

Analysing Capital Punishment in India: A Comparative study of Capital punishment and Life Imprisonment

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Abstract

This review paper explores the complex and contentious issue of life imprisonment versus the death sentence, examining their respective merits and drawbacks. Through a comprehensive analysis of case studies and judicial decisions, this paper evaluates the ethical, legal, and practical implications of both forms of punishment. Life imprisonment and capital punishment are scrutinized for their effectiveness in deterring crime, their economic impact, and their alignment with humanitarian values. The review highlights the nuanced positions within the judiciary and broader society, acknowledging the varying degrees of acceptance and criticism each punishment receives. By presenting a balanced discussion of the pros and cons associated with life imprisonment and the death sentence, this paper aims to provide a thorough understanding of the current debates and contribute to the ongoing discourse on appropriate punitive measures in the justice system.

Keywords: Capital Punishment, Life Imprisonment, Legal system

Introduction

The purpose of punishment is to instill remorse, ensure justice for the victim, and serve as a deterrent to society. When a punishment achieves one or more of these objectives, it becomes necessary to impose various types of penalties, including the death penalty.

Capital punishment, commonly known as the death penalty, is the harshest form of punishment. According to national laws, it is reserved for the most heinous, atrocious, and abhorrent crimes against humanity, such as murder, homicide, and rape. "Capital punishment" refers to the legally sanctioned execution of a criminal convicted of a serious crime and sentenced to death by a judge. It is crucial to distinguish the death penalty from extrajudicial killings, which lack legal due process. Despite variations in the definition and scope of such offenses by country, state, and era (Gupta, 1986), capital punishment has always meant the death sentence. The primary objectives of the death penalty are deterrence—sending a message that such actions will not be tolerated—and incapacitation—ensuring that the individual cannot commit such a severe offense again. While both goals are important, deterrence and incapacitation are paramount.

Today, executions can be carried out in various ways, including hanging, electrocution, lethal injection, or firing squad. The debate over the permissibility of the death penalty within the Indian legal system continues. As the human rights movement in India gains momentum, the legitimacy of using the death penalty as an acceptable form of punishment is increasingly questioned.

Historical Background

The question of whether to impose the ultimate punishment of death for particularly heinous crimes has become a source of passionate debate. Capital crimes, including premeditated murder, multiple murders, and rape-murder, are punishable by the death penalty. Historically, various cultures have employed capital punishment as a means of social control and retribution. Many ancient societies used the death sentence for extreme offenses, with the belief that certain crimes were so severe that they warranted such a punishment being widely accepted.

The oldest documented death sentence regulations can be traced back to the Code of Hammurabi, a legislative text from ancient Babylon (modern-day Iraq). Drafted in the 1700s B.C., the code prescribed capital punishment for twenty-five offenses, including adultery and aiding enslaved people in their attempts to escape, but notably, murder was not among them. Ancient Egyptians, Assyrians, and Greeks also executed citizens for a wide range of offenses. Roman and Mosaic laws endorsed the concept of vengeance, encapsulated in the norms of "an eye for an eye" and "a tooth for a tooth." Notably, historical figures such as Socrates and Jesus were sentenced to death.

Approximately one thousand years into the Common Era, hanging became the preferred method of execution in Britain. However, when William the Conqueror came to power a century later, hanging was outlawed except during wartime. Over time, the United Kingdom began to phase out the death penalty. This gradual abolition highlights the need to rethink the death penalty. Between 1823 and 1837, the death penalty was abolished for more than one hundred of the 222 offenses for which it had previously been imposed (Melusky, Pesto, et al., 2011).

Currently, the most common methods of executing a death sentence around the world include electrocution, gas chamber, shooting, hanging, guillotine, and lethal injection (Terance & Hong, 2005). Historically, the death penalty served two primary purposes: to inflict physical and mental anguish on the offender and to act as a public spectacle, thereby conveying a moral message about the severity of sin and crime (Banner, 2002). As it results in the death of the accused, the death penalty is the ultimate form of corporal punishment. Execution methods can be categorized based on whether death is instantaneous or gradual. Instant or merciful executions typically include beheadings, hangings, and strangulations (Canton, 1996), while modern forms of instant death include firing squads, gas chambers, and lethal injections.

Nations that do not enforce the death penalty often report lower homicide rates compared to those that do. The perception that the death penalty is barbaric and demeaning is gaining traction globally, as it is argued to glorify violence without enhancing public safety or deterring violent crimes. The death penalty has been abolished in many of the world's major religions, civilizations, and regions. According to UN data, over 150 nations have either completely ceased its use or legally prohibited it (Hood & Hoyle, 2009).

Legislations and Statutory Provisions Related to Death Penalty in India

There are approximately 200 pieces of legislation in India that specify penalties for criminal behavior. Most of the country's criminal laws are codified in the Indian Penal Code of 1860. The death penalty is applicable under 59 different provisions across 18 central laws. Thirteen of these provisions are part of the Indian Penal Code, 1860 (IPC), specifically sections 120B, 121, 132, 194, 195A, 302, 303, 305, 307, 364A, 376A, 376E, and 396. Beyond the IPC, there are 16 additional core laws that include crimes punishable by the death penalty. Due to the challenges in accessing state-specific laws, providing precise

data on the number of states with death penalty provisions is difficult (The Death Penalty India Report, 2016).

The approach of the Judiciary and Law Commission of India toward Capital Punishment

The Law Commission of India has twice undertaken comprehensive reviews of the death penalty. In its 35th Report, the Commission recommended retaining the death penalty in India (Capital Punishment Report, 1967). The Supreme Court of India upheld the legitimacy of the death sentence but limited its use to the "rarest of rare" cases in *Bachan Singh v. Union of India*. However, judicial inconsistency and arbitrariness in applying the death penalty remain significant issues. Three decades of applying the "rarest of rare" doctrine have been plagued by concerns about inconsistent and arbitrary judicial decisions. These concerns have been thoroughly examined and documented, with the Supreme Court acknowledging a series of cases that have misinterpreted and incorrectly applied the "rarest of rare" standard, including *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009), *Sangeet & Anr. v. State of Haryana* (2013), and *Sankar Krishnarao Khade v. State of Maharashtra* (2013).

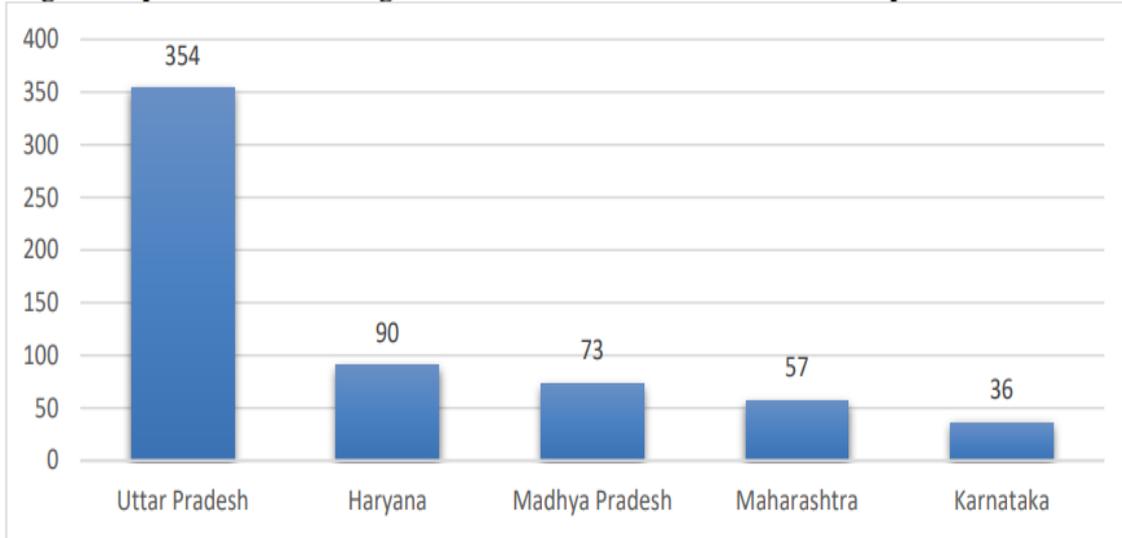
The Supreme Court has also heard and decided several challenges to the death penalty. It ruled that the mandatory death penalty is unconstitutional, as enforcement under any circumstances violates the law (*Mithu Singh v. State of Punjab*, 1983). Additionally, it upheld that hanging as a form of capital punishment is consistent with India's constitution (*Deena v. Union of India*, 1983).

Since the Law Commission's 35th Report, India's social, economic, and cultural landscape has significantly evolved, yet concerns about arbitrary decision-making in death penalty cases have persisted. Consequently, in *Santosh Kumar Satish Bhushan Bariyar v. Maharashtra* (2009) and *Shankar Kisanrao Khade v. Maharashtra* (2013), the Supreme Court referred the matter back to the Law Commission of India. On August 31, 2015, the Law Commission, chaired by Justice A.P. Shah, submitted its 262nd Report on the death penalty in India (Death Penalty India Report, 2016). The Commission recommended the gradual elimination of capital punishment, initially suggesting its abolition for all crimes except terrorism. The Report cited several reasons for abolishing the death penalty, including the fact that 140 other nations have already done so, the arbitrary and erroneous application of the death sentence, and the absence of any proven deterrent effect on offenders (Ashok, 2015).

Execution of Capital Punishment after Independence of India

According to data from Project 39A's "Death Penalty India Report" published in 2016 by the National Law University of Delhi, 720 prisoners have been executed in India since 1947. Uttar Pradesh accounts for nearly half of these executions with 354, followed by Haryana with 90, Madhya Pradesh with 73, Maharashtra with 36, Karnataka with 27, Andhra Pradesh with 24, Delhi with 24, and Punjab with 10. (PTI, NDTV, 2018) According to the Report, the actual number could be much higher, as the government maintains no proper records on executions (PTI, The Economic Times, 2022).

Fig. 1: Top 5 States with Highest Number of Execution after Independence of India



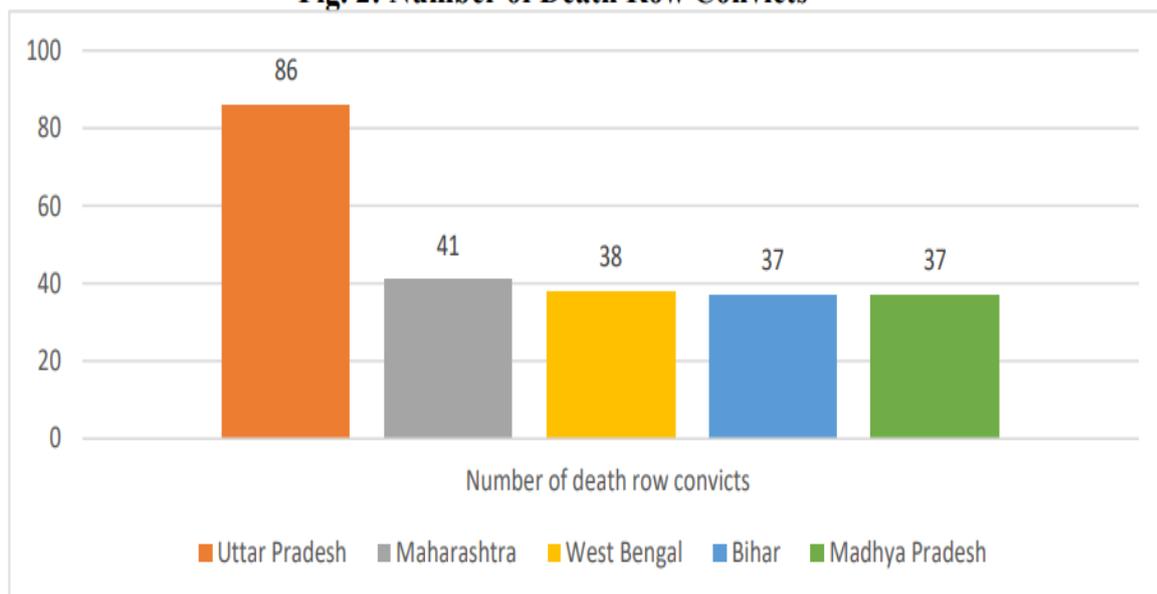
Source: NCRB Report-2021

Impact of Execution on the Crime Rate of India

The National Law University in Delhi recently published the 6th edition of the Death Penalty in India: Annual Statistics Report, 2021, under its Project 39A. This report offers an annual update on the status of the death penalty in India, including relevant international and legislative developments. According to the report, the number of prisoners on death row in India increased from 404 in 2020 to 488 by December 31, 2021, marking a nearly 21% rise from the previous year (Dhawan, 2022). This figure represents the highest number of death row inmates since the National Crime Records Bureau (NCRB) started keeping records in 2004, when 563 inmates were reported (Ahmed et al., 2020).

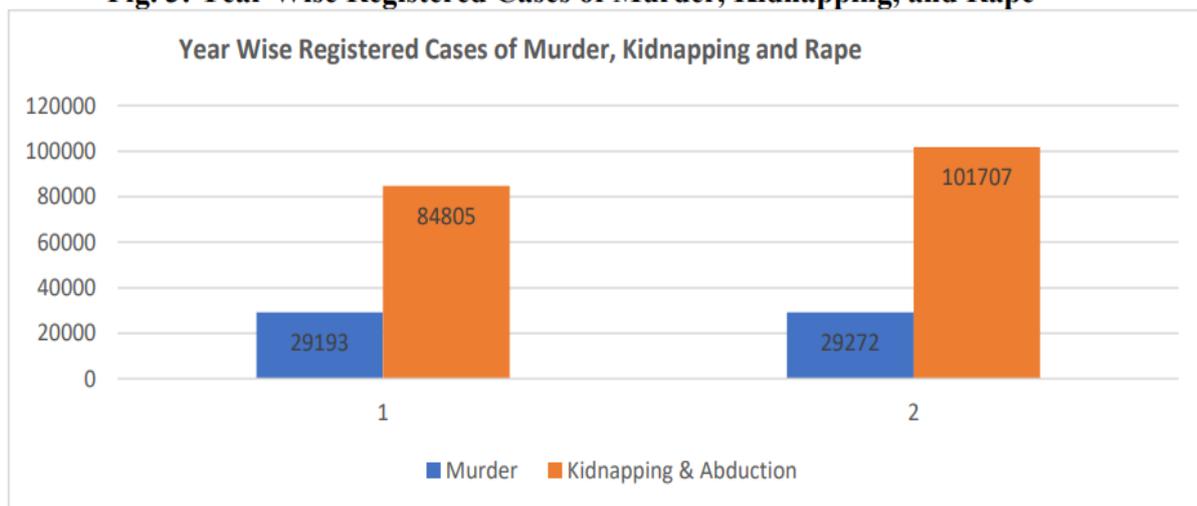
As of December 31, 2021, the states with the most death row inmates were Uttar Pradesh (86), Maharashtra (41), West Bengal (38), and Madhya Pradesh (37). West Bengal had the highest number of inmates facing execution, with 38 individuals on death row.

Fig. 2: Number of Death Row Convicts



Although no death row prisoners have been executed since the four convicts in the Nirbhaya gang rape and murder case were executed in 2020, NCRB data reveals that 29,272 murder cases were registered in India in 2021. This represents a slight increase of 0.3% from 29,193 cases in 2020. In 2019, the number of murder cases was 28,915. Additionally, 101,707 cases of kidnapping and abduction were registered in 2021, marking a significant 19.9% increase from 84,805 cases in 2020 (NCRB report, 2021).

Fig. 3: Year Wise Registered Cases of Murder, Kidnapping, and Rape



Source: NCRB Report-2021

Objective Behind Capital Punishment

The provisions of any law are designed to achieve specific objectives. The drafters of the Indian Penal Code of 1860 aimed to use deterrence as the primary goal of various punishments, emphasizing the severity of these provisions. Capital punishment was extensively prescribed with this objective in mind. Punishments must be severe enough to deter crime without being excessively brutal, and they should be humane yet not so lenient as to be ineffective (Report of the Committee on Reforms of Criminal Justice System, 2003). Historically, the death penalty has served as a powerful deterrent. While it may be driven by a desire for revenge, seeking restitution or satisfaction for wrongs done, the greatest deterrent effect may come from the fear of being sentenced to death (Krishna, ed., 2007).

However, proponents of various theories attempt to explain the functions of different forms of punishment. These include: Theories of Retribution, which focus on punishment as a response to wrongdoing; Theories of Deterrence, which aim to discourage criminal behavior through fear of punishment; Theories of Preventive Measures, which seek to prevent future crimes by incapacitating offenders; Theories of Expiation, which involve offenders atoning for their crimes; and Theories of Reformatory Measures, which emphasize rehabilitating offenders to reintegrate them into society.

Arguments for Retention of the Capital Punishment

The judiciary has deemed it constitutional, serving to protect the life and liberty of individuals in society. It is considered more economical and less cruel than life imprisonment, which leaves individuals to die indefinitely without hope of release. It helps prevent prison overcrowding and provides significant value in satisfying victims of crime. Social contract theories have endorsed the state's right to penalize criminals in the interest of justice, viewing it as a necessary and effective tool. Offenders who are incorrigible and dangerous, acting heinously and disregarding human values, should be removed from society. It serves

both a deterrent and retributive function, aligning with the primary goals of justice administration. It acts as a substitute for private vengeance, making the sentence essential for societal protection. Good laws and proper implementation can prevent the misuse and abuse of the death penalty, which functions as a form of societal self-defense against criminals.

Arguments against the retention of Capital Punishment

It is inhuman. How is it justified to take a life if one cannot give life? If injustice happens to an innocent, it can't be corrected. It serves no economic gains and is immoral too. It leaves no room for the reformation of the guilty, neither he gets the opportunity thereof. Capital Punishment is neither deterrent nor has a retributive value, as witnessed by history. It is uncivilized, indecent, barbaric, cruel, and vengeful and is a stigma in society.

Literature Review

Sana Humd (2022). This article addresses the penological perspective on capital punishment in India. It critically examines the conflicting views of honorable courts, policymakers, commentators, human rights activists, and the Law Commission of India on whether the death penalty should be abolished, retained, or replaced with alternatives practiced in other countries. In doing so, it analyzes the penal provisions in various laws supporting capital punishment in India, including a critical examination of the gaps in its enforcement and implementation. The article references contradictory landmark judgments by India's honorable courts and reviews the suggestions made by the Law Commission of India in its 262nd Report to see if legislators have considered them for future adoption. Additionally, it discusses the theories supporting capital punishment and the systems of capital punishment in other countries.[1]

Himanshu Gupta (2018). The discussion regarding whether the death sentence should be permitted in the modern world is a secondary aspect within the Indian Criminal Justice system. The primary and most pertinent question in the Indian context is whether the death sentence can realistically be carried out in India. Unfortunately, it's quite challenging, at least procedurally, if not technically, to execute the death sentence in India. The concept of the death sentence has been a topic of debate worldwide for a considerable period. The prevailing public opinion leans towards abolishing the death penalty as it is seen to violate human rights on a broad scale. Contemporary legal scholars argue that if killing is inherently wrong, no legal or social sanction can make it right. If it is morally wrong for an individual to take another's life, the same principle applies to the state. There is ongoing debate about the effectiveness of the death penalty as a deterrent, with many arguing that it has not shown any tangible effect in reducing the number of murders, rendering its imposition entirely futile. In India, accused individuals, under the protections of the Indian Criminal Justice system, have numerous avenues to delay their execution after being found guilty by the apex court. These avenues include filing a Review Petition, a Curative Petition, and a Mercy Petition concurrently to the Governor and the President. Furthermore, delays in disposing of Mercy petitions provide grounds for commuting the sentence. This article delves into these issues in detail.[2]

Balwant Singh (1994). This paper examines the nature and implementation of "imprisonment for life" as a form of punishment under the Indian Penal Code and similar laws, focusing specifically on whether Parliament has enacted a punishment in the IPC that is misconceived and unenforceable. The debate surrounding the nature, mode of execution, and consequently the practicality or enforceability of life imprisonment has been extensive, involving high-level discussions within the Central Law Commission, state legislatures, Parliament, and higher courts, including the Supreme Court.[3]

Manwendra Tiwari (2014). In the case of V. Sriharan v. Union of India, the Supreme Court of India, with Chief Justice Sathasivam delivering the judgment, commuted the death sentences of three convicts who were sentenced to death for their involvement in the conspiracy to assassinate former Prime Minister Rajiv Gandhi. The commutation was based on the fact that there was an unexplained delay of 11 years in the rejection of their mercy petitions by the President of India. The Court dismissed the Union of India's argument that petitioners citing excessive delay as grounds for commutation must provide evidence that such prolonged incarceration had a dehumanizing effect. [4]

Himanshu kalita (2022). In many Western jurisdictions and international criminal courts and tribunals, life imprisonment is the most severe penalty that can currently be imposed. The number of convicts serving life sentences is rising globally, including in India. According to recent statistics released by the National Crime Records Bureau of India in 2019, over 53% of India's convicted prisoners are sentenced to life imprisonment. This large number contributes to prison overcrowding and a shortage of space. Additionally, there are widespread reports of human rights violations among prisoners. This paper attempts to shed light on the history of life imprisonment in India, its jurisprudence, and the associated issues and challenges. Prisoners serving life sentences may have more of their rights curtailed compared to other inmates. From a human rights perspective, the analysis includes the rights of convicted prisoners and the human rights implications of imprisonment practices. The paper examines the feasibility of life imprisonment in alignment with human rights principles. Recent developments in the law concerning life imprisonment, including significant judgments and cases, are discussed. Furthermore, international conventions and treaties related to life imprisonment and prisoners' rights are analyzed.[5]

Rahul Aggarwal (2022). Capital punishment, also known as the death penalty, involves executing an offender sentenced to death following a court conviction for a criminal offense. It represents the most severe penalty that can be given to an accused individual. Typically, it is reserved for extremely serious cases such as murder, rape, and treason. Proponents view the death penalty as the most appropriate punishment and an effective deterrent for the gravest crimes. However, opponents argue that it is inhumane. Consequently, the morality of the death penalty is highly debated, with many criminologists and social activists worldwide advocating for its abolition.[6]

Vibhute K. et al. (2017). The death penalty is retained in the Indian legal system. The Indian Penal Code of 1860 and several other acts include provisions for the death penalty. However, life imprisonment is also offered as an alternative wherever the death penalty is prescribed. The Code of Criminal Procedure, 1973 mandates that the death penalty be imposed only for "special reasons" that must be recorded in the judgment. Therefore, life imprisonment is the standard, while the death sentence is the exception. Despite this, the absence of statutory or accepted judicial guidelines has made death sentencing in India "judge-centric" rather than "principle-centric." This paper examines the death sentencing jurisprudence in India and advocates for principle-centric sentencing. It emphasizes the need for judicial objectivity and explores potential solutions to achieve this.[7]

Conclusion

Capital punishment is seen as barbaric and inhumane when administered by the judiciary, often considered a stain on a society built on ethical and humanitarian values. Statistics indicate that the death penalty has failed to deter crime, as the crime rate in India continues to rise. With international legal developments opposing the death penalty, India's judiciary has emphasized alternative punishments. Globally, there has been a trend to restrict crimes punishable by death, with many nations abolishing capital punishment or

limiting its use to the most serious offenses. The move to eliminate the death penalty is viewed more as a moral issue than a legal one. Recent NCRB findings and reports on the death penalty have reignited the debate over whether India should abolish capital punishment for severe crimes.

Since India's independence in 1947, the use of the death penalty has declined. Between January 1, 2000, and June 30, 2015, the Supreme Court of India issued 60 death sentences but later admitted errors in 15 to 25% of those cases, leading judges to increasingly reduce these sentences. The Supreme Court has often acknowledged issuing this severe punishment at its discretion. The death penalty is considered immoral on various grounds, including morality and decency. Consequently, capital punishment should be abolished as it fails to achieve the goals of justice and conflicts with respect for human dignity.

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