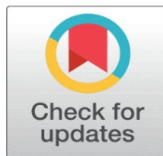


CONSTITUTIONAL VALIDITY AND JUDICIAL INTERPRETATION OF DEATH PENALTY IN INDIA

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ABSTRACT

Capital punishment, also known as the "death penalty" or "death sentence," is imposed for serious crimes such as murder or multiple murders, rape, or any other crime for which a death penalty is provided by law. It is legal in India, but it is rarely voted for. Because of the possibility of commutation to life imprisonment, the penalty is not always carried out. Only four times since 1995: on Auto Shankar in 1995, Dhananjay Chatterjee in 2004, Ajmal Kasab in 2012, and Afzal Guru in 2013 and Akshay Thakur, Mukesh Singh, Pawan Gupta, and Vinay Sharma, who were hanged on 20 March 2020, guilty for rape. Even though death sentences are prohibited in many countries, there is no international agreement on their legality. Not only in India, but also in several developed countries, capital punishment or the death penalty has always been a source of debate. The motive for providing punishment in India is based on two aspects: the first is that the offender should suffer for the pain and injury he or she caused the victim, and the second is that sanctioning punishments will deter others from committing wrongs. This paper focuses on India's capital punishment, also known as the death penalty, which is only applied in extremely rare cases. Furthermore, in the context of the Indian judiciary, this paper investigates the constitutional validity of capital punishment.

Keywords: Capital Punishment, Death Penalty, Constitutional Validity, India

1. INTRODUCTION

"State should not punish with vengeance."

-Emperor Ashoka

India is one of the few countries in the world that retains the death penalty in exceptional circumstances. When used properly, considering both mitigating and aggravating circumstances¹, and primarily providing legal representation to those accused that are from the poorer strata of society and cannot afford the minimum fees required to hire a lawyer, this tool will serve the idea of justice. Even in the author's opinion, the death penalty should not be completely abolished because it is still in use and creates a danger. In society, it has a deterrent effect. Only in the most exceptional of circumstances should the death penalty be applied. It may not have a complete deterrent effect on society, but it does

¹ *Bachan Singh v. State of Punjab* (1980) 2 SCC 684.

create fear in some people's minds than it is for society. The death penalty is defined by Merriam Webster Dictionary as "death as a punishment given by a court of law for very serious crimes." It is given to a prisoner who has committed a particularly serious or heinous crime. Around 142 countries have abolished the death penalty, while 56 countries continue to carry out executions on prisoners.² The reason for this is twofold: first, to create a deterrent effect in the minds of the public by instilling fear in them that they will not commit the crime again, and second, to maintain discipline, law and order, and a crime-free society.

Many international organizations, including Amnesty International and Human Rights Watch, have condemned such inhumane executions that deprive prisoners of their rights and liberties. Every year, the 10th of October is designated as World Day Against the Death Penalty. India is one of the 56 countries that has kept the death penalty in place. It was highlighted in the landmark *Bachan Singh v. State of Punjab*³ decision, in which a ratio of 4:1 judge called for the death penalty to be used only in the "rarest of rare cases." Another issue is that the vast majority of those sentenced to death come from low-income families with little or no education. They are unable to hire the lawyers of their choice to represent them in court, and thus must suffer the consequences.⁴ Also, a problem that is very relevant is the issue where the facts of the cases are incidental in nature, but death penalty is awarded in one case and not in the other case due to differences in Judges' opinions and bias, which can be a source of concern. The death penalty concept is a very fluid and difficult concept with no set rules and regulations. This can sometimes escalate into a major problem that must be investigated, analyzed, and resolved.⁵

2. HISTORY OF CAPITAL PUNISHMENT

Capital punishment is a form of retributive punishment that dates back to the dawn of civilization. It is the legal infliction of death as a punishment, and it has been used for a wide range of offences since ancient times. Both the Greeks and the Romans used the death penalty to punish a wide range of crimes. Socrates and Jesus were two of the most well-known people ever condemned to death in the ancient world. The code of Hammurabi, written by a king of one of the first empires, dates from the third or second millennium before Christ. Retribution, an eye for an eye, and a life for a life, according to this code, is justice. The death penalty has long been a standard in Anglo-American law.⁶ Murder, as well as many other crimes such as kidnapping and witchcraft, are punishable by death in the Bible. Only major felonies carried the death penalty in England by 1500: treason, murder, larceny, rape, and arson. However, by 1700, parliament had enacted a slew of new capital offences, and hundreds of people were being executed each year.⁷

Throughout history, the argument over the death penalty has been intense and morally divisive, including both legal experts and the general population. The issue of whether using the taking of a human life as a form of punishment is ever permissible within the parameters of a constitutional framework goes well beyond simple legal analysis; it reaches right to the core of human rights, ethics, and the fundamental foundation of a just and civilized society. This introduction lays the groundwork for a thorough investigation of the constitutionality and judicial interpretation of the death sentence, with an emphasis on its historical development, ramifications, and the numerous viewpoints that have influenced its function within different legal systems.⁸

The history of the death penalty is lengthy and intricate, going back thousands of years to early civilizations. Its roots can be found in a type of vengeful justice founded on the tenet of "an eye for an eye." Executions have changed throughout

² <https://www.europarl.europa.eu/topics/en/article/20190212STO25910/death-penalty-in-europe-and-the-rest-of-the-world-key-facts>, last accessed on November 29, 2023.

³ *Supra* note 2.

⁴ *Death penalty disproportionately affects the poor, UN rights experts warn*, available at: [Death penalty disproportionately affects the poor, UN rights experts warn | OHCHR](https://www.ohchr.org/en/press-releases/2023/11/death-penalty-disproportionately-affects-the-poor), last accessed on Nov 29, 2023.

⁵ *Ibid.*

⁶ Dr. A. Krishna Kumari, Capital Punishment: The Never-Ending Debate (October 20, 2023), <http://www.richard.clark32btinternet.co.uk/thoughts.html>

⁷ *Ibid.*

⁸ Mbah, Ruth Endam & Pruitt, Tanisha & Wasum, Forcha. (2019). Cruel Choice: The Ethics and Morality of the Death Penalty. 10.7176/RHSS/9-24-03.

time from horrifying public spectacles to more private and ostensibly humane procedures. Many nations today have abolished the death penalty because they believe it is inconsistent with the values of human dignity and rights.⁹

Constitutional Framework: Depending on the jurisdiction, the death sentence may or may not be legal under the constitution. The death sentence is frequently questioned in regard to the Eighth Amendment, which forbids cruel and unusual punishment, in nations like the United States, where it is still used. Many legal disputes concerning the validity of the death sentence center on the definition of what constitutes cruel and unusual punishment.

Court Interpretation: Courts are crucial in establishing whether the death sentence is constitutional. They are entrusted with balancing the seriousness of the offence against the likelihood that it may be applied incorrectly, arbitrarily, or cruelly. Throughout the years, judicial interpretation of the death penalty has changed to reflect shifting society norms and an increasing awareness.

Evolving Standards of Decency: Taking into account changing standards of decency is an important part of judicial interpretation. Courts frequently consider issues like dwindling public support and the rising number of nations that have abolished the death sentence when determining whether society's attitudes have changed. This demonstrates an awareness that the constitution needs to change to reflect evolving moral and ethical standards.

From a global perspective: The consideration of its constitutionality must also consider the death penalty from a worldwide viewpoint. The discussion of the death sentence has been affected by international human rights documents including the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Numerous people contend that the death sentence breaches the right to life as guaranteed by these documents, and international pressure has led to the abolition of the death penalty in numerous countries.

Challenges & Controversies: The death penalty continues to be a contentious topic and presents a number of difficulties. The possibility of executing innocent people, racial and socioeconomic discrepancies in its implementation, and the issue of whether it effectively deters crime are a few of them. Courts are frequently forced to address complex moral and legal concerns as a result of these issues' frequent intersections with constitutional disputes.

Finally, it should be noted that the constitutionality of the death penalty and how it is interpreted by judges are complex and dynamic issues. They address fundamental issues with justice, human rights, and the state's control over life and death. This investigation tries to delve deeply into these issues, looking at how other legal systems have dealt with them and illuminating the current discussions that continue to influence the field.¹⁰

3. PROCESS OF DEATH PENALTY

1) Trial Court

The Sessions Court has the power to award death penalty to an individual by following the principle of 'rarest of rare case', where a mandatory reference is made to the High Court under Section 366(1) CrPC.¹¹

2) High Court

The High Court when confirms the death penalty provides with stages which are as follows:

- High Court certifies the case to be fit for appeal under Art. 132 or Art. 134A.
- Mandatory appeal to Supreme Court under Art. 134.
- Supreme Court grants special leave to appeal under Art. 136.

3) Supreme Court

The Hon'ble Apex court confirms the death sentence of the accused when the case is proved beyond reasonable doubt by the Public Prosecutor and fulfilling the principles of Bachan Singh case.

⁹ Burki, Talha, *The death penalty continues unabated globally*, The Lancet, Volume 397, Issue 10284, 1531 – 1532.

¹⁰ Lavanya Kadari, *A Study on Constitutionality of Death Penalty in India*, International Journal of Research Publication and Reviews, Vol 5, no 5, pp 12260-12265 May 2024.

¹¹ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

4) Review petition in Supreme Court

After the decision of Supreme court is in favor of awarding death penalty, an appeal is filed under Article 137 of the Constitution wherein which the court deeply analyses if this case is fit for death penalty.

5) Curative Petition

The concept of Curative Petition was first developed under *Rupa Ashok Hurra v Ashok Hurra*¹² where after the dismissal of review petition, the Supreme Court may reconsider if there is any violation of the Principles of natural justice.

6) Mercy Petition

It's the last resort given to the accused after exhausting all the legal remedies asking for mercy before the Hon'ble President of India under Article 72 of the Constitution. It's the full discretion of the President to either reject or accept the mercy petition of the accused.

Table 1. Central Legislations with offences punishable with death

The Air Force Act, 1950
The Arms Act, 1959
The Army Act, 1950
The Assam Rifles Act, 2006
The Border Security Force Act, 1968
The Coast Guard Act, 1978
The Commission of Sati (Prevention) Act, 1987
The Delhi Metro Railway (Operation and Maintenance) Act, 2002
The Geneva Conventions Act, 1960
The Indian Penal Code, 1860
The Indo-Tibetan Border Police Force Act, 1992
The Narcotic Drugs and Psychotropic Substances Act, 1985
The Navy Act, 1957
The Petroleum and Minerals Pipelines (Acquisition of right of user in Land) Act, 1962
The Sashastra Seema Bal Act, 2007
The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002
The Unlawful Activities Prevention Act, 1967
Source: Death Penalty India Report¹³

4. CAPITAL PUNISHMENT FOR OFFENCES UNDER IPC

The following offences provide with the capital punishment under the Indian Penal Code, 1860:

- 1) 120B- Punishment of criminal conspiracy.
- 2) 121- Waging, or attempting to wage war, or abetting waging of war, against the Government of India
- 3) 132- Abetment of mutiny, if mutiny is committed in consequence thereof.
- 4) 194- Giving or fabricating false evidence with intent to procure conviction of capital offence.

¹² (2002) 4 S.C.C. 388 (India).

¹³ National Law University, Delhi, Death Penalty India Report Summary (November. 22, 2023, 11:03 PM), https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5b4ced7b1ae6cfe4db494040/1531768280079/Death+Penalty+India+Report_Summary.pdf.

- 5) 195A- Threatening any person to give false evidence.
- 6) 302- Punishment for murder.
- 7) 305- Abetment of suicide of child or insane person
- 8) 307(2)- Attempts by life-convicts
- 9) 364A- Kidnapping for ransom, etc.
- 10) 376A- Punishment for causing death or resulting in persistent vegetative state of victim
- 11) 376AB- Punishment for rape on woman under twelve years of age.
- 12) 376E- Punishment for repeat offenders.
- 13) 396- Dacoity with murder

5. CONSTITUTIONAL VALIDITY OF DEATH PENALTY

When judges had to choose between death sentence and life imprisonment, the Code of Criminal Procedure, 1898, stated death was default punishment. The 1973 amendment brought in a more dramatic shift- death sentence became an exception. The 1970s witnesses' significant engagement on issues concerning death penalty in Supreme Court:

- Jagmohan Singh v State (1972)¹⁴
- Ediga Anamma v State of Andhra Pradesh (1974)¹⁵
- Rajendra Prasad v State of UP (1979)¹⁶

In May 1980 where 05 judges of Supreme Court in Bachan Singh v State of Punjab¹⁷ decided on constitutional validity of death penalty. Court addressed the following question:

- Does the death penalty violate right to life guaranteed under Constitution?
- Is sentencing procedure unconstitutional because it violates Art 14 of the Constitution?

04 Judges upheld the constitutional validity of the death penalty namely, Justice RS Sarkaria, Justice AC Gupta, Justice NL Untwalia and Justice YV Chandrachud. Justice PN Bhagwati disagreed and wrote a dissent.

1) Majority Ruling

- Death penalty does not violate Article 21 as there were reasonable procedural safeguards built in.
- Death penalty sentencing procedure is neither arbitrary nor give excessive discretion to judges and does not violate Article 14.

2) Minority Ruling

Justice PN Bhagwati in powerful dissent said-“sentencing discretion conferred upon court is totally uncontrolled and unregulated it is standard less and unprincipled.”The majority after declaring the validity proceeded to develop a framework for future sentencing judges when deciding between Life Imprisonment and Death penalty-

- Consider aggravating and mitigating circumstances concerning both crime and accused.
- Use of death sentence only in “rarest of rare cases” where option of Life imprisonment is unquestionably foreclosed.
- Reformation was identified as one of the mitigating circumstanced. The onus was put on prosecution to show that the individuals could not be reformed.

6. 40 YEARS OF DEATH PENALTY SENTENCING: THE UNCERTAIN LEGACY OF BACHAN SINGH

Misinterpretation, Error, and Subjectivity have characterized Bachan Singh's 40-year journey away from work. In the last 40 years, the death penalty has primarily been used to punish criminals. Meaning, the sentencing judge focused

¹⁴ (1973), A.I.R. 947 (India).

¹⁵ (1974) S.C.R. (3) 329 (India).

¹⁶ 1979 S.C.R. (3) 78 (India).

¹⁷ *Supra* note 2.

primarily on the brutality of the crime, rather than the circumstances of the accused, as required by Bachan Singh. Given the fact that a large percentage of those sentenced to death are poor and lack competent legal representation. Before sentencing judges, very few aspects of their lives are punished. The Supreme Court and research on the death penalty have raised various concerns over the last 40 years. The application of the Bachan Singh framework has been inconsistent and arbitrary. In the same circumstances, similar cases have resulted in different outcomes. The Supreme Court raised itself concern in the following cases:

- Alope Nath Dutta (2006)¹⁸
- Santosh Kumar Bariyar (2009)¹⁹
- Farooq Abdul Gafur (2009)²⁰

According to a report published in 2016, 74.1 percent of those sentenced to death in India came from low-income families. Sixty-two percent of those sentenced to death lacked a high school diploma. When people cannot obtain adequate legal representation, serious human rights violations occur.²¹ At the time of the Bachan Singh decision, only 18 countries had abolished the death penalty (in 1980). After 40 years, 142 countries have formally or informally abolished the death penalty. In March 2015, India's Law Commission recommended that "the death penalty be abolished for all crimes other than terrorism-related offences and war" in its 262nd Report.²² We sincerely hope that progress toward total abolition will be swift and irreversible," the law commission added.²³

Justice Kurian Joseph called for a reexamination of the death penalty in Chhannu Lal Verma v State of Chhattisgarh²⁴ in November 2018. "Bachan Singh has failed to prevent death sentences from being imposed arbitrarily and freakishly, and capital punishment has failed to achieve any constitutionally valid penological goals," he said of Bachan Singh.

Famous instances of Hanging in India

First Hanging in India after independence was of Nathuram Godse and Narayan Apte, convicted for assassination of Mahatma Gandhi.

- 02 females of India were given penalty- Seema Gavit and Renuka Shinde.
- On 14th August, 2004; Dhananjaya Chatterjee.
- On 27th April, 1995- Auto Shankar.
- On 21st November, 2012- Ajmal Kasab.
- On 9th February, 2013- Afzal Guru.
- On 30th July, 2015- Yakoob Memon.
- On 20th March 2020- Akshay Thakur, Vinay Sharma, Pawan Gupta and Mukesh Singh.

Methods of Executions:

Some of the common means of execution the accused person/prisoners are as follows:

- 1) Hanging
- 2) Shooting
- 3) Lethal injection
- 4) Beheading
- 5) Electrocution

¹⁸ (2007) 12 S.C.C. 230 (India).

¹⁹ (2009) 6 S.C.C. 498 (India).

²⁰ (2010) 14 S.C.C. 641 (India).

²¹ *Supra* Note 5.

²² Available at: [2022081670.pdf](https://www.lawcommission.gov.in/2022081670.pdf), last accessed on Nov. 29th 2023.

²³ Radha Ranjan, "Unraveling the Shadows of Terrorism as a Crime in India," *International Journal for Legal Research & Analysis* (UGC Approved Journal, ISSN 2582-6433) (2023).

²⁴ (2019) 12 SCC 438.

7. JUDICIAL INTERPRETATION OF DEATH PENALTY

The Bachan Singh decision highlighted the mitigating and aggravating circumstances that must be proven in order to justify the death penalty. In aggravating circumstances, the prosecution bears the burden of proving that the accused's case falls within the "rarest of rare cases" and that the death penalty should be applied. In Mitigating Circumstances, the onus of proof is on the Defense Counsel to establish that the case does not fall under the category of "rarest of rare cases." The Supreme Court has commuted many death sentences to life imprisonment because the trial court or the High Court did not properly analyze the case, the case was judge-centric rather than society-centric, and the mitigating circumstances of the defendant were not considered.²⁵ The Supreme Court did not call for the death penalty in Santosh Kumar Singh state (also known as the Priyadarshini Matoo murder case), where the accused raped the victim and broke every bone with the intent of killing her. In two more incidental cases, Bheru Singh v State of Rajasthan²⁶ and Amruta v State of Maharashtra²⁷, where the husband murdered his wife, the death penalty was awarded in the former but not in the latter by the Supreme Court.

The legal system's complicated and comprehensive approach to the interpretation of the death penalty involves significant moral, ethical, and legal issues. This essay explores the complex web of judicial interpretation around the death sentence as courts debate whether and how the ultimate punishment comports with moral and ethical standards, human rights, and social values.

Judiciary's function: The application and evaluation of the death penalty are crucially influenced by the judiciary. Courts are responsible with deciding whether the death penalty is constitutional, evaluating the seriousness of the offence against the likelihood of mistakes, arbitrariness, and cruelty in its execution. The legal limits of the death penalty are interpreted and shaped by courts through judicial review²⁸.

Constitutional Scrutiny: The alignment of the death penalty with constitutional principles is one of the key aspects of judicial interpretation of the punishment. Courts examine whether the death sentence is lawful in light of fundamental rights and restrictions, such as the Eighth Amendment to the United States Constitution, which forbids "cruel and unusual punishment." Courts evaluate the moral and legal justification of the death penalty using this constitutional lens.

Decency Standards Changing: Judicial opinions frequently take changing public norms of decency into account. Courts examine whether public perceptions of the death penalty have changed in light of evolving moral standards. This dynamic feature acknowledges that the constitution must change to reflect changing moral standards in order for the rule of law to stay consistent with society's overarching moral compass.

International Influences: Global viewpoints and international human rights treaties like the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights have a big impact on how judges interpret the death sentence. Many contend that the right to life, as stated in these international conventions, is violated by the death sentence. International pressures have thereby influenced national courts and motivated legal changes that aim to abolish the death penalty.

Complex Legal Challenges: The death sentence poses difficult legal obstacles for courts to overcome. Concerns regarding the possibility of erroneous convictions, racial and socioeconomic inequities in its administration, and the effectiveness of the death sentence as a deterrent to crime are among them. As a result of the complex interactions between these concerns and judicial interpretations, courts are forced to consider challenging ethical and legal questions.

A complex and substantial procedure, judicial interpretation of the death penalty cuts to the heart of justice, human rights, and the authority of the state to take life. The goal of this investigation was to shed light on the complex web of moral, ethical, and sociological issues that characterize the difficult terrain of the death penalty. Judicial interpretations

²⁵ Sangeet v. State of Haryana, (2013) 2 S.C.C. 452 (India).

²⁶ (1994) 2 SCC 467.

²⁷ AIR 1983 SC 629.

²⁸ Radha Ranjan, "Exploring the Boundaries: The Evolving Scope of Judicial Review," *CTE National Journal: Journal of Multidisciplinary Research* (UGC Approved Journal, ISSN 0973-4457) (2023).

will continue to be the compass by which the future of this divisive practice is plotted as communities and courts continue to struggle with the essential question of whether the death penalty is compatible with the principles, they hold dear.²⁹

8. ANALYSIS OF DEATH PENALTY AT GLOBAL LEVEL

At the start of the year, civil society had reason to be optimistic, thanks to some promising developments in 2020: in Singapore, no executions were carried out for the first time since 2013; and in Saudi Arabia, Prince Salman declared a moratorium on drug-related executions³⁰ and 35 countries still have the death penalty for a variety of drug offences in 2021. At the start of 2020, there will be a moratorium on drug-related executions³⁰ The situation appears to be more uncertain by the end of 2021. While there were no executions reported in Saudi Arabia or Singapore in 2021, Iran saw a sharp increase in executions. This dramatic reversal of the 2018-2020 forecast trend, as well as unexpected news of death sentences in low-level cases. Drug-related sentences and executions have increased in many countries 2021.

Harm Reduction International (HRI), as of December 2021, had a total of globally; there were 131 executions for drug offences in 2018, up 336 percent from 2020. It's important to remember that this figure is most likely only a fraction of the total. Globally, all drug-related executions are carried out. According to HRI research, drug-related executions occurred in China and Iran, and drug-related executions are also likely to have occurred in North Korea and Vietnam. China and Iran are two of the most important countries. When it comes to data on their use of the death penalty, they are evasive.

The exceptional drop in drug-related executions seen in 2020 was confirmed by developments in 2021, confirming the conclusions of the Global Overview 2020. First and foremost, progress is fragile and often only temporary if not sustained. long-term, comprehensive reforms; second, executions are only the 'tip of the iceberg' 'The tip of the iceberg' - the most visible part of a larger punitive system should be completely reformed

The world moved closer to abolishing the death penalty with the announcement of total abolition in Kazakhstan and Sierra Leone in 2021. Countries where death can be imposed as a punishment, on the other hand, this is obvious. When it comes to determining which death penalties have abolished, between 2007 and 2021, several countries abolished the death penalty. None of them, however, are countries that still use the death penalty and offences of drugs.³¹

On a global scale, the issue of the death penalty, commonly known as capital punishment, is hotly contested and polarizing. Its use as a form of punishment has been discontinued in some nations, representing a variety of legal, cultural, and ethical viewpoints, while it remains in others. The death sentence is examined in this analysis from a global standpoint, with a particular emphasis on important trends, problems, and the developing human rights discourse around this divisive practice.

Trends in the Application of the Death Penalty Worldwide: The death sentence is applied in different ways all across the world. Some countries, especially in Asia and the Middle East, still regularly use it, frequently for a variety of offences other than homicide. Contrarily, an increasing number of nations in Europe, Latin America, and Africa have abolished capital punishment entirely. This global disparity reflects diverse cultural, legal, and historical factors influencing the practice.

Abolitionist movements and changing attitudes: Significant changes in public opinion and political laws on the death sentence have occurred during the last few decades. The rise in the number of nations that have abolished the death penalty or put a halt to executions is a remarkable trend. This change is frequently accompanied by a rising understanding of the risk of erroneous convictions and the death penalty's violation of human rights.

Human Rights and Death Penalty: The death penalty is a topic that is under close examination from the perspective of human rights. International human rights organizations that support the elimination of the death penalty include Amnesty International and Human Rights Watch. According to them, the right to life, the ban against torture, and

²⁹ Dr. Sangeeta Thakur, *Capital Punishment in India: A Complex Issue*, International Journal for Multidisciplinary Research (IJFMR), Volume 5, Issue 4, July-August 2023.

³⁰ For more details on these developments, see Ajeng Larasati and Giada Girelli (2021), 'The Death Penalty for Drug Offences: Global Overview 2020' (London, Harm Reduction International), https://www.hri.global/files/2021/04/07/HRI_Death_Penalty_Report_2020_FINAL.pdf.

³¹ *Ibid.*

the right to a fair trial are all violated by the death penalty. The debate over human rights around the world has raised pressure on nations who still use the death sentence to change their mind.

Risk of faulty Convictions: The possibility of faulty convictions is one of the death penalty's most significant problems. The legal system's vulnerability has been highlighted by high-profile cases of people who were released from death row after DNA evidence or other circumstances exonerated them. This risk emphasizes the requirement for strict legislative safeguards and comprehensive judicial procedures in situations involving the death penalty.

Socioeconomic and racial disparities: The existence of racial and socioeconomic inequities in the implementation of the death penalty is a crucial problem in the analysis of the death penalty. Research regularly demonstrates that members of marginalized groups receive disproportionately high death sentences. This prompts questions regarding the administration of the death penalty's fairness and equity.

Effectiveness & Deterrence: There is ongoing discussion on the effectiveness of the death sentence as a deterrent to crime. Opponents claim that there is inadequate data to back up the argument made by supporters that it can deter severe crimes. Mixed findings from empirical studies have sparked ongoing debates regarding the effectiveness of the death penalty in deterring crime.

Global research of the death penalty reveals a complicated and dynamic environment. While some nations vehemently support its usage, others are moving more and more in the direction of its elimination because to worries about violations of human rights, erroneous convictions, and uneven implementation. The focus placed on human rights and justice by the international community is increasing, which emphasizes the need for ongoing research and discussion on the death penalty's future. The search for a more just and compassionate approach to criminal justice continues to be at the forefront of the international conversation on the death penalty as the globe struggles with these difficult challenges.³²

9. STEPS TO PREVENT DEATH PENALTY AT INTERNATIONAL LEVEL

- 1) Amnesty International has constantly criticized the concept of death penalty as leads to gross human rights violations, affecting right to life, dignity, equality and justice to the individuals.
- 2) The Universal Declaration of Human under Article 5 states "Freedom from torture or cruel, inhuman or degrading treatment or punishment".³³
- 3) Numerous conventions and Protocols have been developed emphasizing on need to abolish death penalty such as:
 - The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
 - Protocol No. 6 to the European Convention on Human Rights, concerning the abolition of the death penalty, and Protocol No. 13 to the European Convention on Human Rights, concerning the abolition of the death penalty in all circumstances.
- 4) Amnesty International in the UN General Assembly, 62nd session, (2007) called for a resolution:
 - Affirming the right to life and stating that abolition of the death penalty is essential for the protection of human rights;
 - Calling on retentionist states to establish a moratorium on executions as a first step towards abolition of the death penalty;
 - Calling on retentionist states to respect international standards that guarantee the protection of the rights of those facing the death penalty; and
 - Requesting the UN Secretary-General to report on the implementation of the moratorium to the next session of the UNGA.

³² Anckar, C., & Denk, T. (2024). Diffusion and the Abolition of the Death Penalty: A Global Comparison. *Nordic Journal of Human Rights*, 42(2), 195–214. <https://doi.org/10.1080/18918131.2024.2325254>.

³³ Universal Declaration of Human Rights, (November. 20, 2023, 11:40 PM), https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf.

10. REASONS FOR ABOLISHING DEATH PENALTY

There are various reasons for abolition of death penalty which are as follows:

It does not deter crime- Countries who execute commonly cite the death penalty as a way to deter people from committing crime. This claim has been repeatedly discredited, and there is no evidence that the death penalty is any more effective in reducing crime than life imprisonment.

It is discriminatory- The weight of the death penalty is disproportionally carried by those with less advantaged socio-economic backgrounds or belonging to a racial, ethnic or religious minority. This includes having limited access to legal representation, for example, or being at greater disadvantage in their experience of the criminal justice system.

It is used as a political tool- The authorities in some countries, for example Iran and Sudan, use the death penalty to punish political opponents.

11. RECOMMENDATIONS AND SUGGESTIONS

- 1) The concept of Death penalty is very flexible and a difficult concept. It does not have fixed rules. It completely depends upon the discretion of the judge varying from case to case and as a result of which it has become judge centric rather than society centric. Also, it also creates an element of biasness amongst judges as highlighted in the above mentioned cases.
- 2) Secondly, the accused convicted of death penalty primarily belong to the poor and weaker sections of the society which deprives them to get proper legal representation through their lawyers. As a result of which, they are not able to use their legal remedies and are unaware of the intricacies inside the case.
- 3) Non- observance of the mitigating circumstances brings the accused into huge trouble. Hence, importance should be given to the crime and the accused, and be considered innocent unless contrary is proved.

12. CONCLUSION

In conclusion, examining the constitutionality of the death sentence and the legal interpretation of it reveals a convoluted web of legal, moral, and sociological issues. As courts manage the delicate balance between the seriousness of the crime and the possibility of mistakes and cruelty in its application, the judiciary's involvement in scrutinizing the imposition of the ultimate punishment is crucial. When assessing the moral and legal justification of the death penalty, constitutional standards, particularly those that forbid "cruel and unusual punishment," serve as a crucial yardstick. The death sentence is examined carefully in the context of changing moral norms both domestically and internationally. While accepting that a constitution should change to reflect evolving moral and ethical standards, courts must contend with the shifting swells of popular opinion. The seriousness of this problem is further highlighted by international viewpoints and human rights considerations, with international organizations passionately calling for the death penalty to be abolished as a violation of the fundamental right to life. There are difficulties and problems associated with the death penalty. The death penalty's ability to discourage crime and issues with erroneous convictions, racial and socioeconomic disparities continue to be issues. Courts are forced to address difficult moral and legal quandaries as a result of these complex issues' intersection with constitutional defenses. In the end, the debate over the death penalty illustrates how society's conscience is changing and how adaptable the legal system is to shifting standards and ideals. Judicial interpretations will continue to be crucial in determining the future of this divisive practice as countries debate whether the death penalty is consistent with their own constitutions. The need for continual investigation and discussion of the validity and use of the death sentence in the contemporary world is underscored by the desire of a more just and humane approach to criminal justice.