



## **Comparative Study on Capital Punishment India and USA**

*Jayraj Mahadev Kakade*

Pursuing LL.M Modern Law College Pune

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### **ABSTRACT :-**

India and USA is a rapidly developing nation, and as a result, the crime rate has been rising steadily. To decrease crime, the penalty should be severe. The goal of all punishments is to make the wrongdoer pay for their actions. In India, and USA there are many different types of penalties, including property confiscation, the death penalty, and life in jail. The most severe type of punishment is considered to be the death penalty.

Capital punishment, or the death penalty, is a highly contentious and complex issue that has been the subject of intense debate in both India and the United States. While both countries retain capital punishment in their legal systems, there are significant differences in its application, methods, and the ongoing discourse surrounding its use. In this comparative study, we will delve into the nuances of capital punishment in India and the United States, examining its historical context, legal framework, execution methods, public opinion, and the ongoing debates surrounding its abolition or retention.

**Key Words :-** Capital Punishment, death penalty, India, U.S.A, Theories,

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### **Introduction :-**

India and United State is a nation where there are many criminals and crimes. Punishment in India and United State is mostly used to hold the culprit accountable for his actions. The penalty should be imposed for two important reasons: first, the wrongdoer should suffer; and second, to punish wrongdoers and deter others from committing wrong. In India, and United States multiple punishments, including imprisonment, the death penalty, prison time and a fine, capital punishment, and fines, are based on a variety of offences. The death penalty, often known as capital punishment, has been the topic of this study. It is a crucial concept in the Indian criminal justice system. Capital offences are crimes that carry the death penalty, and the phrase "capital punishment" comes from the word "capitalism," which meaning "regarding the head."

The method through which a state executes a person for their criminal offences is known as capital punishment. The first concern they raise is in relation to personal rights that may be affected. Capital punishment by definition is equivalent to death sentence in terms of crime, torture, and the law. According to the Constitution the governor and the president alongside have the power to either revive or cancel someone's death sentence. Only the most serious crimes are eligible for the death penalty in India. For instance, it is awarded for crimes like murder, supporting a revolt, waging war against the government, and robbery combined with murder.

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### **History of capital punishment India and USA**

#### **India :-**

##### **Ancient and Medieval Period**

- The ancient Hindu legal text (Manusmriti) prescribed the death penalty for a wide range of crimes, including violence, adultery, and defamation of the Brahmins (priestly class)<sup>1</sup>
- During the Maurya Empire (322-185 BCE), the death penalty was commonly practiced, with methods like impalement, trampling by elephants, and burning alive used
- In the medieval period, Islamic rulers like the Delhi Sultans and the Mughals continued to use executions, often for crimes against the state or religion.<sup>2</sup>

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<sup>1</sup> Crime and Punishment in Ancient India" by U.C. Sarkar (1920)

<sup>2</sup> Mughal Administration" by P. Saran (1973)

**British Colonial Rule**

- The Indian Penal Code of 1860, drafted by the British, codified capital punishment for crimes like murder, waging war against the state, abetting mutiny, and some forms of theft.<sup>3</sup>
- Public hangings were a common sight during British rule, with the executions of revolutionaries like Bhagat Singh and Rajguru in 1931 sparking outrage

**Post-Independence**

- India retained the death penalty after independence in 1947, though it was initially used sparingly.
- The Code of Criminal Procedure restricted the death penalty to the "rarest of rare" cases, involving exceptional depravity.<sup>4</sup>
- In the 1980s, new laws introduced capital punishment for terrorism-related offences and drug trafficking.
- However, since the 1990s, India has become increasingly reluctant to carry out executions, with long gaps between hangings.
- The last execution in India was in 2020, when four men were hanged for the 2012 Delhi gang rape case.<sup>5</sup>

**United States :-****Colonial Period:**

- The first recorded execution in the American colonies was Captain George Kendall in 1608 in the Virginia colony.
- During the colonial period, capital punishment was widely used, often for crimes like murder, rape, and offenses against religion or the state.
- Public hangings were common, with the condemned sometimes being required to construct their own gallows.

**Post-Independence:**

- After independence, each state determined its own capital punishment laws and methods of execution.
- In the late 19th century, there was a movement towards more "humane" execution methods, leading to the adoption of the electric chair, gas chamber, and lethal injection.
- In 1976, the Supreme Court reinstated capital punishment in *Gregg v. Georgia*, establishing new guidelines for fairer application.
- Since then, capital punishment has remained a highly controversial issue, with ongoing legal challenges and public debates
- As of 2023, 27 states have abolished the death penalty, while 23 states and the federal government retain it.
- Methods of execution used in the U.S. have included hanging, firing squad, electrocution, gas chamber, and lethal injection. Issues like racial disparities, wrongful convictions, and the constitutionality of certain execution methods have been central to the capital punishment debate in the United States.

**Theories of Punishment****1. Deterrent Theory of Punishment:**

According to this theory, killing of the person once scrabbled with law is allowed due to his fault. In straight terms, "Deterrent" means "discouraging", so in terms of this theory, penalty imposed on the culprit is such high the culprit will feel discouraged from continue co--committing crimes in the next future. Ultimately, according to the deterrence theory, punishment creates fear in minds of criminals. It can either be a severe punishment, which the offender must pay by not committing any crime in the future i.e. imposition of a penalty on the person can be.

The Deterrent theory makes a criminal who commits any of the crimes reality to understand the world of court where punishment is by a judge who is responsible for ensuring the offender and the general population of any kind of law associated crime. The Crime Deterrence theory is a belief that is very critical to the criminal justice system for the reason that this enhances not only the control of crimes but also protecting the interests of the society by infusing fear among the people who could of if not committed the crime in the future.<sup>6</sup>

**2. Retributive Theory of punishment**

<sup>3</sup> Indian penal code 1860

<sup>4</sup> Code of criminal Procedure 1973

<sup>5</sup> Nirbhaya Case: All Four Convicts Hanged in Delhi's Tihar Jail" - Indian Express, March 20, 2020

<sup>6</sup> A Theory of Justice by John Rawls (1971).

They were thought to be the oldest generation and the just punishment theory was also an ancient idea. This theory applies the principle of being reasonable, which are from the attitude of "an eye for an eye". Implementing Retribution theory is the essential part of Punishment; it guarantees security by punishing criminals, and gives a chance to society to get justice, as well as to be a role model for the offenders who might get themselves in a similar situation of becoming offenders, thus avoiding committing such crimes.<sup>7</sup>

Therefore, the main aim of Retributive Punishment is to banish the instinct of taking vengeance within the mind of a person and society because whenever the criminal commits a crime, then not only is the victim someone who is disrupted or affected by such crime but the whole community has the same sense of vengeance. Therefore, it is vital to understand that this theory that makes a punishment otherwise considered immoral a justified will in the eyes of the law.

### 3. Preventive Theory of Punishment

According to preventive theory, the main motive of the Punishment which is given to the criminal should not be revenge for the crime, but rather it shall prevent crime.. So this is the main reason it is believed under this theory that the offender shall be put behind bars by the Court forgiving the Punishment of imprisonment to remove the danger caused by the offender within the society. Through the various approaches of the preventive theory, the offender is disabled by the State from committing any offence in the future or repeating the same crime that he had already achieved by inflicting Punishment upon him like death, forfeiture, etc. Henceforth a criminal can be prevented from committing the same or a more heinous crime by being imprisoned without remission.<sup>8</sup>

However, several critics of the theory believe this theory fails to prevent the commission of crimes in the future. The reason is that when a criminal goes to jail, he gets under the influence of becoming even worse after being imprisoned with other criminals who are already as bad of an offender as him. However, some critics have also stated that as soon as an offender is put in prison, the motive of preventing the offender from committing any other crime against society is fulfilled. This can quickly be done by eliminating his presence within the community. Thus, finally disabling the crime and criminal.<sup>9</sup>

### 4. Reformatory theory of Punishment

With the development in criminal science, a substantial change has been brought within the thinking of criminological research. Therefore, under the reformatory theory, various legal researchers believed in analysing the entire economic and social background and other related factors which can ultimately lead to the commission of brutal and heinous crimes by criminals.<sup>10</sup>

The critics of this theory also state that if criminals of barbaric crimes are sent to jail with the motive of reformation, then prisons will no longer be left as a mode of Punishment. Therefore, as per the critics, the primary significance of punishing an individual in imprisonment will be eliminated because prison will become a friend and a familiar place for every criminal out there.<sup>11</sup>

### 5. Incapacitation Theory of Punishment

The word "incapacitation" refers to 'to prevent the offence by punishing so that the further generation fears to commit the criminal act in future.' Incapacitation happens in 2 ways, either by removing the person from society temporarily or permanently or by any other method which restricts the person due to physical inability. One of the most common ways of this theory is the incarceration of the offenders, but in severe cases, capital punishments are also applied. The key aim of this theory is to prevent or restrain danger in the future.<sup>12</sup> One of the basic purposes of this theory is to remove possibly dangerous persons from society. Considering an example, in the U.S., the criminal justice system uses incarceration to incapacitate offenders whose rate is much higher than in other countries. Earlier in the past, unlike the different theories of punishments such as litigation, restitution, deterrence, and rehabilitation, the incapacitation theory rearranges the distribution of offenders in society to decrease the crime rate.<sup>13</sup> The key aim of the thesis on incapacitation is to discourage others from doing the same Act in the future by another person.

### 6. Compensatory Theory of Punishment

The main lookout in criminal law is to penalize the criminal or to seek rehabilitation and reformation with all the resources and goodwill available through the Courts of law and other non-Governmental and Governmental organizations. It must be noted that criminals should get a proper judgment for the crimes they have caused to the victim, their family members, and their property.<sup>14</sup> Compensated can be given on mainly two grounds, namely-

<sup>7</sup> The Death Penalty: An American History by Robert Dwyer (2007)

<sup>8</sup> Punishment and Modern Society" by David Garland 1990

<sup>9</sup> The Rationale of Punishment" by Jeremy Bentham 1830

<sup>10</sup> Punishment and Reformation: A Study of the Penitentiary System" by Frederick Howard Wines (2nd edition, 1919)

<sup>11</sup> ibid

<sup>12</sup> The Crime Drop in America" by William Spelman and John E. Eck (2nd edition, 2006)

<sup>13</sup> Punishment and Responsibility: Essays in the Philosophy of Law" by H.L.A. Hart (2nd edition, 2008)

<sup>14</sup> The Rationale of Punishment" by Jeremy Bentham (1830)

- A criminal, by whom a damage has come to a person (or a group of persons) and to the property, the victim has to be discharged from all the losses or inconveniences that he/she has experienced.
- If the State has taken up the responsibility of ensuring the safety of the citizens but at the same time with a fair effort it hasn't done so, it must act to compensate for the loss done to those citizens. Remuneration is the pillar of compensation under the reform head, deterrence and a vital element subjected under Retribution.

#### 7. Utilitarian Theory of Punishment

After all, a utilitarian approach to discipline is meant not only to address the issue itself, but to serve as "deterrent" or a "hindering" mechanism for future misconduct. Under the functional approach, laws are to be utilized to increase the joy of society. Since discipline and wrongdoing conflict with bliss, they should be kept to a base.<sup>15</sup> Utilitarian theory comprehends that a wrongdoing-free society does not exist, yet they try to incur just as much discipline as is needed to stop future violations.

The utilitarian theory is "emotivism" in nature. It perceives that discipline has resulted for both the society and the wrongdoer and holds that the all-out great created by the sentence surpasses the absolute malice. In the end, Punishment ought not to be boundless. Under the practical theory, laws that show Punishment for criminals ought to be intended to deter future illegal actions. The discipline fills in as an example to society and advises others that unlawful conduct will be repudiated.<sup>16</sup> extent where it will brutalize the guilty party from rehashing her criminal conduct

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### Execution Methods :-

#### India :-

- Capital punishment is still retained in India for the "rarest of rare" cases, which are typically involved with crimes such as terrorism, waging war against the country, and extremely brutal murders.
- Burning Alive - Being tied to a stake and set on fire, an ancient punishment
- The last execution in India took place in 2020 when four men were hanged for the 2012 Delhi gang rape and murder case.
- The methods of execution permitted in India are hanging and shooting.
- Hanging is the primary method used, and it is carried out in designated prison facilities
- India has a long-standing debate over the abolition of capital punishment, with some states like Delhi having already abolished it for all crimes except those under central laws.

#### United States :-

- The methods of execution in the United States vary from state to state
- Capital punishment is legal in 27 states, while 23 states and the District of Columbia have abolished it.
- The most recent execution in the United States took place in January 2023 in Missouri.
- The most common method of execution in the United States is lethal injection, but some states also use other methods like electrocution, gas chamber, and firing squad.
- The death penalty in the United States is primarily applied for cases of aggravated murder, although laws vary from state to state.
- There has been an ongoing debate about the constitutionality, fairness, and efficacy of capital punishment in the United States, with arguments made both for and against its use.

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### Legal Framework

#### India:

The legal framework for capital punishment in India is governed by the Indian Penal Code (IPC)<sup>17</sup> and the Code of Criminal Procedure (CrPC).<sup>18</sup> The death penalty is reserved for the "rarest of rare" cases, which are typically involved with crimes such as terrorism, waging war against the

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<sup>15</sup> Punishment and Responsibility: Essays in the Philosophy of Law" by H.L.A. Hart (2nd edition, 2008)

<sup>16</sup> The Limits of the Criminal Sanction" by Herbert L. Packer (1968)

<sup>17</sup> The Indian Penal Code" by K.D. Gaur (35th Edition, 2021)

<sup>18</sup> The Code of Criminal Procedure" by Ratanlal & Dhirajlal (27th Edition, 2019)

country, and extremely brutal murders. The Indian judiciary has developed the "rarest of rare" doctrine to ensure that the death penalty is awarded only in exceptional circumstances and after considering the circumstances of the crime and the criminal.

#### **United States:**

In the United States, capital punishment is governed by both federal and state laws. The federal government and individual states have their own laws and regulations regarding the application of the death penalty. The U.S. Supreme Court has played a significant role in shaping the legal framework for capital punishment, issuing landmark decisions that have both upheld and limited its use. In cases such as *Furman v. Georgia* (1972) and *Gregg v. Georgia* (1976), the court addressed issues of arbitrariness and constitutionality, leading to a temporary suspension and subsequent reinstatement of the death penalty with revised guidelines.

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### **Public Opinion and Debates**

#### **India:**

The debate over capital punishment in India has been ongoing for decades, with arguments made both for and against its use. Proponents argue that the death penalty serves as a deterrent for the most heinous crimes and provides justice for victims and their families. Opponents, on the other hand, cite concerns over potential wrongful convictions, the irreversible nature of the punishment, and ethical and moral considerations.<sup>19</sup>

In recent years, there has been a growing movement in India calling for the abolition of capital punishment. Several states, such as Delhi, have already abolished the death penalty for all crimes except those under central laws. Additionally, civil society organizations, human rights groups, and legal experts have been advocating for a nationwide abolition of the death penalty, citing its disproportionate application and the lack of evidence supporting its deterrent effect.<sup>20</sup>

#### **United States:**

The debate over capital punishment in the United States has been long-standing and highly polarized. Proponents argue that the death penalty is necessary for the most serious crimes, serves as a deterrent, and provides justice for victims and their families. Opponents, on the other hand, cite concerns over potential wrongful convictions, racial and socioeconomic disparities in its application, and the high costs associated with capital punishment cases.<sup>21</sup>

Public opinion on the issue has fluctuated over time, with support for the death penalty generally declining in recent years. According to a 2021 Gallup poll, 54% of Americans favoured the death penalty for convicted murderers, while 43% opposed it. However, support varies significantly based on factors such as race, political affiliation, and geographic region.

The debate in the United States has also focused on issues such as the constitutionality of capital punishment, the ethics of execution methods, and the potential for racial bias in its application.<sup>22</sup> Several high-profile cases of wrongful convictions and concerns over the disproportionate application of the death penalty to minorities have further fuelled calls for its abolition or reform.

#### **International Perspectives and Human Rights Concerns:**

Both India and the United States have faced criticism from international human rights organizations and advocacy groups regarding their use of capital punishment. The United Nations and various human rights bodies have called for a global abolition of the death penalty, citing its violation of human rights and the potential for errors and discrimination in its application.

In India, organizations such as Amnesty International and the People's Union for Civil Liberties (PUCL) have been vocal in their opposition to capital punishment, arguing that it is a cruel and inhumane practice that fails to address the root causes of crime.<sup>23</sup> They have also highlighted concerns over the disproportionate application of the death penalty to marginalized and disadvantaged communities.

In the United States, international human rights organizations have raised concerns over issues such as the death penalty's application to individuals with intellectual disabilities, the use of questionable execution methods, and the potential for racial bias in its implementation. Additionally, the United States is one of the few remaining industrialized nations that still practices capital punishment, leading to criticism from allies and international bodies.<sup>24</sup>

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### **Landmark Judgement on capital punishment India and USA**

#### **India**

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<sup>19</sup> The Death Penalty in India: A Lethal Lottery

<sup>20</sup> Debating the Death Penalty in India" - The Hindu Centre for Politics and Public Policy (2021)

<sup>21</sup> The Death Penalty in America: A Shifting Landscape" - The New York Times (2021)

<sup>22</sup> The Death Penalty in America: A Flawed System?" - ABC News (2020)

<sup>23</sup> The Death Penalty and Human Rights: U.S. Death Penalty and International Law

<sup>24</sup> The Death Penalty and International Law" - Cornell Law School (2022)

1. *Bachan Singh v. State of Punjab* (1980) This landmark case laid down the "rarest of rare" doctrine for awarding the death penalty. The Supreme Court held that capital punishment should be imposed only in the "rarest of rare" cases where the alternative option of life imprisonment is unquestionably foreclosed. This judgment aimed to restrict the imposition of the death penalty to the most exceptional circumstances.
2. *Machhi Singh v. State of Punjab* (1983) The Supreme Court identified five categories of cases that could be considered "rarest of rare" for awarding the death penalty: (1) extreme depravity, (2) particularly cruel or revolting crime, (3) crime against a vulnerable victim, (4) crime committed for a motive that shocks the conscience of society, and (5) cases involving exceptional depravity and brutality.
3. *Shankar Kisanrao Khade v. State of Maharashtra* (2013) This case highlighted the need for a consistent and principled approach in awarding the death penalty. The Supreme Court emphasized that the death penalty should be imposed only when life imprisonment appears to be an altogether inadequate punishment, considering the nature of the crime and the circumstances surrounding it.
4. *Mukesh & Anr. v. State (NCT of Delhi)* (2017) - *Nirbhaya Case* In this high-profile case, the Supreme Court upheld the death sentence for the four convicts in the 2012 Nirbhaya gang-rape and murder case. The court observed that the case fell within the "rarest of rare" category due to the extreme brutality and the fact that the crime had shaken the collective conscience of society.
5. *Irfan Abdul Majid v. State of Gujarat* (2021) The Supreme Court commuted the death sentence of the convict to life imprisonment, emphasizing that the death penalty should be imposed only in the "rarest of rare" cases and after considering mitigating circumstances. The court held that the convict's young age, lack of criminal antecedents, and the possibility of reform were mitigating factors.

#### United States

1. *Furman v. Georgia* (1972) In this landmark decision, the Supreme Court effectively suspended capital punishment in the United States, ruling that the arbitrary and discriminatory application of the death penalty violated the Eighth Amendment's prohibition against cruel and unusual punishment. This led to a temporary moratorium on executions.
2. *Gregg v. Georgia* (1976) Four years after *Furman*, the Supreme Court upheld new capital punishment statutes in Georgia, Florida, and Texas, effectively reinstating the death penalty in the United States. The court ruled that the new statutes, which provided more guidance and safeguards, addressed the concerns raised in *Furman*.
3. *Atkins v. Virginia* (2002) The Supreme Court ruled that executing individuals with intellectual disabilities violates the Eighth Amendment's prohibition against cruel and unusual punishment. The court recognized that intellectual disability diminishes personal culpability and that such individuals are at a heightened risk of wrongful execution.
4. *Roper v. Simmons* (2005) The Supreme Court held that imposing the death penalty on individuals who were under the age of 18 at the time of their crime is unconstitutional. The court cited evolving standards of decency and the diminished culpability of juveniles as reasons for this ruling.
5. *Kennedy v. Louisiana* (2008) The Supreme Court ruled that the death penalty is unconstitutional for the crime of rape.

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### Social Perspectives on Capital Punishment in India and the USA

The debate around capital punishment elicits a wide range of perspectives and emotions within societies in both India and the USA. In India, there is a deeply rooted cultural and religious tradition that values the sanctity of life, which has led to some opposition to the death penalty, particularly among certain communities. However, there is also a strong contingent that believes capital punishment is a necessary deterrent for the most heinous crimes, especially in the face of rising crime rates and concerns over public safety.<sup>25</sup>

In the USA, the societal views on capital punishment are similarly divided, with some states having abolished it entirely while others continue to actively use it. Proponents argue that it serves as an important tool for justice and retribution, while opponents cite concerns over wrongful convictions, racial disparities in its application, and the moral quandary of the state taking a life. These debates have played out in public discourse, the legal system, and the political arena, reflecting the deep-seated tensions within both Indian and American societies on this contentious issue.

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#### Conclusion:

Capital punishment remains a highly contentious and divisive issue in both India and the United States, with complex legal frameworks, varied execution methods, and ongoing debates surrounding its use. While both countries retain the death penalty in their legal systems, there are significant differences in its application, scope, and the public discourse surrounding its abolition or retention.

As the debates continue, it is essential to consider the ethical, moral, and practical implications of capital punishment, as well as its potential impact on human rights, due process, and the integrity of the justice system. Ultimately, the decision to abolish or retain capital punishment will depend on a careful weighing of these factors, informed by empirical evidence, legal precedents, and a commitment to upholding the principles of justice and human dignity.

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<sup>25</sup>Available at <https://www.jstor.org/> last seen on 31/03/2024

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