

# Examine The Ongoing Debate About the Death Penalty, Considering Its Morality, Effectiveness as A Deterrent, And Racial Disparities In Its Application

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## ABSTRACT

The death penalty, which is sometimes referred to as cruel and barbaric, is still a divisive topic in the Indian criminal justice system. Supporters of its continuation point to justice and deterrence in their case, while opponents highlight its ethical and practical drawbacks, such as its inability to effectively discourage crime and the possibility of erroneous convictions. Global trends towards decreasing the usage of the death sentence are reflected in international legal changes that also favor its eradication. The issue of abolition has resurfaced in India due to worries with sentence irregularities and racial inequities. This essay explores the background information, legal system, efficacy, racial inequality, and policy implications for capital punishment in India's criminal justice system. Eventually, it is believed that the death penalty is incompatible with human dignity and justice, which emphasizes the necessity of abolishing it.

**Keywords:** *Death penalty, Morality, Disparity in application, Effectiveness, Need, Criminal Laws.*

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## 1. INTRODUCTION

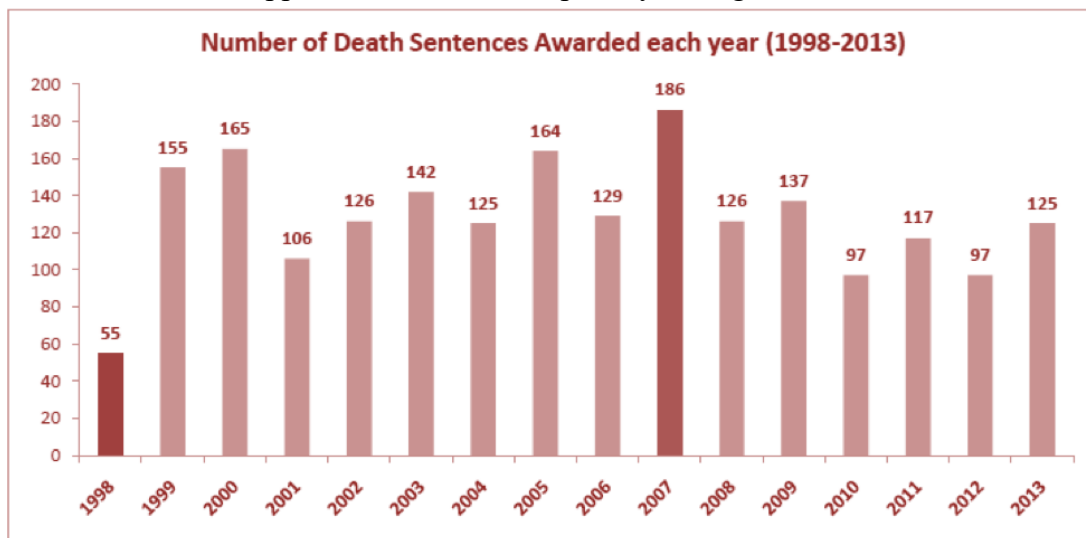
Every form of punishment stems from the same principle: that wrongdoing must be met with some form of penalty. There are two key justifications for imposing the penalty. The first holds that punishing criminals deters others from following in their footsteps, and the second believes it is fair and equitable that those responsible for wrongdoing should pay the price. A similar premise underpins the death penalty as it does all other forms of punishment [1]. The most broadly applicable discussion, considering the current state of affairs, is the one around the death penalty.

In India, the death penalty is a fundamental component of the criminal justice system. As India's human rights movement gains momentum, many see the death penalty as morally reprehensible. This is a strange argument, though, because it's immoral to sacrifice the lives of one individual for the sake of the survival of another. Execution of a criminal criminally convicted and sentenced to death is the capital punishment, often known as the death penalty. It is important to differentiate between the death penalty and executions that do not follow the proper legal procedures. The death penalty and capital punishment are often used interchangeably; however,

due to the possibility of commutation to life imprisonment, execution is not necessarily carried out after the imposition of the penalty (even when it is upheld on appeal) [2].

Cassation has been a sanction since ancient times. It would be hard to find a nation that has never had the death penalty. Throughout human history, the death penalty has always been an option for those seeking severe retribution. Despite Plato's arguments that it should be reserved for the irredeemable, the laws of Draco (fl. 7th century BCE) extensively utilized the death penalty in ancient Greece for crimes such as murder, treason, arson, and rape. Furthermore, the Romans applied it to a broad variety of crimes; however, during the republic, people were temporarily excused. A huge number of criminals and crimes occur in India. The basis for any punishment in India is the intention to punish the offender. Punishment serves two primary purposes: first, it ensures that the offender will bear the consequences of their actions, and second, it deters others from engaging in wrongdoing [3]. The severity of a crime determines the type of punishment meted out in India; some examples include the death penalty, life in jail without parole, a fine plus prison time, etc.

An integral aspect of India's criminal justice system is the death penalty. Capital offenses are crimes that carry the death sentence. Originating from the Latin word "capitals," which means "regarding the head," the word "capital punishment" is borrowed into English. Capital punishment is another name for the death sentence. When a person commits a capital crime, the state may decide to execute them as a form of punishment. Any criminal found guilty and sentenced to death by a court of law is known as a capital punishment or death penalty inmate. The death penalty, meted out for the gravest of human rights violations. Location, state, and national variations in the application of the death penalty are significant.



**Figure 1:** Death sentences awarded every year  
(Source – NCRB Report)

Many Indian human rights groups hold the view that the death penalty is morally wrong. Capital punishment, according to human rights groups, violates the rights of an individual. A death sentence is known as capital punishment in the fields of law, criminal justice, and punishment. Two schools of thought have come together to form Indian criminal jurisprudence. The president and governor also have the authority to commute or halt the execution of a death sentence according to the constitution. Only the most heinous crimes in India are deemed worthy of the death penalty. Crimes such as murder, robbery with murder, aiding and abetting a rebellion, and war against the government are punishable by death. When the court determines that life in prison is not enough, the death penalty is imposed according to the specifics of the case.

### **1.1. Meaning of Capital Punishment**

"Capital Punishment" refers to the deadliest form of punishment. The most heinous, horrible, and horrifying transgressions against humanity are to be punished with this. The consequences of capital punishment have consistently been the death penalty, even though the nature and severity of such crimes vary throughout countries, states, and centuries. A death sentence is what is often understood when the terms "capital sentence" are used in the fields of law, criminal justice, and penology [4].

### **1.2. Historical background of capital punishment**

Various communities have used capital punishment from ancient times, with brutality and intergenerational warfare being prevalent forms of punishment. Because it was the harshest form of punishment, death served as the best deterrent and means of revenge in these communities. What constitutes a threat of punishment is proportional to the gravity of the crime and the harm it caused. Since the state is responsible for protecting its citizens, it must either soothe the hurt feelings of the victim's loved ones or punish the murderer for showing little regard for human life [5].

No modern nation has retained the use of the death penalty, which is based on an antiquated practice. The rules of Draco (c. 7th century BCE) in ancient Greece imposed the death penalty for murder, betrayal, pyromania, and assault. The only people who should use it, according to Plato, are the despairing. Even the Romans used it for a variety of crimes; but, throughout the republic, subjects were temporarily exempt. The Roman Republic did not, according to Sir Henry Marine, outlaw capital punishment; rather, the procedure of investigations and punishment or banishment served to coordinate its non-use. Cases deemed "physically and rationally harming" are authorized to be punished with the death penalty under the bill, which also includes "rehash attackers." In order to guarantee safety, this law mandates the use of firearms in cars and the imposition of interim rules.

## **2. LEGISLATIVE FRAMEWORK**

The Indian Penal Code (henceforth IPC) and other special enactments establish the death penalty as a punishment for certain crimes in Indian law. The death penalty is imposed for 10 offences

under the Indian Penal Code, the majority of which deal with crimes against the state or the human body [6]. This was addressed by the Code's authors, who argued that capital punishment should only be used in extreme circumstances, such as murder or the gravest offense against the state. Judges has a lot of leeway to use their discretion in determining minimum sentences or alternative sentencing under the code for most crimes with the death penalty [7]. One of the cornerstones of criminal justice, proportionality, states that punishment ought to be commensurate with the gravity of the offence, which may explain why this strategy of discretion is being employed.

Therefore, the best person to determine responsibility and hand out specific punishments is the judge who rules on the case. This is precisely why Section 303 of the Indian Penal Code was invalidated by the Supreme Court in the case of *Mithu v. State*. There are also specific statutes that establish the death penalty, and some of these statutes even make the death penalty obligatory [8].

The Air Force Act of 1950 and the Navy Act of 1950 are two examples of military statutes that impose the death penalty. Exercising capital punishment is sanctioned by several statutes pertaining to state security and law and order preservation, such as the Defence of India Act, 1971, Defence and Internal Security Act, 1971, Terrorist and Disruptive Activities (Prevention) Act, 1987, Prevention of Terrorism Act, 2002, Unlawful Activities Prevention Act, 1967, Explosive Substances Act, 1908, and Arms Act, 1959. The Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1987 [9]; the Commission of Sati (Prevention) Act, 1987; and the Narcotic Drugs and Psychotropic Substances (Prevention) Act, 1985 are examples of social purpose legislation. Additionally, the death penalty is codified in a number of state statutes. A few examples of such laws are the Control of Organised Crime Acts of 1999 in Maharashtra and 2000 in Karnataka and 2001 in Andhra Pradesh, among others [10].

### **3. EFFECTIVENESS AS A PUNISHMENT**

Opinions on the Penalty of Death in India: Keeping It or Repealing it.

#### **3.1. Arguments for Retention of the Capital Punishment**

The court has ruled that it is constitutional. Its purpose is to safeguard people's lives and freedoms within society. The alternative, keeping the person in up for the rest of eternity with no chance of parole, is cruel and wasteful, but this is cheaper and less harsh. It keeps jails from being overcrowded. In terms of making the crime victims feel better, it's priceless. As an essential and effective weapon for the administration of justice, the right of the state to punish criminals has been upheld by all social contract theories. As much as they perpetrate atrocities and show no respect for human values, society should do away with dangerous, irredeemable criminals. The primary goal of administering justice is to prevent wrongdoing and exact punishment. To safeguard society, the punishment is necessary, and it serves as an alternative to personal vendettas and retaliation. Eliminating the likelihood of the death sentence being

misused requires good laws and proper executions. To protect society from criminals, it's like a private right of defense [11].

### **3.2. Arguments against the retention of Capital Punishment**

Such behavior is completely unhuman. If it is not possible to give life, then why is it OK to take it? There is no way to right a wrong when it strikes an innocent person. It is both economically useless and morally reprehensible. There is no space for the guilty to repent, and he is not given the chance to do so. Looking back at history reveals that capital punishment serves no purpose, either as a deterrent or a means of retribution. As a social stigma, it is uncivilized, immoral, savage, brutal, and vindictive [12].

## **4. RACIAL DISPARITIES IN APPLICATION**

The problem of racial discrepancies in the death penalty's implementation in India interacts with more complicated social issues including socioeconomic inequality and discrimination based on caste. Although the death penalty was formally abolished in India in 1950, there are still some situations in which it can be applied, raising concerns about how it disproportionately affects underprivileged communities, especially those from lower castes and minority groups. Research has shown that there are discrepancies in how marginalized people are represented throughout the criminal justice system—from arrest to sentencing—which are a reflection of ingrained biases and prejudices [13]. Inequities in the use of the death penalty are further exacerbated by differences in access to competent legal counsel and unequal treatment by law enforcement. Reducing racial discrepancies in the death penalty's use in India requires extensive changes that dismantle deeply rooted prejudices, advance equitable access to the legal system, and protect the rights of all people to justice and fairness.

## **5. IMPLICATIONS FOR CRIMINAL JUSTICE POLICY**

The death penalty's consequences for criminal justice policy involve a complex strategy that takes social, pragmatic, and moral factors into account. Politicians must consider the moral ramifications of the death penalty, balancing the alleged deterrence impact of the death penalty against worries about the sanctity of life and the possibility of executing the innocent. In order to balance opposing viewpoints and values within society, this calls for constant discussion and consideration. Furthermore, in order to inform policy decisions about the death penalty's continued use or abolition, the practical efficacy of the death penalty as a deterrent must be critically assessed through evidence-based study and analysis. Moreover, institutional changes that support justice, equity, and due process in the criminal justice system are required due to the widespread racial discrepancies in the use of the death penalty [14]. This involves putting in place safeguards against erroneous convictions, addressing latent prejudices, and enhancing the legal representation of underprivileged communities. In the end, the consequences of the death penalty for criminal justice policy highlight the necessity of comprehensive changes that respect

justice, equality, and human rights while working to improve public safety and advance the general good.

## 6. CONCLUSION

Within the legal system, the death penalty is frequently viewed as a cruel and brutal kind of punishment that goes against society's moral and humanitarian ideals. Statistics indicate that, despite its historical use, the death penalty is ineffective at deterring crime and may even be a factor in the rise in crimes. Furthermore, global legal tendencies are moving away from the death sentence and toward substituting other forms of punishment and restricting its use to the most serious of offenses. With the death penalty becoming seen as incompatible with justice and respect for human dignity, there is a moral necessity to abolish it, which is reflected in the current global movement. Since obtaining independence in 1947, there has been a discernible decrease in the usage of the death sentence in India, where the argument over its abolition has been rekindled in light of new discoveries [15]. The Supreme Court's admission that a sizable portion of death sentences were erroneous emphasizes the inherent problems with its implementation even more. An increasing number of judges are choosing to impose lesser sentences, which highlights the death penalty's moral and practical drawbacks and strengthens the case for its elimination. In the end, it is decided that the death penalty is immoral and wrong, which emphasizes the necessity of removing it from the criminal justice system.

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