

## DEATH PENALTY: A MORAL AND LEGAL DEBATE

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### ABSTRACT

The capital punishment is also known as death penalty. It is one of the most severe punishment. It is a execution method and it is awarded in the rarest of the rare cases or heinous crimes. The Bhartiya nayee sanhita prescribes capital punishment for the following crimes like Rape, murder dacoity with murder, kidnapping waging war etc.

In this research paper I would examine the morality and legality of death penalty. Some advocates that death penalty deters the crime and set an example for the society and creates terror in the mind of people which abstain them for committing the crime.

On the other hand some says it is a violation of human rights and giving death penalty is morally impressible and it is inherently cruel and barbaric in nature and it also risk the life of an innocent. some institutions like Amnesty international opposes death penalty in all the cases without an exception . it holds that death penalty breaches human rights

Theories of punishment like retributive and deterrent theory supports capital punishment retributive theory is based upon the concept of Eye for an Eye ie Tit for Tat it says that the accused should suffer the same amount of pain that victim suffered.

Deterrent theory says the punishment is so cruel that it sets an example for the society and also it creates fear in the like minded people which abstain them to committing crime

**KEYWORDS** Capital punishment, Death penalty, Retribution

### INTRODUCTION

#### MEANING OF CAPITAL PUNISHMENT

**The** word capital punishment refers for the most severe form of punishment and it is only given in the most grievous barbaric crimes which are against the humanity. The definition of capital punishment varies from country to country and each country has different perspectives on it.

#### **Capital punishment in India**

Raghu raj Singh was presumed was the first person in India who was awarded Capital punishment. He was executed on 9 September 1947 at Jabalpur Central jail.

The death penalty a continuous issue worldwide has been a part of India's legal framework since worldwide. India retains capital punishment as an execution method for rarest of the rare cases.

#### **Theories of punishment**

There are four theories of punishment

1       Retribution theory. The word tribution is a Latin word which means to payback. It is also called theory of Vengeance. This theory believes that accused must suffer the same amount of pain that the victim suffered. It gives moral justice to the victim. it is based on the concept

of eye for an eye Mahatma Ghandhi disagrees with this theory. This theory was more used in previous time. In the present time the use of this theory is almost null.

Deterrent theory the word deter means to abstain . This theory has mainly two objectives To set an example in society and to stop future crimes by giving punishment harder . In this theory it says that punishment is so severe that it creates fear in the like minded people in the society . like Saudi Arabia has very strict laws even for the petty crimes

Preventive theory . This theory is also called theory of disablement . This theory supports life imprisonment and Death penalty because these punishment prevents criminals from committing further crimes.

Jurist like Jeremy Bentham supports this theory because it make penal code more humane The basic idea about this theory punishment should not be more regressive.

Reformative theory. The reformative theory is based upon the concept of Hate the Crime not the criminal. The main objective of this theory is to reform the criminal and also make him a law-abiding citizen so he can contribute towards his nation. Countries like India follow this theory.

#### **LEGAL FRAMEWORK AND LANDMARK CASES**

In the Modern period Capital punishment is governed by Bhartiya Nyaya Sanhita and Bhartiya Nagarik Suraksha Sanhita . BNS outlines various crimes for which capital punishment can be imposed.

In the case of Bachan Singh vs. State of Punjab (1980) In this case the doctrine of rarest of the rare was very first introduced it says that death penalty was given only in the rarest of the rare cases where the crime was barbaric, and the alternative Life imprisonment was not sufficient. Nirbhaya Gang rape case (2012) This is one of the most brutal and heinous rape case. it has led to widespread protest and discussions about the death penalty has given the heinous crimes The trial court has awarded death penalty to the convicts

The four convicts of were hanged on March 20, 2020, at 5.30 AM in Tihar Jail

The 262<sup>nd</sup> Law commission of India report on capital punishment has recommended the abolition of capital punishment for all the offences except the offences of Terrorism.

#### **DOCTERINE OF RAREST OF THE RARE**

This doctrine was established in the case of Bachan Singh vs State of Punjab

In the year of 1980 The Supreme court emphasized the rarest of rare doctrine and on that time Life imprisonment was the general norm and capital punishment was awarded on the for the exceptional cases and for most heinous crimes.

In the case of Macchi Singh and others v. State of Punjab. The Supreme Court laid down the guidelines for the Capital punishment.

1. Manner of commission of crime
2. Motive for the commission of crime
3. Anti-Social or social abhorrent crime
4. Magnitude or gravity of offence
5. Victim involved in the crime

#### **ARGUMENTS IN FAVOR OF DEATH PENALTY**

1) Deterrence- Some proponents argue that death penalty is effective way of punishing the criminals who commits heinous crimes like Rape and murder. It also prevents criminals from committing serious crimes due to fear of losing their own lives.

2) Retribution- It is based upon the concept of Eye for an Eye. some proponents believes that capital punishment provides sense of retribution, and it provides moral justice to the victim family and the society

3) Prevents Habitual offenders – Advocates asserts that executing a criminal pull out the possibility of them reoffending so it protects the society from further harm

#### **ARGUMENTS AGAINST THE DEATH PENALTY**

Violation of human rights- It violates the Article 21 Right to life of Constitution of India Several bodies like UNHRC (United nations human rights council) it opposes the death penalty and gives a reason that there is no evidence that death penalty deters the crime.

Risk of wrongful conviction – A team of researchers has concluded that about 4.1 percent of criminal defendants who are sentenced to death are falsely convicted. The application of capital punishment is arbitrary and biased with certain groups being disproportionately impacted.

Ineffective as deterrent – Some proponents believe that capital punishment is not as much effective. Some studies also found that capital punishment does not prevent crime.

### **REVIEW OF LITERATURE**

To understand about the historical evolution of the death penalty, the researcher went through a paper called Death penalty: A moral and legal debate to find out the viewpoints about the death penalty.

Dr. Sangeta Thakur "The capital punishment in India: A complex issue" In this research paper, the researcher examines the various aspects of capital punishment. It includes the historical context, legal framework, physiological effect, and societal impact of capital punishment. This paper also discusses the contemporary challenges of giving capital punishment. Several activist scholars and legal experts are advocating the safeguarding measures which prevent the wrongful convictions.

The Indian legal system permits capital punishment in the rarest of the rare cases. Its implementation continues to be closely examined.

In the last, the researcher said to weigh the arguments and adopt a balanced approach which does not breach human rights while ensuring justice to victims.

Dr. D. Srujana "Legal, Moral and Social Reflections on the Death Penalty" In this research paper, the researcher has examined the multifaceted legal, moral, and societal considerations. Some studies revealed that there is disproportionate representation of marginalised communities like SC, ST, and Adivasi among death row captives in India. This raises the question of biasness in the Indian legal system and potential discrimination in the

capital punishment. This paper also discusses the social implications of capital punishment and its impact on the victim's family.

One of the biggest concerns in capital punishment is the inherent risk of miscarriages of justice due to its irrevocable nature. Sometimes it also risks the lives of innocent people.

Aarushi Dharyan "Death penalty: A Necessary Evil or a Violation of Human Rights?" In this research paper, the researcher has examined the legal, ethical, and social factors that need to be carefully examined. The researcher has also obtained the public opinion about the death penalty. In general, the public has given their opinion on the death penalty should be given because it creates fear in the minds of criminals who committed serious crimes.

On the other hand, some portion of the public also says that the death penalty should not be given because it breaches human rights. Some studies also find that there is no clear evidence that the death penalty has reduced the number of crime rates. According to one of the findings of that was carried out by the team of researchers of National Law University Delhi who inspected the crime data from the year of 2001 to 2014, the death penalty has not had a remarkable impact on the cases of Rape, Homicides, etc.

Marshan and Shubham Raj CONSTITUTIONALITY OF THE DEATH PENALTY AND ITS COMPARATIVE STUDY In this research paper, the researcher has conducted the comparative study of the constitutionality of the death penalty. There are many debates that have happened in India related to capital punishment, have been abolished in India or not. Article 21 of the Indian Constitution has guaranteed the Right to Life and Personal Liberty to every citizen. When a criminal is punished by a death sentence, his right is taken from him by the state. In this research paper, the researcher has talked about the advantages of capital punishment. It is necessary for the courts to impose the punishment, so it ensures fair justice has been maintained in the society. The researcher has



also conduct comparative study of different countries like India China and United Kingdom. 144 countries have abolished the death penalty.

### **OBJECTIVES OF THE STUDY**

- 1 To Examine the Legal and Moral perspective of Death penalty
- 2 To critically analyze the ethical and legal arguments for and against the capital punishment
- 3 To Investigate the issues of wrongful convictions in the judicial system

### **RESEARCH QUESTIONS**

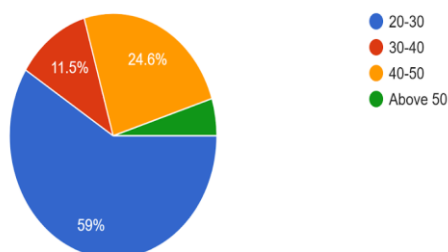
1. Do you think Life imprisonment is better Alternative than Death penalty?
2. Does Capital punishment violates the human rights?
3. Does Capital punishment actually deters the crime?

### **RESEARCH METHODOLOGY**

The Research paper falls under the category of descriptive research and in this paper I have used the primary sources such as questionnaire and secondary sources such as journals, articles and research paper they were used to find out the legal and moral debate about the Death penalty

### **FINDINGS OF THE STUDY**

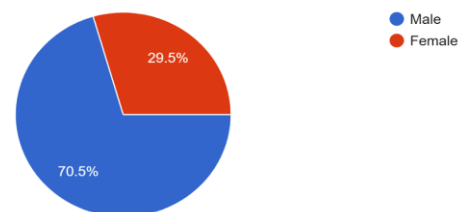
Age  
61 responses



In this chart 59% of the participants above 20 and below 30 years of age and 11.5% of the participants are above 30 and below 40 years of age and 24.6% of participants are above 40 and below 50 years of age and remaining 4.9% of participants are above 50 years of age.

Gender

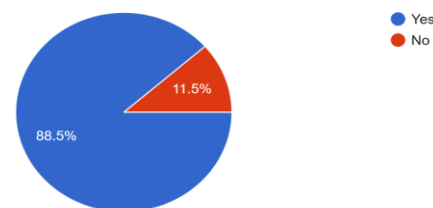
Gender  
61 responses



In this chart 70.5% of participants are Male and remaining 29.5% are Females.

### **Are you aware of the legal status of the death penalty in our country?**

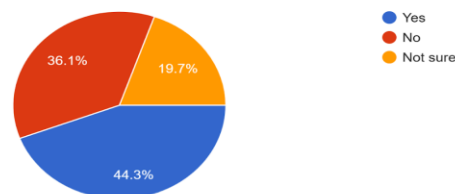
Are you aware of the legal status of the death penalty in your country?  
61 responses



In this chart 88.5% of participants are aware of the status of death penalty which indicates high awareness level. and a small percentage (11.5%) of participants doesn't know about the status of death penalty.

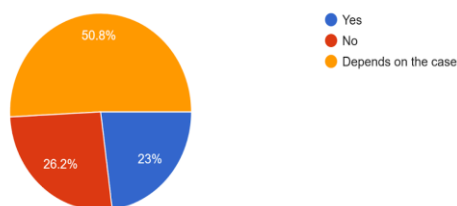
### **Do you think Death penalty effectively deters crime?**

Do you think the death penalty effectively deter crime?  
61 responses



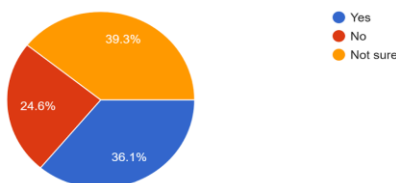
In this chart 44.3% of participants believe that Death penalty effectively deters the crime which indicates the slight majority another 36.1% participants believe it does not have any positive effects on criminals and crime rates and remaining 19.7% of participants are not sure which indicates lack of conclusive evidence.

Do you believe life imprisonment is a better alternative than the death penalty?  
61 responses



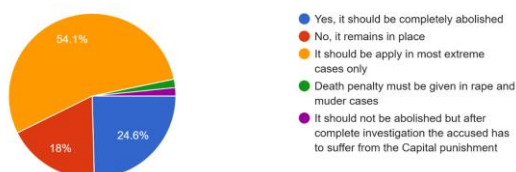
In this chart most participants 50.8% believe that it is depends on the case ie the gravity of offence or the intention of the criminal or he is provoked to commit heinous offence. In that basis it is depends on that whether Life imprisonment is better than Death penalty or not. And other 23% of participants believe life imprisonment is better than death penalty. And remaining 26.2% of participants believe that Life imprisonment is not better alternative than death penalty.

Do you believe the justice system is fair and unbiased in applying the death penalty?  
61 responses



In this chart the largest group of participants 39.3% not sure that whether judicial system is fair and biased in applying death penalty. It suggests that people have lack of trust about the system's capability. The other 36.1% of participants have trust on the judicial system capability to provide fair justice. The Remaining 24.6% of participants are disagree and it shows the unfairness and biasness in judicial system

In your opinion death penalty should be abolished?  
61 responses



In this chart most respondents believe that death penalty is given only in most extreme

cases. It indicates a preference for limited use of death penalty rather than the complete abolition.

24.6% of respondents believe that death penalty should be completely abolished because there is no proven fact that the use of death penalty reduces crime rates.

18% of respondents supports death penalty without any restrictions

1.6 % of respondents believe it must be given in Rape and Murder cases

1% of respondents believe that it should not abolished but after complete investigation the accused suffer from death penalty

### CONCLUSION AND SUGESTIONS

The capital punishment cadavers a continuous issue world-wide. It is one of the most Severe forms of punishment. It is awarded in the most serious crimes like Rape Murder and Terrorism. In this Research paper the investigator has examined the ethical Moral and Legal perspective of death penalty.

There is a sparking debate for and against the death penalty. Some proponents argue in the favour of death penalty said it would be effective in deterrence and creates terror in the minds of people, and it also ensures justice to the victim and their families.

On the other hand, some argues in against of death penalty says it violates the human rights and there is no evidence that death penalty would be effective in reducing the crime rates. UNHRC (United Nation Human Rights Commision) and Amnesty International advocates for the abolition of Death penalty.

As per the Researcher Death penalty should not be abolished Instead it retained for the rarest of the rare cases.

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