

DEATH PENALTY

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Abstract

In documented human history, the death penalty has been frequently used by most civilizations. Despite this, its practice has sparked a lot of debate. The death penalty has been abolished in law or practice in a growing number of industrialized and developing nations. However, certain countries, including the United States, continue to rigorously implement the death sentence. Given that the United States is a developed country and a member of the Western world, it begs the issue of why the death penalty is still used in some areas of the country when it is no longer used in other parts of the globe. The continuance of the death sentence in the United States may be ascribed to America's propensity to "degradation," racism, and vigilante justice, according to this thesis, which is one of the two explanations the thesis seeks to provide.

The fact that the United States has complete control over legal executions and is the only Western country to utilize the death penalty raises the additional question of whether the United States should abolish the death penalty. According to research, the death sentence is flawed, discriminatory, and ineffective in deterring crime. However, in the twenty-first century, the most common reasons opposing the death sentence are not the ones listed above. Instead, it is advocated that the death penalty be abolished since it violates fundamental human rights in an unjustifiable manner.

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Introduction

Death penalty, also acknowledged as the capital punishment, is endorsed by the state for taking of life of an offender as penalizing for a criminal offence. The judgment directing that someone is punished with the death penalty is called a death sentence, and the act of carrying out such a sentence is known as an execution.¹

Capital punishment is legal in India, acceptable for some offences under the substantive penal legislation, the Indian Penal Code, 1860 as well as other special laws. The most current executions in India took place in March 2020, where the four 2012 Delhi gang rape and murder culprits were hung in Tihar Jail in Delhi.²

Death Penalty in India

In India, the death sentence is carried out via hanging or gunshot. In the Indian court system, hanging is the mode of execution, according to the Criminal Procedure Code.³ In the armed

¹https://en.wikipedia.org/wiki/Capital_punishment#:~:text=Capital%20punishment%2C%20also%20known%20as,is%20known%20as%20an%20execution. (Accessed on 13-07-2021)

² <https://mumbaimirror.indiatimes.com/news/india/nirbhaya-rape-case-hanging-everything-you-need-to-know/articleshow/74722958.cms> (accessed on 14-07-2021)

³ Section 371

forces, however, both hanging and gunshot are listed as official methods of death in the Army Act, Navy Act and Air Force Act.

According to a research conducted by Delhi's National Law University, 755 individuals have been hung in India since independence.⁴

Prior to Memon's⁵ execution in 2015, Muhammad Afzal,⁶ who was the accused of planning the Parliament assault in 2001, was hung on February 8, 2013.

Mohammad Ajmal Amir Qasab⁷ was executed on November 21, 2012, for his role in the 2008 Mumbai terror attack, while in the case of Dhananjay Chatterjee v. State of West Bengal⁸ was hanged in 2004 for the murder and rape of a 14-year-old girl.

Before this, one of the most well-known death sentences was that of Gowri Shankar, better known as auto Shankar, executed for the criminal charge of murder, rape & robbery in 1995 in the case of Gauri Shankar and ors. v. State of Tamilnadu.⁹

The data about India's death penalty differs from one source to the next. Between 1954 and 1963, at least 1,400 convicts were executed.¹⁰

The disproportion in the data is frequently due to be deficient in authorized statistics and a insufficiency of openly available data on death sentences approved by the judiciary in India.

Crime Punishable By Death in India

Indian Penal Code, 1860	Offence
120B,	Being a party to a criminal conspiracy to commit a capital offence
121,	Waging, or attempting to wage war, or abetting waging of war, against the Government of India
132,	Abetting a mutiny in the armed forces (if a mutiny occurs as a result), engaging in mutiny
194,	Giving or fabricating false evidence with intent to procure a conviction of a capital offence
302, 303	Punishment for Murder & punishment for murder by life - convict

⁴ <https://www.project39a.com/dpir> (assessed on 14-07-2021)

⁵ Yakub Abdul Razak Memon v. State Of Maharashtra, on 21 March, 2013

⁶ State v. Mohd. Afzal and Ors. 2003 (3) JCC 1669

⁷ <https://www.ndtv.com/india-news/ajmal-kasab-hanged-in-secrecy-buried-at-punes-yerwada-jail-505169>

(assessed on 14-07-2021)

⁸ 1994 SCC (2) 220

⁹ 1994 CriLJ 3071

¹⁰ According to a 1967 law commission study

305,	Abetting the suicide of a child or insane person
364A,	Kidnapping, in the course of which the victim was held for ransom or other coercive purposes
376A, Criminal law amendment act, 2013	Rape if the person responsible for inflicting injuries whose outcome is the victim's death or incapacitation in a persistent vegetative state, or is a habitual offender
396	Dacoity with murder

The offences that result in death are only punishable by death if they fulfil the "rarest of rare"¹¹ principle recognized in the Bachan Singh case.

Following the Delhi gang rape and murder in 2012,¹² the Supreme Court modified the legislation in April 2013 to make it harsher by introducing new categories of crimes including violence against women and underage girls.

This is the first time such law has come to India, and the Parliament has passed The Criminal Law (Amendment) Act, 2013 also known as Nirbhaya Act.

Is Death Penalty Constitutional?

Before the assessment of Indian Supreme Court, the elimination of the death sentence in India was examined¹³ in order to answer to a resolution moved by Raghunath Singh, Member of Lok Sabha.¹⁴ The Law Commission of India stressed out on the interpretation that the situation in India demands the divergent point to the scheme of 'abolition of death penalty' and concluded that death penalty must be there. It said that the diversity in upbringing, the diversity of the population, the inconsistency in the levels of education and morality and the vital need for maintaining law and order were fundamental factors and issues that impede India from taking a favourable position to abolish the capital punishment. However, the jurisprudence regarding the capital sentence tremendously changed throughout various landmark judgments pronounced by the Supreme Court of India.

According to the case of Mithu v. State of Punjab¹⁵, the death penalty is not an obligatory punishment for the offences mentioned above. The death sentence is likewise unconstitutional, according to the Supreme Court.

If a judgment of death sentence is passed against a pregnant woman, the high court is required to postpone the implementation of such sentence and may, if it seems suitable, lessen the sentence to life imprisonment.¹⁶

The Supreme Court has ruled that the excessive delay in carrying out the death sentence for the people suffering from mental illness or insanity is a mitigating factor in a plea for commutation.¹⁷

¹¹ (SC) AIR 1980 SC 898

¹² Nirbhaya Rape Case

¹³ The 35th Law Commission report

¹⁴ <https://lawcommissionofindia.nic.in/1-50/Report35Vol2.pdf> (assessed on 14-07-2021)

¹⁵ AIR 1983 SC 473

¹⁶ Section 416, The Code of Criminal Procedure, 1973

International Scenario

Different countries in the world are classified as abolitionist and retentionist on a global scale depending on their stance on death penalty.

At the end of 2014, seven nations have abolished capital punishment for minor offences. Only 98 countries declared themselves abolitionists for all crimes, with 35 declaring themselves abolitionists in practice.¹⁸

At the same time, 58 countries are considered to be retentionists, meaning they still retain the death sentence on their books and have employed it recently. India, China, Indonesia, and the United States are among the world's most populated countries on this list.

Even after the civil war, neighbouring nations such as Nepal officially abolished the death sentence in 1990 and did not reinstate it.

Despite a protracted civil conflict, Sri Lanka has maintained a moratorium on the death sentence, according to the commission report.

No Clear Data

The difficulty in collecting the actual number of convicts serving death sentences in India has been emphasized by Project 39A of the National Law University, Delhi, which produces death penalty reports.

Since independence, India has executed about 755 people, according to Project 39A. According to the study, Uttar Pradesh had the greatest number of executions, with 366. In addition, the state's Bareilly District Jail holds the distinction of having carried out 130 executions, the most of any jail in the country, with the most recent execution taking place on September 24, 1988.

The Tihar Central Prisons in Delhi have carried out 25 executions, the most recent of which being that of Afzal Guru on February 9, 2013.

“Though we at Project 39A have done our best to compile data from multiple sources, the terrible reality is that prisons and other government offices do not have reliable records of the persons they have executed,” Project 39A noted.

“As a result, we continue to struggle to get reliable statistics on the execution of the death sentence in India, and we are hampered by a complete lack of coordination between various government sources,” it said.

Mercy Petition Process

Firstly the death penalty granted against a convicted person must be confirmed by a high court¹⁹ before such convict, may file a mercy petition.

Mercy petition can be filed by a convicted person granting death sentence, to the president for asking to reduce the death sentence to the life imprisonment. Bodily health, age, the rule being exceptionally ruthless, or the offender being the family's chief job holder is all argument for a mercy appeal.²⁰

¹⁷ Shatrughan Chauhan v. Union of India on 21 January, 2014

¹⁸ Amnesty International report, 2014

¹⁹ Section 367, CrPC

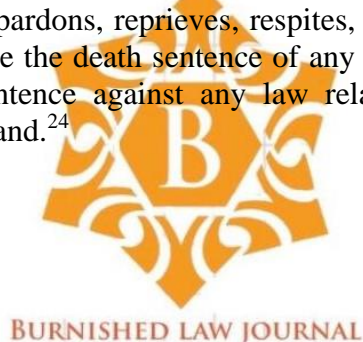
²⁰ Jagmohan Singh v. The State Of U. P. 1973 AIR 947

The President has the power to grant pardon to a person who has been tried and convicted of an offence whose punishment is a death sentence. He can also grant pardons, reprieves, respites, or remissions of punishment, and also suspend, remit, or commute the sentence of a convicted person.²¹

Before coming to the President, the mercy petition is evaluated by the Ministry of Home Affairs, which contacts the state involved.

While outgoing President Pranab Mukherjee²² turned down 24 mercy requests, his predecessor, Pratibha Patil,²³ commutes a record 30 pardons, including some for heinous crimes.

The governor of any state has the same power as of the president. the governor of a state has the power to pass the order for pardons, reprieves, respites, or remissions of death sentence, or to suspend, remit, or commute the death sentence of any person convicted of any offence whose punishment is death sentence against any law relating to a matter to which the executive power of the state expand.²⁴



²¹ Article 72, The Constitution of India, 1949

²² <https://www.indiatoday.in/india/story/president-pranab-mukherjee-mercy-petitions-1025001-2017-07-18>
(assessed on 14-07-2021)

²³ <https://www.indiatoday.in/india/story/pratibha-patil-commutes-30-death-row-sentences-104359-2012-06-04>
(assessed on 14-07-2021)

²⁴ Article 161, The Constitution of India, 1949