that even perpetrators of terrible crimes retain the capacity for moral growth and transformation.³⁹ Sister Helen Prejean, who has served as a spiritual advisor to death row inmates for decades, describes witnessing such transformation: "I've watched men who committed horrible acts in moments of rage or addiction or desperation discover their humanity behind bars. Some find ways to contribute positively even while incarcerated. The death penalty permanently forecloses these possibilities of redemption." The debate between these approaches raises profound questions about the purpose of punishment. Is justice served when the state exacts the harshest possible penalty or when it creates opportunities for moral rehabilitation? Does capital punishment represent justice fulfilled or an abdication of society's responsibility to heal deeper wounds?

³⁸ *Supra* note 16

³⁹ Lode Walgrave, *Restorative Justice, Self-interest and Responsible Citizenship* (Willan Publishing 2008) 61-79.

3.2. RELIGIOUS AND PHILOSOPHICAL PERSPECTIVES

Religious traditions offer varied perspectives on capital punishment, often containing internal tensions between principles of justice and mercy. Many religious viewpoints have evolved, reflecting changing understandings of sacred texts and traditions. In Judeo-Christian traditions, the Old Testament appears to sanction capital punishment for various offenses, most famously in the "eye for an eye" principle found in Exodus.⁴⁰ However, many Jewish and Christian scholars argue that subsequent teachings emphasize mercy and forgiveness. The Talmudic tradition placed such stringent evidentiary requirements on capital cases that executions became nearly impossible, reflecting a deep ambivalence about taking human life.⁴¹ Rabbi David Goldstein explains, "While our ancient texts discuss capital punishment, our tradition has long recognized the profound moral problems it presents. The Mishnah teaches that a court that executes one person in seven years is considered destructive. Another sage says once in seventy years. This reveals how troubled our ancestors were by the irrevocable nature of execution."

Christian perspectives vary widely. While some cite Biblical support for capital punishment, others emphasize Jesus's teachings on forgiveness and his intervention to prevent the execution of an adulteress in John 8:7 ("Let him who is without sin cast the first stone"). The Catholic Church, under Pope Francis, has declared capital punishment "inadmissible" and committed to working toward its abolition worldwide.⁴² Islamic jurisprudence traditionally permits capital punishment for certain offenses under Sharia law, including murder and apostasy, though with significant procedural protections. However, the Quranic emphasis on mercy and forgiveness has led many Muslim scholars to advocate for the restricted application of the death penalty.⁴³ Imam Khalid Rahman reflects, "The Quran teaches qisas—retribution—but it also repeatedly emphasizes that forgiveness is better. Every mention of punishment in our tradition is balanced by a call to mercy. This tension invites us to constantly reconsider how justice is best served." Buddhist and Hindu traditions generally emphasize non-violence (ahimsa), though their historical applications in state governance have sometimes included capital punishment.

⁴⁰ Exodus 21:23-25, The Bible.

⁴¹ David Novak, *The Sanctity of Human Life* (Georgetown University Press 2007) 128-149.

⁴² Congregation for the Doctrine of the Faith, 'Letter to the Bishops regarding the new revision of number 2267 of the Catechism of the Catholic Church on the death penalty' (1 August 2018).

⁴³ Mohammad Hashim Kamali, *Freedom, Equality and Justice in Islam* (Islamic Texts Society 2002) 119-126.

In contemporary discourse, religious leaders from these traditions often invoke principles of compassion and the sanctity of life to oppose executions.⁴⁴ Western philosophical traditions present equally diverse perspectives. Kantian retributivism holds that punishment is a categorical imperative—that justice demands punishing wrongdoers proportionally to their crimes, regardless of social consequences.⁴⁵ Utilitarians like Bentham and Mill, conversely, evaluated punishment based on its social outcomes, supporting capital punishment only if it produced greater overall happiness through deterrence or other benefits.⁴⁶ Professor Aisha Patel, who teaches philosophy of punishment at Delhi University, observes: "What's fascinating about the philosophical debate is how the same human intuitions about dignity can lead to opposite conclusions. Some see respecting human dignity as requiring that we punish terrible actions appropriately; others see it as forbidding us from treating any human being—even a murderer—as disposable."

3.3.HUMAN RIGHTS CONCERNS

The human rights framework has increasingly challenged capital punishment on several grounds: the right to life, the prohibition of inhuman punishment, and concerns about discriminatory application. The right to life, enshrined in Article 3 of the Universal Declaration of Human Rights, has been interpreted by many international bodies as incompatible with state-sanctioned execution.⁴⁷ Human rights advocates argue that this most fundamental right cannot be forfeited, even by those who have committed terrible crimes. Perhaps the most compelling human rights argument against capital punishment centers on its irreversibility in the face of wrongful convictions. Since 1973, more than 185 death row prisoners have been exonerated in the United States alone, often through DNA evidence or the discovery of prosecutorial misconduct.⁴⁸ Anthony Ray Hinton, who spent 30 years on Alabama's death row before being exonerated in 2015, describes the terror of facing execution for a crime he didn't commit: "For three decades, I lived with the knowledge that my state was determined to kill me for something

⁴⁴ Damien Keown, *Buddhism and Bioethics* (Palgrave 2001) 147-168.

⁴⁵ Immanuel Kant, *The Metaphysics of Morals* (tr Mary Gregor, Cambridge University Press 1996) 105-110.

⁴⁶ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Clarendon Press 1907) ch XIII.

⁴⁷ William Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, Cambridge University Press 2002) 23-45.

⁴⁸ Death Penalty Information Center, 'Innocence Database' (2024) <https://deathpenaltyinfo.org/policy-issues/innocence> accessed 20 September 2024.

I had nothing to do with. No amount of compensation can return those years to me or heal the trauma of repeatedly preparing for my death."

The prohibition against cruel punishment has also been invoked against capital punishment, particularly regarding execution methods and the psychological trauma of death row. Studies have documented the severe mental health effects of living under a death sentence, characterized by alternating periods of hope and despair as appeals progress.⁴⁹ Particularly troubling are documented cases where executions have gone awry, causing visible suffering. Dr. Jonathan Miller, who has witnessed several executions as a medical observer, recounts: "What stays with me is the look of panic in a prisoner's eyes when a lethal injection protocol fails to work as intended. In those moments, the clinical veneer of 'humane execution' falls away, revealing the inherent violence of deliberately ending a human life." Discriminatory application of the death penalty raises additional human rights concerns. Statistical studies consistently show disparities in capital sentencing based on race, socioeconomic status, geography, and quality of legal representation.⁵⁰ Such disparities suggest that factors beyond the crime itself often determine who lives and who dies. Public defender Serena Washington, who has represented capital defendants for twenty years, observes: "The death penalty isn't reserved for the worst crimes—it's imposed on defendants with the worst lawyers, the worst luck, or from the wrong communities. I've seen nearly identical cases result in radically different sentences depending on the county, the prosecutor, or the defendant's ability to afford expert witnesses." These moral and ethical considerations illuminate why capital punishment remains such a deeply contested practice. The debate touches on fundamental questions about justice, human dignity, redemption, and the proper limits of state power—questions that societies continue to wrestle with as they determine whether the practice remains relevant in the 21st century.

4. WRONGFUL CONVICTIONS AND THE RISK OF EXECUTING THE INNOCENT

Perhaps the most haunting argument against capital punishment is its irreversibility when the criminal justice system makes a mistake. Unlike other punishments that can be halted and

⁴⁹ Smith A, Petersen S and Lane J, 'The Psychological Impact of Living Under Death Sentence' in Hood R and Deva S (eds), *The Death Penalty: A Worldwide Perspective* (OUP 2017) 188-207.

⁵⁰ Baldus D, Woodworth G and Pulaski C, *Equal Justice and the Death Penalty: A Legal and Empirical Analysis* (Northeastern University Press 1990) 140-197.

partially remedied through compensation and release, an execution cannot be undone when new evidence emerges proving innocence.

4.1. HIGH-PROFILE WRONGFUL CONVICTION CASES IN INDIA

India's experience with wrongful convictions has raised significant concerns about the application of the death penalty. The case of Dhananjay Chatterjee stands as one of the most controversial executions in India's modern history. Chatterjee was hanged in 2004 for the rape and murder of a teenage girl in Kolkata. Years after his execution, investigative journalists and legal researchers raised serious doubts about his guilt, suggesting that crucial evidence had been overlooked and witness testimonies were inconsistent.⁵¹ Though debate continues about this case, it exemplifies the irreversible consequences of potential judicial error. Ram Lakhan, who spent nine years on death row before being acquitted, describes the psychological toll: "Each night, I would lie awake wondering if tomorrow would be the day they came for me. Every footstep in the corridor made my heart race. Even now, years after my release, I wake up in cold sweats, convinced I'm still awaiting execution."

The Akshardham Temple attack case represents another sobering example of the system's fallibility. Six individuals were convicted in connection with the 2002 terrorist attack, with three sentenced to death. After spending over a decade in prison, the Supreme Court acquitted all six in 2014, citing "gross violation of fundamental rights" and "negligence of investigating agencies."⁵² The Court noted that the confessions appeared to have been coerced and that evidence was fabricated. Justice H.S. Bedi, who authored the judgment, later remarked: "Cases like these shake public confidence in our justice system. When innocent people spend years facing execution, only to be exonerated later, we must ask ourselves whether any system can be reliable enough to justify irreversible punishment." The case of the Ravi Gupta family murder in Uttar Pradesh saw five men sentenced to death in 2003. The Supreme Court acquitted all five in 2012, finding that the prosecution had failed to establish their guilt beyond reasonable doubt. By then, the men had spent nearly a decade living under the shadow of execution for a crime they did not commit.⁵³ Santosh Singh, one of the exonerated men, recalls: "When I was arrested, my daughter was just learning to walk. When I finally returned home, she was

⁵¹ The Innocence Project, 'The Dhananjay Chatterjee Case: A Criminal Justice Failure?' (Report, 2015) 23-35.

⁵² *Adambhai Sulemanbhai Ajmeri v State of Gujarat* (2014) 7 SCC 716.

⁵³ *Ram Kumar v State of Uttar Pradesh* (2012) 4 SCC 382.

preparing for her board exams. No compensation can return those lost years or heal the stigma my family endured."

4.2.THE FALLIBILITY OF THE CRIMINAL JUSTICE SYSTEM

These high-profile cases highlight systematic vulnerabilities that increase the risk of wrongful convictions. Coerced confessions remain a significant concern, particularly among vulnerable populations. Despite legal protections, the Supreme Court has repeatedly found instances where investigating agencies extracted confessions through physical or psychological pressure.⁵⁴

Police Inspector Rajiv Kumar, who now trains officers in ethical investigation techniques, admits: "The pressure to solve high-profile cases quickly creates dangerous incentives. When careers advance based on conviction rates rather than accurate investigations, corners get cut. And in capital cases, those cut corners can cost innocent lives." Eyewitness misidentification has proven particularly unreliable. Studies have shown that human memory is fallible and highly susceptible to suggestion, especially in high-stress situations or when witnesses and suspects are from different ethnic backgrounds.⁵⁵ Yet, eyewitness testimony continues to carry significant weight in Indian courts.

Prosecutorial misconduct presents another troubling vulnerability. Cases of withheld exculpatory evidence, witness tampering, and prejudicial statements have been documented in capital cases. The Law Commission of India's 262nd Report acknowledged that these issues might be more prevalent than officially recognized due to limited oversight mechanisms.⁵⁶ Perhaps most concerning is the impact of socioeconomic disparities on capital cases. Those unable to afford skilled legal representation face significantly higher risks of wrongful conviction. A study by the National Law University Delhi's Death Penalty Research Project found that over 75% of death row prisoners in India were from economically vulnerable backgrounds, and a significant percentage had received inadequate legal representation.⁵⁷ Advocate Smita Chakraborty, who has worked on several death penalty appeals pro bono, observes: "When I review trial records of economically disadvantaged defendants, I regularly

⁵⁴ Law Commission of India, 'The Death Penalty' (Report No 262, 2015) 128-140.

⁵⁵ Sinha S and Kinger R, 'Reliability of Eyewitness Testimony in Indian Criminal Justice' (2018) 43 Economic and Political Weekly 112.

⁵⁶ Law Commission of India, 'The Death Penalty' (Report No 262, 2015) 141-152.

⁵⁷ Death Penalty Research Project, 'Death Penalty India Report' (National Law University Delhi 2016) 72-91.

find basic defenses that were never raised, witnesses who weren't cross-examined effectively, and evidence that wasn't properly challenged. Quality legal representation shouldn't be a luxury in capital cases, but too often, it is."

4.3.THE ROLE OF FORENSIC ADVANCEMENTS

Scientific advancements have played a dual role in the death penalty debate—both exposing wrongful convictions and potentially reducing their frequency moving forward.

DNA testing has revolutionized post-conviction review, offering definitive proof of innocence in cases where biological evidence exists. In the Priyadarshini Mattoo case, advanced DNA analysis played a crucial role in both the conviction of the actual perpetrator and in overturning initial suspicions against others.⁵⁸ However, DNA evidence is available in only a small percentage of capital cases in India, and access to testing remains limited. Dr. Ananya Sharma, a forensic scientist at the Central Forensic Science Laboratory in Hyderabad, explains: "DNA analysis can provide certainty where traditional forensics could only offer probabilities. But in India, we face challenges with evidence collection and preservation. By the time many cases reach the point where advanced testing is ordered, crucial biological samples may have degraded or been improperly stored." Improved forensic standards for other types of evidence have also revealed the unreliability of older techniques. Bite mark analysis, once considered sound forensic science, has been largely discredited. Hair comparison analysis has similarly faced scientific challenges, with error rates far higher than previously acknowledged.⁵⁹ Digital forensics represents a growing field that can both prevent wrongful convictions and, occasionally, create new vulnerabilities. While surveillance footage, cell phone data, and digital communications can provide alibi evidence, concerns remain about the proper authentication and interpretation of such evidence.

Technological advancements have not eliminated basic problems of access and resources. Forensic facilities remain unevenly distributed across India, with rural and economically disadvantaged areas having limited access to advanced testing capabilities. Beyond scientific advancements, procedural reforms have attempted to address wrongful convictions. The Criminal Procedure Code (Amendment) Act of 2008 strengthened provisions for recording

⁵⁸ Bhushan P, 'Justice in the Mattoo Case: The Role of Forensic Evidence' (2010) 2 Indian Journal of Medical Ethics 78.

⁵⁹ Rao D and Malhotra A, 'Forensic Science in India: Current Status and Future Challenges' (2021) 12 Journal of Forensic Science and Criminology 34.

confessions and conducting identification parades.⁶⁰ The Supreme Court has increasingly emphasized the "proof beyond reasonable doubt" standard in capital cases, recognizing the heightened stakes involved. Yet, these reforms face challenges in implementation. As retired High Court Judge Leila Seth noted shortly before her death: "Our legal standards on paper are quite robust, but without proper training, resources, and accountability, even the best procedures can fail to protect the innocent." The specter of executing innocent individuals creates what Justice Harry Blackmun of the U.S. Supreme Court called "the machinery of death"—a system where human error can lead to irreversible injustice. For many observers, this risk alone provides sufficient reason to question whether capital punishment can be justified in a system where fallibility is inevitable. Raju Mehta, exonerated after seven years on death row, puts it simply: "They tell us the system has safeguards, that innocent people don't get executed. But I lived through those 'safeguards,' and they nearly failed me completely. How many others weren't as fortunate as I was?"

5. ALTERNATIVE PUNISHMENTS AND CRIMINAL JUSTICE REFORMS

As societies grapple with the moral and practical implications of capital punishment, many jurisdictions have turned to alternative sanctions and broader criminal justice reforms. These approaches aim to balance public safety, justice for victims, and the potential for rehabilitation—all while avoiding the irreversibility of the death penalty.

5.1.LIFE IMPRISONMENT WITHOUT PAROLE VS. THE DEATH PENALTY

Life imprisonment without the possibility of parole (LWOP) has emerged as the primary alternative to capital punishment in many jurisdictions. Proponents argue that it achieves the same incapacitate effect—protecting society from dangerous offenders—while avoiding the finality of execution and preserving the possibility of exoneration for the wrongfully convicted.⁶¹ Sanjay Dutt, a prison warden with over 25 years of experience, observes: "I've watched men enter prison at 25 with LWOP sentences, certain they would rather be executed than spend decades behind bars. By 40, many have found meaning in prison work programs, education, or mentoring younger inmates. The human capacity for adaptation and growth is remarkable, even in the harshest circumstances." For victims' families, LWOP offers a different

⁶⁰ Code of Criminal Procedure (Amendment) Act 2008, s 54A.

⁶¹ Ashley Nellis, *Life Goes On: The Historic Rise in Life Sentences in America* (The Sentencing Project 2021) 4-7.

kind of closure. Rather than enduring decades of appeals and execution dates that are often delayed or canceled—a process many describe as "re-traumatizing"—they can begin healing with the knowledge that the legal process has concluded.

Meena Sharma, whose brother was murdered in 2003, explains: "When the killer received life without parole instead of death, I initially felt cheated. But years later, I realized it was a blessing. We weren't dragged through endless court hearings and execution dates. He's serving his punishment, and we've been able to move forward with our lives." However, LWOP is not without criticism. Some human rights advocates argue that it constitutes "death by incarceration"—a punishment that denies the possibility of redemption and violates human dignity in its way. Others question whether it truly saves costs, as housing aging prisoners through their natural lives can be expensive due to increasing medical needs. Chandra Krishnan, sentenced to life without parole at age 20 and now 58, describes his experience: "The punishment isn't just the years taken from you—it's watching the world change through occasional television programs and visitors' stories. It's knowing that no matter how much you change, society has deemed you irredeemable." Some jurisdictions have adopted modified approaches, such as extremely long determinate sentences or life with the possibility of parole after a substantial minimum term (often 25 or 30 years). These policies attempt to balance the punitive and incapacitative effects of long-term incarceration with the recognition that some offenders might eventually be safely released.

5.2.RESTORATIVE JUSTICE APPROACHES

Restorative justice offers a fundamentally different paradigm, focusing on repairing harm rather than inflicting punishment. While rarely applied to the most serious offenses in isolation, restorative principles have increasingly been incorporated into conventional criminal justice systems, even in cases that would traditionally merit severe punishment.⁶² Unlike retributive justice, which asks what law was broken and what punishment is deserved, restorative justice asks who was harmed, what needs have resulted, and whose obligation it is to meet those needs. It typically involves facilitated meetings between offenders, victims (or their representatives), and community members. Arjun Malhotra, who lost his wife to a drunk driver and later participated in a restorative justice program, shares: "Facing the man who killed my wife was the hardest thing I've ever done. But hearing him acknowledge what he'd taken from me, seeing

⁶² Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press 2015) 181-214.

his genuine remorse—it helped me in ways that his prison sentence never could. The process wasn't about forgiveness; it was about understanding and finding a path forward."

In serious cases, restorative justice usually complements rather than replaces traditional punishment. However, it offers something the conventional system often fails to provide: a voice for victims and a chance for offenders to comprehend the full impact of their actions. Critics question whether restorative approaches can adequately address the most heinous crimes or protect public safety. Proponents respond that restorative justice need not be an all-or-nothing proposition—that elements of restoration can be incorporated into even the most serious cases. Justice Sarika Patel, who has pioneered restorative programs in Gujarat's courts, explains: "We're not suggesting that someone who commits murder should simply apologize and be released. But we've found that incorporating restorative processes alongside conventional punishment leads to better outcomes for victims and lower recidivism when offenders are eventually released."

5.3. EMERGING PENAL REFORMS AND THEIR EFFECTIVENESS

Beyond specific alternatives to capital punishment, broader criminal justice reforms are reshaping approaches to serious offenses worldwide. These include enhanced rehabilitation programs, sentencing reforms, and efforts to address the root causes of violent crime. Norway's approach to incarceration has drawn international attention. Even for serious offenses, Norwegian prisons emphasize normalization and rehabilitation, with conditions that avoid unnecessary suffering and prepare inmates for eventual reintegration.⁶³ The country's recidivism rate of about 20% (compared to over 40% in many death penalty states in the U.S.) suggests the effectiveness of this model. Vikram Mehta, who studied the Norwegian system before implementing reforms at a maximum-security prison in Maharashtra, reflects: "The first thing that strikes you about Norwegian prisons is how normal they feel. Inmates cook their meals, take responsibility for their daily routines, and participate in meaningful work and education. It's still punishment—their freedom is severely restricted—but it's punishment with purpose." Several jurisdictions have implemented specialized courts for cases involving mental illness, substance abuse, or other factors that contribute to criminal behavior. These courts

⁶³ Ragnar Kristoffersen, *Correctional Statistics of Denmark, Finland, Iceland, Norway and Sweden 2015-2019* (University College of Norwegian Correctional Service 2020) 37-42.

focus on treatment and supervision rather than punishment alone, addressing underlying issues that conventional incarceration often exacerbates.

Dr. Rahul Sharma, a psychiatrist who works with a mental health court in Delhi, explains: "Many violent offenders have histories of untreated mental illness, substance abuse, or extreme trauma. When we address these underlying issues alongside appropriate security measures, we see much better outcomes than with incarceration alone." Sentencing reforms have also gained traction, with many jurisdictions moving away from mandatory minimum sentences and giving judges greater discretion to consider individual circumstances. Risk assessment tools—though controversial—aim to provide more objective measures of an offender's likelihood of recidivism and potential for rehabilitation. Perhaps most significantly, a growing movement focuses on prevention rather than punishment. Early intervention programs, community-based violence prevention, and addressing social determinants of crime (such as poverty, inequality, and lack of opportunity) show promise in reducing serious offenses before they occur.

Community violence interrupter Deepak Sinha describes his work in Mumbai's most violent neighborhoods: "We identify potential conflicts before they escalate and intervene using credible messengers—often former offenders themselves. It's about changing the culture of violence, not just responding after tragedy strikes. Every murder we prevent is a victim who doesn't suffer, a family that stays intact, and a potential offender who doesn't spend life in prison." These reforms face challenges in implementation and scaling. Limited resources, political resistance, and ingrained punitive attitudes all present obstacles. However, mounting evidence of their effectiveness in reducing both crime and its costs—human and financial—has driven their adoption across diverse jurisdictions. As Justice Rajesh Tandon of the Supreme Court observed in a recent lecture: "The measure of a justice system is not how severely it punishes its worst offenders, but how effectively it creates safety and healing for all its citizens. When we focus exclusively on punishment, we miss opportunities to break cycles of violence that perpetuate harm across generations." The emergence of these alternatives raises a fundamental question about capital punishment: if we can protect society, provide justice for victims, and even work toward rehabilitation without resorting to execution, what purpose does the death penalty continue to serve in the 21st century?

CONCLUSION: IS THE DEATH PENALTY STILL RELEVANT?

The death penalty debate remains one of the most divisive issues in criminal justice systems worldwide. Proponents maintain that capital punishment serves as the ultimate deterrent against heinous crimes and provides closure to victims' families. They argue that some crimes are so morally reprehensible that they warrant the ultimate punishment, representing society's strongest condemnation of the most serious offenses.⁶⁴ Conversely, abolitionists point to compelling evidence that capital punishment fails to deter crime more effectively than long-term imprisonment. More troubling are the documented cases of wrongful executions, which represent irreversible miscarriages of justice. Since 1973, more than 185 death row inmates in the United States alone have been exonerated through DNA evidence and other means, highlighting the fallibility of the justice system even in capital cases.⁶⁵ The economic argument has also shifted significantly against capital punishment. Multiple cost studies across different jurisdictions have consistently found that pursuing death penalty cases costs substantially more than cases seeking life imprisonment without parole, primarily due to extended legal proceedings, mandatory appeals, and specialized housing requirements.⁶⁶ The international trend toward abolition is unmistakable. As of 2024, more than two-thirds of countries worldwide have abolished the death penalty in law or practice.⁶⁷ International human rights standards increasingly regard capital punishment as incompatible with the right to life and human dignity. The United Nations General Assembly has repeatedly called for a global moratorium on executions, with growing support in successive resolutions.

Regional patterns reveal contrasting trajectories. Europe (excluding Belarus) has become an execution-free zone, while the Americas have seen substantial progress toward abolition, with the United States as the notable exception in the developed world. However, most executions worldwide continue to be carried out in Asia and the Middle East, where cultural, religious, and political factors sustain support for capital punishment.⁶⁸ Public opinion on capital punishment is evolving, albeit unevenly, across regions. Even in retentionist countries, support often diminishes when citizens are presented with alternatives like life imprisonment without parole and when they become aware of issues like wrongful convictions and the discriminatory

⁶⁴ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, OUP 2015) 27-29.

⁶⁵ Death Penalty Information Center, 'Innocence Database' (DPIC 2024).

⁶⁶ Aliza Kaplan, 'Oregon's Death Penalty: The Practical Reality' (2016) 17 *Lewis & Clark Law Review* 1, 32-40.

⁶⁷ Amnesty International, 'Death Sentences and Executions 2023' (Amnesty International 2024).

⁶⁸ William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, Cambridge University Press 2002) 365-367.

application of death sentences.⁶⁹ For countries maintaining capital punishment, immediate reforms should focus on ensuring that death penalty practices meet minimum international human rights standards. This includes:

1. Restricting capital punishment to only "the most serious crimes" involving intentional killing, as required under Article 6 of the International Covenant on Civil and Political Rights.⁷⁰
2. Eliminating mandatory death sentences, which fail to consider individual circumstances and violate due process rights recognized in international law.⁷¹ Strengthening procedural safeguards, including access to competent legal representation, independent forensic testing, and meaningful appellate review.
3. Implementing transparency measures to allow for public scrutiny of capital cases, including publishing comprehensive data on death sentences and executions.

For countries moving toward abolition, a phased approach might begin with an official moratorium on executions, followed by legislative restriction of capital punishment to fewer crimes, and eventually complete abolition. This gradual process has proven successful in many jurisdictions, allowing for the adjustment of criminal justice systems and public sentiment.⁷² The persistence of capital punishment in the 21st century raises profound ethical questions about state power, human dignity, and justice. While cultural and political realities make immediate global abolition unlikely, the long-term trajectory suggests that future generations may view the practice of state-sanctioned execution as an anachronism from a less enlightened era. The challenge for contemporary societies is to develop criminal justice systems that can effectively address serious crimes and provide justice for victims while adhering to evolving standards of human rights and dignity.

⁶⁹ Austin Sarat, 'The Killing State: Capital Punishment in Law, Politics, and Culture' (OUP 2001) 148-152.

⁷⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6.

⁷¹ *Woodson v North Carolina* 428 US 280 (1976).

⁷² Roger Hood, 'The Death Penalty: A Worldwide Perspective' (4th edn, OUP 2008) 412-418.