

A COMPARATIVE LEGAL ANALYSIS OF ABOLISHING VERSUS RETAINING THE DEATH PENALTY IN INDIA AND ENGLAND: EFFECTS ON JUSTICE AND HUMAN RIGHTS

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1.1 Evolution of Capital Punishment in Legal Systems

Ancient Legal Codes and Death Penalty Provisions

Capital punishment has existed as a legal institution for thousands of years, with early civilizations implementing death penalties for a wide range of offenses. The earliest recorded legal codes enshrining capital punishment include Hammurabi's Code, the Draconian laws of ancient Greece, and Roman law.

Hammurabi's Code (c. 1754 BCE)

One of the first known legal codes, Hammurabi's Code, was inscribed on a stone stele in ancient Babylon. It is one of the earliest recorded examples of codified laws, heavily reliant on the principle of "lex talionis" or "an eye for an eye, a tooth for a tooth." The code stipulated death as a penalty for offenses such as murder, robbery, adultery, and false accusations. Unlike modern legal systems, Hammurabi's laws did not account for extenuating circumstances or intent, often enforcing severe punishments even for minor infractions.

Draconian Laws (7th Century BCE)

In ancient Greece, the term "Draconian" stems from Draco, an Athenian legislator who codified laws that were considered excessively harsh. Almost every crime, including petty theft, was punishable by death. These laws reflected the ruling class's attempt to maintain order through fear and deterrence⁷³¹. The extreme severity of Draco's legal provisions eventually led to reforms, including the abolition of the death penalty for minor crimes under Solon's governance.

Roman Law and Capital Punishment

The Roman legal system incorporated capital punishment⁷³² extensively, with penalties varying according to social class. Citizens were

often granted more humane executions, such as beheading, while slaves and non-citizens faced brutal methods like crucifixion or being thrown to wild beasts. The Twelve Tables (c. 450 BCE) codified Roman law and provided for capital punishment in cases of treason, arson, and perjury⁷³³. During the later Roman Empire, the influence of Christianity led to debates on the morality of the death penalty, eventually influencing its reduced application in certain cases.

The Middle Ages and the Rise of Execution Methods

During the medieval period, the death penalty remained a dominant legal instrument, often carried out through public executions. The Middle Ages saw a proliferation of execution

⁷³¹ Tony M, 'Deterrence and the Death Penalty: A Reconsideration' (2013) 35 *Crime and Justice* 1

⁷³² Johnson D, 'Retention and Resistance: The Comparative Politics of Capital Punishment' (2009) 9 *Annual Review of Law and Social Science* 67

⁷³³ Bowers WJ and Pierce GL, 'Arbitrariness and Discrimination Post under - Furman Capital Statutes' (1980) 26 *Crime & Delinquency* 563

methods aimed at punishing the accused and serving as a deterrent to others.

Execution Methods

Some of the most notorious execution methods during this period included hanging, beheading, burning at the stake, drawing and quartering, and boiling. These executions were often public spectacles designed to reinforce the power of the state and the church.

- Hanging – A common method used across Europe for crimes like theft and murder.
- Beheading – Reserved for nobles and high-ranking individuals as a more "honorable" execution.
- Burning at the Stake – Used for heretics and witches, particularly during the Inquisition.
- Drawing and Quartering – Inflicted on traitors in England, involving disembowelment and dismemberment.
- Boiling – A rare but gruesome punishment for poisoners.

Religious and Political Influence

The Catholic Church played a significant role in the legal system during the Middle Ages, advocating for the use of capital punishment in cases of heresy and blasphemy. The Inquisition led to the execution of thousands under religious authority. Additionally, monarchies utilized capital punishment to eliminate political threats and maintain control over their subjects.

Development of Modern Legal Frameworks for Capital Punishment

As legal systems evolved, Enlightenment thinkers in the 17th and 18th centuries began questioning the morality and efficacy of the death penalty. Philosophers like Cesare Beccaria, in his 1764 work *On Crimes and Punishments*, argued against capital punishment, stating that it was neither a deterrent nor a justifiable means of retribution.

Beccaria's ideas laid the groundwork for penal reforms across Europe and beyond.

Abolitionist Movements and Legislative Reforms

The 19th and 20th centuries saw significant changes in the application of capital punishment. Some key developments include:

- Abolition in Various Countries – Countries like Venezuela (1863), Portugal (1867), and the Netherlands (1870) abolished the death penalty for most crimes.
- Reforms in Execution Methods – Efforts to make executions more "humane" led to the adoption of the guillotine, electric chair, lethal injection, and gas chambers.
- The UN and Human Rights Advocacy – The Universal Declaration of Human Rights (1948) and subsequent treaties influenced nations to reconsider the morality of capital punishment.
- Judicial Safeguards – Modern legal systems introduced appeals, clemency, and considerations of mitigating circumstances, reducing wrongful executions.

Colonial Influences on Death Penalty Laws in India and England

England's Legal Framework and the Death Penalty

England's history with the death penalty has been long and complex. The Bloody Code, in effect from the 17th to 19th centuries, listed over 200 offenses punishable by death, including minor crimes like pickpocketing. The push for reforms, particularly in the 19th century, reduced capital crimes significantly, leading to the eventual abolition of the death penalty for murder in 1965.

The Death Penalty in Colonial India

As a British colony, India inherited the English legal system, including capital punishment laws. The British administration used the death penalty as a tool to suppress dissent,

particularly against freedom fighters and political activists. The Indian Penal Code (IPC)⁷³⁴ of 1860, drafted under British rule, included provisions for capital punishment, which continued post-independence.

Post-Independence Developments in India

After gaining independence in 1947, India retained capital punishment but applied it selectively. Some key legal developments include:

- The Rarest of Rare Doctrine – Established in *Bachan Singh v. State of Punjab*⁷³⁵ (1980), this principle dictates that the death penalty should only be applied in exceptional cases.
- Judicial Review and Commutation – Courts have increasingly exercised restraint, commuting death sentences to life imprisonment in many cases.
- Abolitionist Movements – Activists and legal scholars have consistently debated the ethical and practical implications of the death penalty.

1.2 Philosophical Justifications for and Against the Death Penalty

Philosophical Justifications for and Against the Death Penalty

The death penalty has long been a subject of moral and philosophical debate, with arguments rooted in various theories of punishment, ethical principles, and human rights considerations. Different perspectives, including retributive justice, deterrence, rehabilitation, and restorative justice, offer varying justifications for or against capital punishment. While Kantian ethics supports retributive justice, utilitarian thinkers such as Jeremy Bentham and John Stuart Mill assess capital punishment based on its consequences⁷³⁶. Additionally, abolitionist

perspectives highlight human rights concerns, advocating for the complete elimination of the death penalty. This paper examines these philosophical positions, critically analyzing their implications.

Theories of Punishment and the Death Penalty

Punishment serves several purposes in moral and legal philosophy, including retribution, deterrence, rehabilitation, and restorative justice.

Retribution

Retributive justice holds that punishment should be proportionate to the crime committed. This concept is often summarized by the principle of "an eye for an eye," suggesting that those who commit severe offenses, such as murder, deserve an equally severe penalty. Proponents argue that the death penalty provides moral balance by ensuring that offenders face the ultimate consequence for their actions.

However, critics contend that retribution perpetuates violence rather than resolving conflicts. Additionally, given the irreversible nature of capital punishment, wrongful convictions present a significant ethical issue, raising concerns about justice system.

Deterrence

The deterrence theory asserts that punishment should prevent future crimes by discouraging both individuals and society from engaging in unlawful acts⁷³⁷. Supporters of the death penalty argue that its severity discourages individuals from committing capital offenses.

Nevertheless, research findings on deterrence are inconclusive. Some studies indicate that the death penalty does not significantly reduce crime rates when compared to life imprisonment. Furthermore, critics highlight that many crimes occur under circumstances where individuals act impulsively or without rational consideration of consequences, making deterrence ineffective.

⁷³⁴ Indian Penal Code 1860, s 302

⁷³⁵ BACHAN SINGH ETC. ETC. vs. STATE OF PUNJAB ETC. ETC.

⁷³⁶ 'Capital Punishment' (Internet Encyclopedia of Philosophy) <https://iep.utm.edu/death-penalty-capital-punishment/> accessed on 25th Feb 2025.

⁷³⁷ Bowers WJ, 'Capital Punishment and Deterrence: Examining the Effect of Executions on Murder in Texas' (2001) 45 *Crime & Delinquency* 481

Rehabilitation

Rehabilitation emphasizes transforming offenders into law-abiding citizens. The death penalty is fundamentally incompatible with this goal, as it eliminates the possibility of reform. If punishment should foster positive behavioral change, life imprisonment with rehabilitation opportunities is a more ethical alternative.

Advocates of rehabilitation argue that individuals can change over time, even after committing serious crimes. Programs focused on psychological and moral development allow offenders the chance to atone for their actions, which is not possible with capital punishment.

Restorative Justice

Restorative justice seeks to repair the harm caused by crime through reconciliation between offenders and victims. This approach emphasizes accountability, healing, and community involvement rather than punitive measures. From this perspective, the death penalty is counterproductive because it eliminates offenders instead of encouraging them to take responsibility for their actions.

Supporters of restorative justice argue that justice should focus on healing rather than revenge. While victims' families may feel closure from an execution, other forms of justice, such as restitution or public acknowledgment of wrongdoing, may be more meaningful and ethically sound.

Kantian Ethics and the Moral Argument for Retribution

Immanuel Kant, a key figure in deontological ethics, strongly supported retributive justice⁷³⁸. According to Kantian ethics, individuals are rational beings responsible for their actions, and justice demands that they receive punishment proportionate to their offenses.

Kant's "categorical imperative" asserts that moral principles should be universally

applicable. He argued that failing to execute murderers would undermine the principle of justice, implying that the sanctity of life is not upheld. Therefore, in Kantian terms, the death penalty is a moral necessity to maintain justice and respect human dignity.

However, critics of Kant's perspective highlight that his theory does not account for judicial errors. Since capital punishment is irreversible, wrongful executions pose a significant ethical dilemma, undermining the justification for the practice in imperfect legal systems.

Utilitarian Perspectives: Bentham and Mill

Utilitarianism, a consequentialist ethical theory, evaluates moral actions based on their outcomes, aiming to maximize overall happiness and minimize suffering. Jeremy Bentham and John Stuart Mill, two leading utilitarian thinkers, held differing views on the death penalty⁷³⁹.

Bentham's Perspective

Jeremy Bentham, the founder of classical utilitarianism, generally opposed the death penalty. He argued that punishment should serve to prevent harm while causing the least amount of suffering necessary for deterrence. Since life imprisonment can serve as an effective deterrent, he viewed execution as excessive and unnecessary. Additionally, he emphasized the risk of wrongful executions as a critical ethical concern.

Mill's Perspective

John Stuart Mill, in contrast, defended the death penalty in specific cases. He argued that a swift and decisive execution could be less cruel than prolonged incarceration, which might impose greater psychological torment. In his view, capital punishment could serve as a deterrent while being a more humane option for the convicted individual.

⁷³⁸ 'Deontological Ethics' ([Stanford Encyclopedia of Philosophy](https://plato.stanford.edu/entries/ethics-deontological/)) <https://plato.stanford.edu/entries/ethics-deontological/> accessed on 25th feb 2025.

⁷³⁹ 'Bentham 's Utilitarian Critique of the Death Penalty' (Scholarly Commons: Northwestern Pritzker School of Law) https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?params=/context/jclc/article/6388/&path_info=39_74|CrimL_Criminology1033_1983_.pdf accessed on 25th feb 2025.

Nonetheless, Mill acknowledged that the death penalty should be reserved for the most severe crimes and only applied when guilt is indisputable. Contemporary critics challenge his stance by emphasizing advances in psychology that suggest even serious offenders can be rehabilitated.

Abolitionist Perspectives and Human Rights

Abolitionist arguments against the death penalty often focus on human rights concerns, emphasizing the inherent dignity of every individual. The Universal Declaration of Human Rights (UDHR) enshrines the right to life and prohibits cruel and inhumane punishment, principles that directly oppose capital punishment⁷⁴⁰.

Right to Life

Abolitionists argue that the death penalty violates the fundamental right to life. By allowing state-sanctioned executions, governments contradict their commitment to protecting human dignity.

Risk of Wrongful Execution

One of the strongest arguments against the death penalty is the possibility of wrongful convictions. Legal errors have led to the execution of innocent individuals, making capital punishment an ethically indefensible practice⁷⁴¹.

Discriminatory Application

Studies suggest that the death penalty is often applied unfairly, disproportionately affecting marginalized and minority communities. These disparities raise concerns about systemic injustice, making capital punishment not only a legal issue but also a social one.

⁷⁴⁰ 'Illustrated Universal Declaration of Human Rights' (Ohchr) <https://www.ohchr.org/en/universal-declaration-of-human-rights/illustrated-universal-declaration-human-rights>, accessed on 25th feb 2025.

⁷⁴¹ 'Innocence and the Death Penalty: The Increasing Danger of Executing the Innocent' (Death Penalty Information Center) <https://deathpenaltyinfo.org/research/analysis/reports/in-depth/innocence-and-the-death-penalty-the-increasing-danger-of-executing-the-innocent>, accessed on 26th feb 2025.

1.3 International Perspectives on the Death Penalty

United Nations and Human Rights Conventions on Capital Punishment

The global debate on the death penalty continues, with human rights organizations and international bodies advocating for its abolition. The United Nations (UN) has played a pivotal role in shaping policies on capital punishment through treaties, resolutions, and legal frameworks.

One of the key legal instruments addressing the death penalty is the **International Covenant on Civil and Political Rights (ICCPR)**, adopted in 1966⁷⁴². Article 6 of the ICCPR affirms the right to life and limits the use of capital punishment to the "most serious crimes," primarily involving intentional killing. The **Second Optional Protocol to the ICCPR**, adopted in 1989, calls for the complete abolition of the death penalty. To date, over 80 countries have ratified this protocol, committing to eliminating capital punishment from their judicial systems.

The **Universal Declaration of Human Rights (UDHR)** also upholds the right to life (Article 3), providing a moral foundation against capital punishment⁷⁴³. The UN General Assembly has reinforced this stance through resolutions urging member states to adopt a **moratorium on executions**, a step toward full abolition. These resolutions, first passed in 2007 and reaffirmed in subsequent years, highlight the growing global opposition to capital punishment.

Other international institutions, including the **European Court of Human Rights (ECHR)** and the **Inter-American Court of Human Rights (IACHR)**⁷⁴⁴, have ruled against the death

⁷⁴² 'International Covenant on Civil and Political Rights' (United Nation Treaty Collection) https://treaties.un.org/PAGES/ViewDetails.aspx?chapter=4&clang=en&tdsg_no=IV-4&src=TREATY, accessed on 26th feb 2025.

⁷⁴³ 'Universal Declaration of Human Rights' (Welcome To The United Nation) <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, accessed on 26th feb 2025

⁷⁴⁴ 'Dialogue with regional human rights courts' (ECHR) <https://www.echr.coe.int/regional-human-rights-courts> accessed on 26th feb 2025.

penalty, viewing it as incompatible with fundamental human rights. Regional treaties such as the **Protocol to the American Convention on Human Rights to Abolish the Death Penalty** further illustrate global efforts to eradicate the practice.

Global Trends: Abolitionist vs. Retentionist Countries

The legal status of the death penalty varies worldwide, with some nations abolishing it completely and others continuing to enforce it. Countries can be classified into **abolitionist** and **retentionist** categories based on their stance.

Abolitionist Countries

Many nations have moved away from capital punishment, either formally abolishing it or ceasing executions in practice. As of recent statistics, over **140 countries** have abolished the death penalty in law or practice. These include:

- **Fully Abolitionist Nations:** Countries that have completely removed capital punishment from their legal systems (e.g., Canada, Germany, Argentina, South Africa, Australia).
- **Abolitionist for Ordinary Crimes:** Countries where the death penalty is only retained for extraordinary circumstances, such as war crimes (e.g., Brazil, Israel, Chile).
- **De Facto Abolitionist Nations:** Countries that still retain the death penalty legally but have not carried out executions for over a decade (e.g., Russia, Sri Lanka, Morocco).

Retentionist Countries

Some countries continue to implement the death penalty as a form of criminal justice. While their numbers are decreasing, several nations still carry out executions regularly, including:

- **China** (executions are reportedly in the thousands annually, though official figures are undisclosed)

- **Iran** (capital punishment is used for crimes including drug-related offenses)
- **Saudi Arabia** (applies capital punishment under Islamic law for crimes such as apostasy and adultery)
- **United States** (some states continue to enforce the death penalty)
- **Egypt** and **Pakistan** (executions persist for crimes including terrorism and blasphemy)

Case Studies: U.S., China, and European Union Policies on Capital Punishment

United States

The United States is among the few Western nations that still enforce the death penalty. Its application is governed by **both federal and state laws**, leading to varying policies across different regions. Recent trends include:

- **23 states** have abolished capital punishment.
- **3 states** (California, Pennsylvania, Oregon) have imposed moratoriums.
- **24 states** continue to impose the death penalty.

The U.S. Supreme Court has played a crucial role in shaping capital punishment laws through landmark rulings:

- **Furman v. Georgia (1972):** Temporarily halted executions due to inconsistent sentencing.
- **Gregg v. Georgia (1976):** Reinstated the death penalty under revised legal guidelines.
- **Atkins v. Virginia (2002):** Prohibited executing individuals with intellectual disabilities.
- **Roper v. Simmons (2005):** Abolished the death penalty for juveniles.

Lethal injection remains the primary execution method, though controversies over its effectiveness and drug shortages have led

some states to consider alternatives such as nitrogen gas and firing squads.

China

China is the world's leading enforcer of the death penalty, though official execution numbers remain a state secret. The death penalty in China applies to crimes ranging from violent offenses to corruption and drug trafficking. In recent years, legal reforms have aimed to prevent wrongful executions, including:

- **2007 policy change** requiring Supreme People's Court approval for all death sentences.
- **Greater reliance on suspended death sentences** can be converted to life imprisonment if good behavior is demonstrated.
- **Increased use of lethal injection**, replacing traditional firing squads.

Despite these efforts, China faces international criticism for its lack of judicial transparency and the potential use of the death penalty for political repression.

European Union (EU)

The European Union is staunchly **abolitionist**, making the eradication of capital punishment a key human rights principle. No EU member state allows the death penalty, and opposition to it is a prerequisite for EU membership under the **Copenhagen Criteria**.

Key policies include:

- **European Convention on Human Rights (ECHR) Protocols No. 6 and 13**, which prohibit the death penalty in both peacetime and wartime.
- **Council of Europe sanctions** against countries practicing capital punishment.
- **Trade restrictions on lethal injection drugs**, preventing U.S. states from acquiring necessary substances for executions.

The EU also actively engages in global abolition efforts through diplomatic pressure and human rights advocacy, encouraging retentionist countries to adopt moratoriums and eventually eliminate capital punishment.

1.4 Human Rights Implications of Capital Punishment

The death penalty, also known as capital punishment, is a deeply divisive issue in human rights discussions. While some argue that it serves as a deterrent against severe crimes, others contend that it violates fundamental human rights. This essay explores the implications of capital punishment, particularly its conflict with the right to life, the risks of judicial errors, discriminatory application, psychological and social effects, international perspectives, and the global movement toward abolition.

1. Capital Punishment and the Right to Life

The fundamental right to life is recognized in Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Critics argue that capital punishment contradicts this principle, as it involves the intentional taking of a human life by the state.

Even in cases of serious crimes, opponents believe that life imprisonment or rehabilitation programs provide a more humane approach to justice. The irreversible nature of executions means that any mistakes made in the legal process are permanent, raising significant ethical concerns.

2. Risk of Judicial Errors and Wrongful Convictions

One of the most significant human rights concerns regarding the death penalty is the potential for judicial errors. Even the most advanced legal systems are prone to mistakes due to issues in evidence collection, witness reliability, forensic testing, or legal representation. There have been numerous cases where individuals sentenced to death were later found to be innocent.

Organizations such as Amnesty International and the Innocence Project have highlighted instances where DNA testing or new evidence has led to the exoneration of death row inmates. Given the irreversible nature of capital punishment, such errors represent a grave injustice and a fundamental violation of human rights.

3. Discriminatory Application of the Death Penalty

Capital punishment is often applied in a biased manner, influenced by factors such as race, socio-economic background, and political climate. Research shows that marginalized groups, particularly racial minorities and individuals from low-income backgrounds, are disproportionately sentenced to death in some countries.

Additionally, individuals who cannot afford skilled legal defense are more likely to receive the death penalty. Public defenders in capital cases often face heavy workloads and limited resources, which can result in inadequate legal representation. This unequal application raises concerns about fairness and equal protection under the law.

4. Psychological and Social Effects of Capital Punishment

The psychological impact of capital punishment extends beyond the condemned individual. Those on death row often endure prolonged periods of isolation and severe mental distress, leading to conditions such as "death row syndrome," characterized by anxiety, depression, and psychological deterioration.

Families of executed individuals experience emotional trauma and social stigma. Additionally, prison staff responsible for carrying out executions may suffer from moral and psychological distress due to their involvement in state-sanctioned killings. These effects highlight the broader societal consequences of capital punishment.

5. International Perspectives on Capital Punishment

The global stance on the death penalty has shifted toward abolition. Organizations such as the United Nations and the European Union actively advocate for its eradication. The European Convention on Human Rights (ECHR) prohibits capital punishment under Protocols 6 and 13, reinforcing the movement toward a world free from the death penalty.

Currently, over two-thirds of the world's countries have abolished the death penalty in law or practice. However, some nations, including China, Iran, Saudi Arabia, and the United States, continue to conduct executions. The UN General Assembly has repeatedly called for a worldwide moratorium on capital punishment, citing its inconsistency with modern human rights standards.

6. Public Opinion and Political Influence

Public sentiment regarding the death penalty varies across different societies. In some cultures, a majority of citizens view it as a necessary punishment for severe crimes. However, research indicates that when presented with alternatives such as life imprisonment without parole, support for the death penalty decreases.

Political leaders play a significant role in shaping policies on capital punishment. In democratic societies, public opinion can influence legislative changes, while in authoritarian regimes, the death penalty is sometimes used as a tool of repression. The commitment of governments to international human rights standards is crucial in determining the future of capital punishment.

7. The Global Movement Toward Abolition

The abolition of the death penalty has gained momentum over recent decades. Many nations have either repealed capital punishment laws or placed moratoriums on executions. Human rights organizations, legal experts, and activists continue to push for reforms that prioritize human dignity and justice.

Common reasons cited for abolishing the death penalty include:

- The risk of executing innocent individuals
- The lack of evidence supporting its deterrent effect
- The inhumane and degrading nature of executions
- The disproportionate impact on marginalized communities
- The growing international consensus against state executions

International pressure has played a role in influencing some countries to abandon capital punishment. For example, the European Union has made the abolition of the death penalty a prerequisite for membership, encouraging several nations to align their policies with human rights principles.

8. Alternative Justice Approaches

As societies progress, alternative methods of justice are being explored to replace the death penalty. Restorative justice, which focuses on rehabilitation and reconciliation rather than retribution, has gained traction in some legal systems. This approach emphasizes repairing harm through dialogue between offenders, victims, and communities.

Life imprisonment without parole is often presented as a viable substitute for capital punishment. It ensures that serious offenders remain incarcerated while addressing ethical concerns associated with executions. Additionally, enhancing prison conditions and implementing rehabilitative programs can contribute to a more humane and effective justice system.