



ANALYSIS OF DEATH PENALTY IN INDIA: A DETERRENT OR A VIOLATION OF HUMAN RIGHTS

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ABSTRACT

The death penalty is one of the most controversial topics in the Indian judiciary and many other countries as well. Capital punishment, also known as the death penalty, involves hanging people who have committed a crime and has been a topic of heated debate. This raises the question of whether the death penalty has deterred or prevented the commission of crime or not, or whether it violates basic human rights. Supporters believe that the fear of death can prevent serious crimes and provide justice for victims. In contrast, critics observe that harsh and irreversible punishment goes against the right to life and the values of rehabilitation. In India, the judiciary uses the “rarest of rare” doctrine, which brings up concerns about fairness and equality due to its inconsistent application. Worldwide, there is a trend towards ending capital punishment, based on moral, legal, and practical reasons. In India, the death penalty is the killing or hanging of the offender in the name of justice. It is a violation of Article 21, which emphasises the right to life and dignity, and is still prevalent in the Indian Constitution and in other countries as well. This research paper will look at the effectiveness, legality, and ethical aspects of capital punishment. It will analyse whether crime was really prevented or whether basic human rights were violated.¹

Keywords: Capital Punishment, Article 21, Death Penalty.

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¹ Death Penalty Information Center, Human Rights, Death Penalty Info Ctr., (last visited Oct. 22, 2025) Anusha Arif, Contours of Justice: Human Rights and Constitutionality of Capital Punishment in India, SPRF (Feb. 8, 2024)

INTRODUCTION

The death penalty, or capital punishment, has been one of the most debatable issues in criminal justice and human rights over centuries. It is possible to define capital punishment as a process through which a person is executed by the state as a result of committing a crime that is considered to constitute the highest degree of seriousness, e.g., murder, terrorism, or other gravest types of crimes. The simple question to come to mind is whether capital punishment is an effective remedy to crime or whether it is an insult to the simplest human right- life. There are advocates of the death penalty who believe that it serves as a worthwhile deterrent to the most heinous offences, but the fact that death is forever must be considered. It is a decision that cannot be undone. According to them, the state can fulfil its mandate to ensure law and order and protect innocent lives by permanently removing criminals from society. The critics claim that the death penalty is cruel, irreversible and in most cases discriminatory in practice, thereby weakening the principles of human dignity and equality under the law. They say that any error in the judicial system, biased proceedings or wrongful conviction of the accused may contribute to innocent people being killed, making it irreparable and unfair. Moreover, the opponents suggest that rather than reducing crime, the death penalty is a culture of violence, where the state has itself killed in its eagerness to administer justice. In the contemporary society where human rights are embraced and enforced worldwide, the majority of nations have already abolished the death penalty because it is perceived to be inconsistent with the ideals of rehabilitation and humanitarian care. The problem, then, transcends penal and legal justifications and reaches the moral, ethical and humanitarian levels. It raises the extremely profound question: would such a civilised community permit itself to accept a system that leaves the possibility of taking life as one of the forms of justice, or must they seek others that do not ignore the rights of men, but ensure the safety and security of accountability? This eternal controversy highlights the necessity to reconcile justice for the victims with the sanctity of human life and, therefore, capital punishment is one of the most controversial topics in the legal and ethical life of the current generation.²

LITERATURE REVIEW

In India, the death penalty is still one of the most disputable and ethically debatable topics of law, criminology, and decent human rights. The most significant issue, the question of whether

² Office of the United Nations High Commissioner for Human Rights (OHCHR), Death Penalty, (last visited Oct. 22, 2025).

the capital penalty is a crime deterrent or a crime against humanity, has been resolved in tremendous literature on the topic, juridical rulings, and international discussions. The concern of the reasonableness and suitability of the presence of the death penalty in a democratic and constitutional society that honours the rights of life and personal freedom has been discussed by academics, jurists, and human rights agitators.

Historically, the death penalty has been reserved in India for situations which are regarded as uncommon or unusual cases, as ascertained in the historic *Bachan Singh v. State of Punjab* case. *State of Punjab* (1980). The Supreme Court decided that the death penalty should be awarded in situations where the penalty of life imprisonment cannot be mitigated by any means. This doctrine has been, however, criticised as ambiguous and subjective. Cases that followed *v Machhi Singh*. *Shatrughan Chauhan v State of Punjab* (1983). The Union of India (2014), which emphasises procedural fairness and humane treatment, has also developed this principle further. Despite such precautions, the critics say that the rare of rare test still allows discretion in the hands of the judiciary and, as such, it will lead to inconsistency and arbitrariness in sentencing.

In criminology, the deterrence theory assumes that when the punishment is severe, potential offenders will be deterred from committing crime by keeping them out. However, empirical studies in India and the whole world have not been in a position to provide conclusive findings that underpin the line of reducing crime through the death penalty. A research study conducted by the Death Penalty Research Project of the National Law University, Delhi (2016) suggested that most of the death row prisoners were among the less fortunate in society and hence the system is not very effective in preventing crime, but rather it is aimed at the poor and needy in the society. Additionally, the long sentences and the psychological torture of being in death row are not only an ethical matter of serious concern but also a human rights issue.

Human rights activists also assert that the death penalty is against the right to life as provided in the Indian Constitution in Article 21, which can only be limited by a just, fair and reasonable process. Article 3 of the Universal Declaration of Human Rights and 6, Article 6 of the International Covenant on Civil and Political Rights are both concerned with the sanctity of life and promote the process of abolition by the states internationally. The majority of the European nations are democratic; therefore, they have already abolished capital punishment, deeming it cruel, inhuman and irreversible and even more so when there is a case of wrongful conviction.

The Indian disaster is also related to the feelings of people, not to mention politics. Even though there are sections of society that mandate extreme forms of punishment for heinous crimes like terrorism, rape, and murder, there is a growing global trend towards human rights and restorative justice, which raises questions about the morality of human beings being executed by the state. The need to resort to reformative and rehabilitative methods, rather than vindictive justice, is stressed in the current literature.

In conclusion, the literature on the death penalty in India has presented a new trend, which is that the death penalty is not a deterrent and is contrary to the constitutional and human rights of India. As India is trying to keep pace with international norms concerning human rights, the abolition or at least radical reformation of capital punishment appears to be not only urgent but inevitable to be able to preserve the postulations regarding fairness, equality, and dignity of the human person.

ORIGIN AND EARLY USE OF DEATH PENALTY

History of the death penalty and its initial use in India can be traced as far as the Vedic period (say 1500 BCE to 500 BCE). Manusmriti (Laws of Manu) is another Hindu epic that legalised the death penalty for great crimes such as murder, theft and treason. It was anchored on the principle of preserving dharma (cosmic order and law), and the king as the fount of justice. In ancient Indian kingdoms, death penalties were carried out in different ways, including beheading, burning or crushing by elephants, which were supposed to bring fear and deter crime. Death was looked upon very readily under the Mauryan Empire (c. 322-185 BCE) during the reigns of emperors like Chandragupta and Ashoka, but later Emperor Ashoka encouraged more humane rule by converting to Buddhism, which taught non-violence and sympathy. Despite the reforms of Ashoka, the death penalty was codified in Indian laws in the later dynasties.³

Capital punishment did not disappear with the introduction of Islamic rule in medieval India and continued, and rulers like the Delhi Sultans and the Mughals used it to deal with such crimes as rebellion, spying, and murder. Executions were cruel to serve as an example and came in various forms that were mostly public. In British colonialism, the Indian Penal Code of 1860 outlawed capital punishment, with the same not being further applied except in the case of murder and opposition against the state. The death penalty was also employed by the

³ Anusha Arif, Capital Punishment in India, iPleaders (May 27, 2019)

British to deal with everyday crimes and to curb any political dissidence, such as anti-colonial leaders like Bhagat Singh.⁴

This change was initially initiated by a Supreme Court decision in 1980 in *Bachan Singh v. State of Punjab*, which developed the doctrine of rarest of rare and limited the death penalty to the uncommon situations when there is no other option of punishment. Procedural justice, proportionality, and human rights have over the years become the priority of the courts.

CAPITAL PUNISHMENT AS A DETERRENT

Criminal laws were implemented to prevent serious offences, and the most notable among them are murder and terror attacks. The primary argument is that fear of losing one's life will deter individuals from committing evil acts. The argument is that capital punishment makes people understand that society abhors criminal behaviour of the worst sort and therefore serves to deter future criminal behaviour. In theory, if potential criminals know that they will face harsh punishments, they might be discouraged from committing a crime.

However, the usability of the death penalty as a deterrent is largely debatable. A few studies across the globe, such as those in India, have not been able to establish credible information that it deters crime more effectively than life imprisonment. The threat of punishment—being convicted and arrested is more frequently a superior deterrent to the harshness of the punishment. In nations where the criminal process takes a long time or is considered to be unjust, even the deterrent effect of the death penalty would be undermined.

The Supreme Court in India has ruled that the death penalty can only be utilised in the "rarest of rare" instances and not as a matter of example. Overall, though the concept of deterrence continues to dominate, its operational effect remains unclear and highly controversial.⁵

CAPITAL PUNISHMENT AS A VIOLATION OF HUMAN RIGHTS. HOW?

Capital punishment, or the death penalty, is in most cases considered a human rights abuse because it is in itself at variance with the right to life and the risk of irreversible errors. International human rights law and the constitutions of several countries, including India, have enshrined the right to life as a fundamental precept. Capital punishment, or the death penalty, has been the subject of emotive moral, legal, and social controversy for many centuries, with

⁴ History of Capital Punishment in India, LawBhoomi (Nov. 2023)

⁵ Mukesh Kumar Yadav, Death Penalty and Its Evolution in the Indian Legal System, TSCLD (Apr. 18, 2024)

widespread consensus that it is a serious violation of human rights. The right to life is the most basic of all the human rights, as it's entrenched in global law by such documents as the

Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The death penalty is against this right and the inalienable dignity of the human person, as it makes provision for the deliberate homicide of a human person by instruments of the state. Secondly, it is widely held that the death penalty is inhuman, cruel, and degrading because it exposes individuals to years of psychological agony on death row in suspense and ends with a deadly, irreversible act of execution. The irreversibility of the penalty has another urgent human rights issue: the risk of punishing the innocent due to judicial error, poor defence, or bias in the judicial system. There have been many cases across the globe that have disclosed wrongful convictions where people who had been condemned to death were eventually found innocent, marking the fallibility of human institutions and the devastating effects of such blunders. Capital punishment has also been universally criticised as discriminatorily executed, with disproportionately high numbers involving minorities, the indigent, and marginalised communities who lack resources to appoint qualified attorneys. This unequal application also contravenes the provisions of equality and fairness under the enshrined human rights law. International human rights organisations, such as the United Nations, have consistently advocated for the abolition of the death penalty and encouraged states to implement life imprisonment or other forms as more equitable measures of punishment. Although it is maintained that the death penalty acts as a deterrent to violent crime, studies have continued to be lacking in furnishing definitive evidence in favour of this argument, negating the basis for its continuance. Applying the death penalty, rather, creates a chain of violence, replacing revenge with rehabilitation and hindering the advancement of humanity towards a fairer, compassionate and equal society. Accordingly, capital punishment violates human rights on a direct basis, not merely in taking away people's most fundamental right to life but also in perpetuating cruelty, discrimination, and irremediable injustice. The universal trend towards its abolition in recent times is a testimony to an emerging perception that justice has to be proportionate to human dignity as well as the norms of humanity.⁶

Here is how capital punishment clashes with the violation of human rights and fundamental rights as well:

⁶ A. Vatsa, Death Penalty in India: An Examination of the ..., JSTOR, No. 27192972 (2019)

Violation of the Right to Life: The right to life, as it is guaranteed in Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), is the most fundamental and nonderogable right of any human being. Capital punishment, by virtue of permitting the state to actively kill an individual, violates this natural right and violates the doctrine of human dignity. Moreover, the irreversibility of the death penalty makes it more threatening since judicial mistakes or mistakes in conviction cannot be corrected once an execution has been completed. This not only humiliates justice, but also risks taking the tragic gamble of executing innocent lives. Furthermore, death row inmates typically endure years of psychological suffering, which is tantamount to cruel treatment and again violates human rights norms. The selective and arbitrary application of the death penalty, often on marginalised groups or people who cannot receive competent legal representation, extends the inequalities in society. Instead of granting justice, it perpetuates violence and denies even the possibility of reform or rehabilitation. Capital punishment is therefore fundamentally against the right to life and becomes increasingly incompatible with human rights now.

Cruel and Unusual Punishment: Cruel and unusual punishment is totally contradictory to the death penalty because the death sentence is a practice against human and fundamental rights. The ban on cruel and unusual punishment, which is expressed in most constitutions and international instruments on human rights, is to ban cruel punishment that inflicts unnecessary pain and is disproportionate to the offence and which undermines human dignity. Capital punishment, in its turn, violates all these points.

To begin with, this is inhuman in nature because once the death sentence is administered, it cannot be reversed, and once one is convicted, they may not have a second opportunity. Second, the way of execution, be it hanging, lethal injection, or electrocution, may entail hideous physical and mental pain, and it is, to the majority, degrading and inhuman. Third, prejudice and arbitrariness of the death penalty, based on race, social status or poverty, take a toll on equality before the law.

Regarding the human rights perspective, the death penalty is against Article 21 of the Indian Constitution and Article 3 of the Universal Declaration of Human Rights, which state the right to life. International treaties, like the International Covenant on Civil and Political Rights (ICCPR), discourage it and invite states to aim at abolition. Thus, the dispute is based on the fact that despite the legality of the death penalty in some countries, it is against the progressive

values of human rights, which oppose unusual punishment, inhumanity, and failure to conform to human dignity.

Lack of Deterrent Effect: Capital punishment is generally defended because it acts as a deterrent to horrific crime, but there is no conclusive proof that it does deter crime more than life imprisonment. Most murders and violent offences are spontaneous, done in states of fury, passion, or shock, where thought of punishment does not enter the mind of the culprit. This absence of deterrent impact renders capital punishment an ineffective and disproportionate reaction to crime. According to the human rights perspective, to inflict an irreversible penalty such as death without ascertained social utility amounts to cruel and unusual punishment. It is contrary to the right to life as enshrined in Article 21 of the Indian Constitution and Article 3 of the Universal Declaration of Human Rights.

In addition, international human rights law calls on states to move toward abolition because the death penalty cannot pass the test of necessity in contemporary civilised times. If punishment is not performing its stated function but causing irreparable damage, it can no longer be deemed just but becomes an offence against human dignity. Thus, the lack of a deterrent effect conflicts with the legitimacy of the death penalty and renders it incompatible with fundamental human rights.⁷

Human Dignity: Capital punishment violates the postulate of human dignity that is the cornerstone of both human and basic rights. The death penalty allows human life to be made a disposable commodity and reduces an individual's life to the seriousness of the crime committed, rather than to the inherent worth of the individual as a human. The execution, irrespective of the procedure followed, subjects the criminals to terrible physical agony and mental torment as they are always scared and nervous about their demise. The intentional infliction of pain deprives individuals of their dignity and hence makes the punishment cruel and degrading. Constitutionally,

Article 21 of the Indian Constitution ensures the right to liberty and life, which has been understood by the Supreme Court to encompass the right to live with dignity. Internationally, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights articulate the inherent dignity of all human beings and are offended by the death penalty. Moreover, the absolute irreversibility of the death penalty does not leave any

⁷ Death Penalty Info Ctr., Deterrence, Death Penalty Info Ctr. (last visited Oct. 22, 2025).

room for reform or change, depriving people of the opportunity to reform and become useful members of society. In this way, by disregarding the human dignity and inherent worth of human existence, capital punishment contradicts human and fundamental rights.⁸

SHIFT TOWARDS RESTORATIVE JUSTICE

Capital punishment has been hotly debated as either a preventive measure against crime or a denial of fundamental human rights. It has been argued that the death penalty is a very effective deterrent to crime and fair to the victims since they eliminate the most dangerous offenders in society permanently. Studies have, however, not produced much consistent evidence that the death penalty prevents crime better than life imprisonment. The critics, however, believe that the death penalty weakens the right to life and is likely to be an inhuman practice; therefore, it is not in line with modern human rights norms. Moreover, the irreversibility of execution does not leave room to rectify erroneous convictions, and it is also disproportionate against vulnerable populations. To respond to these anxieties, societies are increasingly rethinking what it even is to be just, and are tending towards restorative justice. Restorative justice is also not about punishing the criminal as opposed to the retributive focus of the death penalty: unlike the retributive focus, restorative justice is interested in restoring the damage of crime. It includes the victims, offenders and members of the community in a systematic process that entails accountability, avenues and reconciliation. The victims will be encouraged to speak out about their plight, the perpetrators will be encouraged to take responsibility and recompense the harm they have caused, and the communities will be brought together to achieve healing and avert recidivism. The model upholds human dignity and aims at developing sustainable solutions to crime with a forward-thinking model that is centred on healing and not on retribution. The abandonment of capital punishment in favour of restorative justice is an indicator of an even greater change in social values, not of retribution and fear, but of empathy, inclusion and transformation. It is a sign that justice is not in the death penalty, but in the possibility of progress and change for all the victims of crime.⁹

GLOBAL AND LEGAL PERSPECTIVES

Capital punishment is one of the most contentious judicial practices in the world, generally discussed as to whether it is an effective deterrent or a violation of human rights. Globally,

⁸ Federal Judicial Center, *Judiciaries Worldwide: Death Penalty*, FJC (last visited Oct. 22, 2025).

⁹ Death Penalty Info Ctr., *Deterrence*, Death Penalty Info Ctr (last visited Oct. 22, 2025).

legally, the application of the death penalty is being increasingly limited or abolished. More than two-thirds of the states have abolished it completely or temporarily suspended its application in practice, as international opinion becomes more and more resolute in the belief that it is not compatible with contemporary human rights norms. The United Nations has urged, in resolutions and the International Covenant on Civil and Political Rights (ICCPR), a global moratorium on the death penalty and reiterated the right to life as a fundamental human right. Interestingly, subregional entities like the European Union squarely oppose the death penalty in any form and abolition of the same is a prerequisite for membership. On the legal plane, the death penalty calls into question basic provisions regarding due process, racial and economic discrimination, and the possibility of killing innocent people. These concerns contravene international human rights law enshrined in principles, which include the right to a fair trial and protection against torture, inhuman treatment, or degrading punishment. Even with such doubts, there are still some states, including the United States, China, Iran, and Saudi Arabia, which still promote retaining capital punishment as a crime deterrent. Empirical data in different jurisdictions, however, hitherto has not been able to demonstrate conclusively that the death penalty is a better deterrent than life imprisonment. As law develops and global pressures accelerate, the abolitionist movement is obviously on the march. The world is increasingly coming to realise that justice systems have to respect the dignity of the human being and be centred on rehabilitation and justice and not irreversible punishment. With this, consistent with both international and legal perspectives, capital punishment is being considered less as a deterrent and more as a breach of principles of internationally accepted human rights.¹⁰

CAPITAL PUNISHMENT IN INDIA AND OTHER COUNTRIES

Capital punishment remains a legal punishment in India but only for the "rarest of rare" cases, as ruled by the Supreme Court in the case of *Bachan Singh v. State of Punjab* (1980). The death penalty is reserved only for the heinous offences of terrorism, ghastly murders, and rapes accompanied by murder in Indian courts. Though the death penalty is lawful in India, it remains a phenomenon of rarity; the last execution was carried out in 2020, when four men were put to death for the Nirbhaya gang rape case of 2012. India's approach towards the death penalty is one of balancing the public demand for justice for the most heinous crimes and increased empathy towards human rights. Most other nations have been firmer against the death penalty. More than 140 nations have abolished it in law or stopped practising it. For example, all

¹⁰ World Population Review, Countries with Death Penalty, (last visited Oct. 22, 2025).

member states of the European Union have done away with the death penalty, and it is a precondition for membership in the EU. Canada, Australia, South

Africa, and most of the countries of Latin America have also done away with it. In contrast, nations like China, Iran, Saudi Arabia, and the United States continue to practice it, albeit with varying frequency and legal protection. China has the most executions reported, although figures are classified as a state secret. The death penalty continues in certain states in the United States, but with a considerable decrease in the number of executions and growing opposition from the public. Internationally, the move is emphatically towards abolition, prompted by fear of human rights abuses, miscarriage of justice, and failure to deter. International organisations such as the United Nations have been advocating a global moratorium against capital punishment for decades. Although India still retains the death penalty in its statute book, it is increasingly being pushed both domestically and internationally to abandon it in favour of more humane, rehabilitation-focused systems of justice.¹¹

CONCLUSION

The death penalty has become a controversial issue in India, where justice and the upholding of human rights have both become a matter of conflict. Though it continues to be a legally sanctioned and executed deterrent, especially for the rarest of rare criminals, there is not much hard evidence to ascertain that capital punishment is more effective in deterring crime than life imprisonment. The Indian legal system has attempted to maintain due process and curtail the arbitrary use, but fear of judicial inconsistency, the possibility of wrongful conviction and its inherently disproportionate impact on the poor and marginalised classes are feared. The trend on abolition of the death penalty at the international level is towards abolition, owing to the growing belief in the notion that the death penalty contradicts the basic right to life and is an act of inhuman treatment. India is at a crossroads- it is challenged by domestic public opinion that gravitates towards strict punishment of serious offences and the international pressure to shift towards conformity with human rights standards. An eventual shift towards such options as life imprisonment or restorative justice would be a show of kinder and more progressive justice, and would be in line with international human rights standards.¹²

¹¹ Death Penalty Info Ctr., Executions Around the World, (last visited Oct. 22, 2025).

¹² Anusha Arif, Capital Punishment in India, iPleaders (May 27, 2019), Mukesh Kumar Yadav, Death Penalty and Its Evolution in the Indian Legal System, TSCLD (Apr. 18, 2024),

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