



COMPARATIVE ANALYSIS OF CAPITAL PUNISHMENT: A STUDY ON LEGAL PRACTICES IN INDIA AND THE UNITED STATES

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ABSTRACT

The paper begins by examining the history and constitutional foundations of capital punishment, focusing on its evolution and application in India and the United States. This paper further provides a comparative analysis of two prominent democracies. Despite a worldwide decline in the use of the death penalty, both countries still follow capital punishment. The paper further delves into the decreasing support for the death penalty in the United States, mainly due to the sensitive approach towards offenders. There has been an increase in gender-specific perspectives. This paper examines how emotional reasoning supports a humane approach towards punishment, increasingly influencing public debate and legal practices. The paper also reviews new modern methods of execution and the ongoing societal debates surrounding capital punishment. It further examines the Indian perspective on capital sentencing, properly reviewing the Doctrine of rarest of rare, followed in India. Life imprisonment is the rule, and the death penalty is the exception, as in India, it is awarded only in the gravest of cases. The paper further compares the Sentencing Procedures in the United States and India. The paper inspects Human Rights Issues Surrounding Capital Punishment. This paper further examines the difference in approach of Supreme Courts in both countries by analysing their landmark judgments. The paper further summarises the key differences and similarities in applying capital punishment in India and the United States. The paper concludes by suggesting potential ways for future legal discussions advocating for a more compassionate approach towards capital punishment.

1. Introduction

One of the most debated and controversial legal practices across the globe is capital punishment, raising fervent discussions on ethical considerations, societal implications, and legal jurisdictions. This comparison of capital punishment by India and the United States presents and throws light on the reality and the situation, basically since both these countries starkly and sharply compare against each other when it comes to the legal system applied, the cultural perception made, and the actual effects of death penalties. India is one of those countries situated deep within the heartland of rich and diverse socio-economic fabrics. The given country is characterised by

very complex and varied legal structures that often deal with the controversial questions of capital punishment, being based on traditional values and current law principles. This situation is not the case since the United States of America is a country based on a federal system where every state has its judicial systems and philosophies; hence, their belief and practice also fall into this category of punishment. In applying all these varied methodologies, this study shall contribute towards clarifying underlying elements that affect the executions of legal practices and societal attitudes toward capital punishment, essentially contributing towards a broader conversation toward



modern society's understanding of justice and human rights.

2. Legal Framework of Capital Punishment in India

The legal framework of capital punishment in India is defined primarily by the IPC and CrPC¹⁵. Under Section 302 of the IPC, the death penalty is prescribed for murder, but it is not automatic, as the judiciary exercises considerable discretion in sentencing. The Supreme Court of India has established constitutional safeguards, stipulating that capital punishment should only be applied in the rarest of rare cases, thereby aiming to restrict its application to the most heinous crimes.¹⁶ This judicial approach reflects an effort to balance the deterrent effect of capital punishment with human rights considerations, showcasing a complexity often lacking in other jurisdictions, such as the United States, where the application can be broader and arbitrary. Consequently, India's framework is characterised by a blend of legal caution and moral deliberation, shaping its unique stance on capital punishment within the global debate.¹⁷ The BNS¹⁸ has added four new crimes with the death penalty. These include gang rape of a woman below 18 years (Clause 70(2)), murder by a mob (Clause 101(2)), organised crime (Clause 109), and terrorist acts (Clause 111). Thus, the number of crimes that carry the death penalty in the BNS has risen from 11 to 15. In its Annual Prison Statistics 2022, NCRB revealed that 190 prisoners were awarded capital punishment during the year, while according to the Annual Statistics on Death Penalty compiled by Project 39A, 539 prisoners had been sentenced to death by the end of the year 2022¹⁹. The Supreme Court took cognisance of this deficiency and, on Suo motu cognisance in 2022, referred the matter to a Constitution

Bench. The above circumstances demonstrate that BNS, in its persistence and enhancement of punishments by death, is indifferent to domestic and global judicial trends.

3. Historical Development and Current Legal Provisions in India

Capital punishment in India, defined as the state-sanctioned execution of individuals convicted of certain crimes, holds significant implications for justice and human rights within the country. Historically ingrained in the Indian legal system, it is prescribed for the gravest offences, such as murder and terrorism-related acts, reflecting a societal contract where the ultimate penalty is viewed as a deterrent against heinous crimes. However, the application of capital punishment raises pertinent issues surrounding human rights, particularly given the international momentum toward abolition.²⁰ The Indian legal framework encounters contradictions with constitutional guarantees, including the right to life and fair trial, which are increasingly scrutinized in light of global human rights norms. This interplay between national law and global standards underscores the need to critically examine capital punishment's role in assessing its deterrent efficacy and ethical ramifications in a contemporary judicial context. Legal Framework of Capital Punishment in the United States. The historical development of capital punishment in India is deeply rooted in its ancient legal traditions, reflecting evolving societal values and norms. Initially prescribed in ancient texts like the Manusmriti, capital punishment was applied to uphold dharma, or cosmic order, against severe transgressions. During the colonial era, British legal frameworks significantly influenced the Indian penal system, introducing codified laws that standardised capital offences, notably through the Indian Penal Code of 1860. This period marked a critical transition as executions became state-sanctioned, aligning with Western legal

¹⁵ The Code of Criminal Procedure, (1973).

¹⁶ Anusha Arif, Contours of Justice: Human Rights and Constitutionality of Capital Punishment in India, – Sprf (2024), <https://sprf.in/constitutionality-of-capital-punishment-in-india/> (last visited Nov 25, 2024).

¹⁷ Sneha Mahawar, Capital Punishment in India, iPleaders (2022), <https://blog.iplayers.in/capital-punishment-in-india-2/> (last visited Dec 01, 2024).

¹⁸ The Bharatiya Nyaya Sanhita, (2023)

¹⁹ Joseph Mathai & Paramjeet Singh, Review Death Penalty Punishments in Bharatiya Nyaya Sanhita 2023, People's Union for Democratic Rights (2023).

²⁰ Aishwarya Agrawal, History of Capital Punishment in India, LawBhoomi (2024), <https://lawbhoomi.com/history-of-capital-punishment-in-india/> (last visited Nov 15, 2024).



principles, while simultaneously igniting debates on morality and justice. The abolition movements in the late 20th century highlight a growing discontent with capital punishment, prompting judicial scrutiny of its application and ethical implications. Today, India's legal provisions regarding the death penalty continue to balance historical precedents with contemporary human rights concerns, reflecting an ongoing dialogue between tradition and modernity. The evolution of capital punishment reflects broader societal changes, transitioning from ancient practices rooted in retribution to contemporary debates framed within human rights discourse.²¹ In ancient civilizations, such as those in Mesopotamia and Rome, capital punishment was a tool for social control, enforcing legal codes through harsh penalties that deterred transgressions against communal norms. However, as societies evolved, the rationale behind state-sanctioned death shifted significantly. Modern legal frameworks, particularly in democracies, increasingly emphasize the protection of human rights and the importance of due process. In India, despite the existence of capital punishment, the application has come under scrutiny due to allegations of arbitrariness and social injustice, often affecting marginalized communities disproportionately. The juxtaposition of legal provisions and their application reveals critical gaps in India's criminal justice system, highlighting a need for reform that aligns with contemporary human rights standards while addressing the historical injustices rooted in its judicial practices. The IPC²² serves as the foundational legal framework governing capital punishment in India, outlining specific offences that warrant the death penalty. The Supreme Court of India has played a pivotal role in interpreting these provisions, shaping the legal landscape surrounding capital punishment through

landmark rulings. For instance, the court has emphasised the need for a rigorous approach to applying the death penalty, asserting that it should be reserved for the "rarest of rare" cases, a phrase that encapsulates the interplay between judicial discretion and the gravity of the crime. This judicial philosophy aims to safeguard against arbitrary application and reinforce the principles of justice and fairness inherent in the Constitution.

4. Legal Framework of Capital Punishment in USA

The legal basis for the death penalty in the US is in the Constitution and federal and state laws and Supreme Court decisions. It's decentralized, each state can have it, repeal it or suspend it. 27 states have the death penalty now and others have abolished it or put executions on hold for moral and procedural reasons. At the federal level the death penalty can be applied for some crimes like terrorism, espionage and large scale drug trafficking if the state doesn't have the death penalty. The 8th and 14th Amendments of the Constitution provide significant protections for death penalty cases. The 8th Amendment prohibits "cruel and unusual punishment" and therefore affects the method of execution and its constitutionality. Because the 14th Amendment guarantees due process and equal protection there are process requirements like bifurcated trials where guilt is decided in a separate proceeding from sentencing. Federal and state laws also require a weighing of aggravating factors (e.g. seriousness of the crime) and mitigating factors (e.g. defendant's mental state or history) to impose the death penalty. And every death penalty case is automatically appealed to reduce error so there's more review in death penalty cases than in other criminal cases.

5. Historical Development and Current Legal Provisions in USA

The evolution of the death penalty in the United States has been shaped by changing attitudes towards its morality, fairness, and effectiveness. Initially derived from English common law, it was widely used for serious offenses during the

²¹ Ambika Chauhan, Historical Background and Recent Development on Capital Punishment in India: Deep Analysis, Juris Centre (2022), <https://juriscentre.com/2022/12/12/historical-background-and-recent-development-on-capital-punishment-in-india-deep-analysis/> (last visited Nov 11, 2024).

²² The Indian Penal Code, (1860).



colonial era.²³ However, by the 20th century, public opinion had begun to shift, leading to legal reforms aimed at addressing growing concerns about racial bias, wrongful executions, and arbitrary application. Despite its suspension in the 1972 *Furman v Georgia*²⁴ case, it was later reinstated under revised guidelines such as bifurcated trials and clear sentencing criteria. In modern times, further restrictions have been added through Supreme Court cases such as *Atkins v Virginia*²⁵ and *Roper v Simmons*²⁶, which respectively banned the execution of people with intellectual disabilities and for crimes committed as minors. Lethal injection is now the most common method of execution, although ethical and reliability issues are still hotly debated. Current laws focus on procedural safeguards like mandatory appeals and thorough reviews of circumstances surrounding offenses. Despite federal and state practice of capital punishment, there is a noticeable trend towards abolition or moratoriums, with a national debate ongoing regarding its relevance to modern-day justice systems.

6. Comparative Insights and Future Implications for Capital Punishment Practices

India and the USA capital punishment practices clearly differ since these come under different social, legal, and ethical contexts. Such diversities existing in real life signify that the two nations have developed differently, which further influences their systems of justice, human rights movements, and international debates on the improvement of criminal justice. Capital punishment is practiced in a very complex and fragmented legal system of the United States. The power to implement the death penalty is decentralized in the hands of states. Each state decides whether to continue, use, or abolish the death penalty. Some states, like Texas, conduct regular executions, while others, like California, have stopped it entirely.

This has caused national debate regarding the constitutionality and morality of the death penalty. The different states have devised unique methods of carrying out the death penalty.²⁷ In America, issues of race and money are usually addressed. Some studies have represented that within the United States, such marginalized groups such as African Americans and Latino are slightly over-represented in capital punishment. This problem is worse because of economic conditions as defendants who cannot afford good legal help are at a higher risk of wrongful conviction. The US is under increasing criticism regarding the fairness and value of the death penalty. Many wrongful executions are investigated by advocacy groups and complaints by legal scholars to the extent of calling this also not one of the strengths of the justice system. It makes such high-profile success of exoneration using DNA evidence²⁸ a mandate for reassessing capital punishment owing to its critics charging that capital punishment constitutes the infraction of the Eighth Amendment as well by being "cruel and unusual punishment." Attitudes toward justice and cultural-historical perspective have significantly influenced India's policy on death penalty.²⁹ The Indian Penal Code retains provisions for capital punishment. Its use still remains within the "rarest of rare" cases³⁰ that was a doctrine adopted by the Supreme Court in the landmark case of *Bachan Singh v. State of Punjab*³¹, in 1980. That judgment reflected the judicial concern over making peace with both justice demands and right to life. The people in Indian society are on capital punishment when it relates to high-profile brutal crime incidents like terrorism, rape, and mass murder. Public opinion and media reports

²³ Edward J. Eberle, *The Method and Role of Comparative Law*, 8 *Washington University Global Studies Law Review* (2009).

²⁴ *Furman v. Georgia* 402 U.S. 238 (1972)

²⁵ *Atkins v. Virginia* 536 U.S. 304 (2002)

²⁶ *Roper v. Simmons*, 543 U.S. 551 (2005)

²⁷ Kyra Nanda -, *Analysing Capital Punishment in India: A Comparative Study of Capital Punishment and Life Imprisonment*, 6 *International Journal For Multidisciplinary Research* (2024).

²⁸ - *History of forensic DNA profiling in criminal investigations*, in *Introduction to Forensic DNA Evidence for Criminal Justice Professionals* 20 (2017), <https://doi.org/10.1201/b15031-5> (last visited Dec 11, 2024).

²⁹ Austin Sarat, *Capital Punishment in the USA: Prospects & Possibilities*, in *The SAGE Handbook of Punishment and Society* 308 (2013), <https://doi.org/10.4135/9781446247624.n15> (last visited Dec 07, 2024).

³⁰ Jayraj Mahadev Kakade, *Comparative Study on Capital Punishment India and USA*, 5 *International Journal of Research Publication and Reviews* (2024).

³¹ *Bachan Singh v. State Of Punjab* 3 SCC 24 (1982)



greatly influence discourse; often people hold the view that death penalty has retribution functions and crime prevention functions.³² This view, however, also has several criticisms against it. Human rights bodies and legal scholars argue that public opinion can unduly coerce courts, which again may jeopardize fair standards of trial. Like in the United States, issues also come up in India because the nation is grappling with injustice relative to criminal justice and its administration. It remains concerning because, in practice, the application of the death penalty results disproportionately against the poor and other poor communities, who will usually lack access to means that deliver the best possible legal service. In addition, vagueness in Indian sentencing and lack of a fair criterion for making clemency petitions makes its capital punishment system more complicated. Comparing these two nations, a great difference appears in the way capital punishment has been addressed; however, many shared problems arise, such as inequality and the risk of judicial error. These are differences in greater cultural and philosophical attitude on the issue of crime and punishment.³³ While the U.S. is struggling through racial injustice and constitutional challenges, India's regime gives expression to the dilemma between fundamental duties and more contemporary human rights ideals in the world. Capital punishment debate has grown to be increasingly more critical regarding its morality and effectiveness, as well as a demand to seek change in countries.³⁴ Comparative reviews and transborder legal debate may be able to spearhead the change needed in it. Indeed, experience reflects a number of jurisdictions that have abolished the death penalty. Member states of the European Union are examples where this will provide an opportunity to bring

into light alternative approaches to justice which may make rehabilitation and restorative measure rather than vengeance.

This is not only a just argument of legal capital punishment for India and USA but it also portrays the extent to which both nations stand by the dignity of humans and the fairness of the concept of justice, and if both are so conscious about such issues by thinking critically to understand all practicalities involved in action, then this can very well launch something at an international level making the criminal justice system somewhat fair rather than it is beastly.

7. Conclusion

There are some common problems while comparing the analysis of capital punishment in India and the United States, but there are also differences. The "rarest of rare"³⁵ rule in India needs to be followed very carefully, while the United States has a divided federal system. However, both countries face serious issues like unfairness, discrimination, and the inability to change wrongful convictions. It should focus more on the urgency of change in the justice system to meet the standards of today's people and their values. Most importantly, it should have a fair law-making process that everyone can read or understand and fair treatment when it comes to punishing, treating everyone equally. Some concepts that would be attached with the restorative justice include making other alternatives instead; allow them to go on with the rehabilitation process carried on even in a better way. This will help improve, in terms of preparing itself, for the implementation of a crime prevention program of which should be much better and of effectiveness. This is mainly because they can eventually understand the need better and improve just how well such programs may work. The future of capital punishment cannot be about either keeping it or using it but rather about making important improvements and creating systems that greatly affect basic human dignity. These

³² National Research Council et al., *Deterrence and the Death Penalty* (2012).

³³ Akshay Mahavira, *Capital Punishment in India (Constitutional Validity of Capital Punishment)*, 12 *International Journal of Science and Research (IJSR)* 1847 (2023).

³⁴ Dinkar Gitte Anant Pawar, *Execution of Capital Punishment in India: Is It a Violation of Human Rights?*, 12 *International Journal of Science and Research (IJSR)* 608 (2023).

³⁵ Kathi Milliken-Boyd & James Windell, *The Rarest of the Rare*, in *Sentencing Youth to Life in Prison* 111 (2022), <https://doi.org/10.4324/9781032067209-19> (last visited Dec 15, 2024).



systems have to be structured so that justice would truly become meaningful for them; this means much more healing, fixing of wrong things done, and little toward revenge and punishment. It would inspire a large number of people in the world to demand such change within the framework of the case for and implementation of a sense of justice that is more humane in nature.

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