



## DEATH PENALTY: ANALYTICAL STUDY

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### Abstract

India is still among the 56 countries in the world to have capital punishment in its statute book and have used it in its recent past. Capital punishment or death penalty is nothing but a government sanctioned execution of a person as punishment for his/her crime.

Shooting and hanging are two methods of death penalty in India. Hanging is the method of execution in the civilian court according to the **Code of Criminal Procedure**. Where as according to the **Army Act 1950** both shooting and hanging are official methods of execution in the military court-martial system.

### Introduction

Since independence **755** people have been sentenced to death according to the research conducted by the **National Law University Delhi**. Out of this 75 percent of all the prisoners sentenced to death belong to socially, economically marginalized communities such as backward classes, religious minorities (mostly Muslims) and Dalits. Out of 385 existing prisoners who are sentenced to death, 94 percentage of them are Dalits and religious minorities. The **Death Penalty India Report (DPIR) 2016** stated that over 62 percentage of the prisoners who had been sentenced to death had not even completed secondary school and 23 percentage of them haven't been to school.

From this data we can clearly highlight the pathetic nature of criminal justice system of India and from this data we can clearly come to a conclusion that the system isn't capable of administrating the death penalty in a non-arbitrary and a fair manner.

Due to the social and economic backwardness of these prisoners sentenced to death, they are unable to access proper legal aid and quality legal representation. This consequently violates their right to a fair trail. Among all the death-row prisoners who spoke to the **DPIR**, 75 percent of them didn't even get a chance to meet their lawyer outside the courtroom. This percentage only decreased in appellate jurisdiction such as high court and supreme court. This is because these courts are geographically more distant than the trial courts. As these prisoners sentenced to death can't afford a good lawyer and do not meet their lawyer regularly they have no idea about the status of their own case. There have been numerous instances when these prisoners were unable to participate in their own trial. This clearly shows the violation of their right to a fair trail. The results of death penalty cases from 2000 to 2015 state that for every 100 death sentences that the trial court gives, less than five percent are confirmed by the appellate jurisdiction. This clearly highlights the overuse of the award of death penalty by the trial courts.

### United Nation's stand on capital punishment

On 2007 December the UN passed a resolution which called for a worldwide moratorium(temporary prohibition) of capital punishment. The general assembly stated that there isn't any irrefutable proof of the deterrent value of death penalty. Any



failure or miscarriage in the implementation of justice in capital punishment is irreversible and irreparable.

On November 2020 a resolution was passed in the UN against capital punishment. **120** countries voted for the resolution, rejecting this inherently cruel irrevocable form of punishment. But **39** countries voted against the resolution which included countries from the Asian-pacific region such as **India, Pakistan, China, Afghanistan, North Korea, China** ect. **Dui Hua** a NGO which tracks China's death penalty statistics states that about **84,000** executions have taken place in the country from **2002 to 2018**. The number of people sitting in death-row in Asia is extremely high, which is shocking. The UN feels that it's the duty of the nations that supported the moratorium to put pressure on these Asian countries to get rid of capital punishment. There are many organisations in the **United States of America** such as **American Civil Liberties Union (ACLU)** and **Amnesty International** which have abolition of Capital Punishment as their fundamental purpose.

### Indian Law Commission On Death Penalty

The **35th** law commission report in 1967 looked into the issue of Capital Punishment and recommended the retention of capital punishment.

But the recommendation of the **262nd** law commission report of India was different from that of the 35th law commission report. The 262nd law commission report recommended the abolition of Capital punishment in all cases except cases relating to terrorism and waging war. This law commission got suggestions from all quarters

of the nation which included the lights of **Dr.APJ Abdul Kalam** . The commission has also come to a conclusion that mercy powers under **Article 161** and **Article 72** have failed in acting as a safeguard against miscarriage of justice in the imposition of capital punishment. The 262nd commission concluded that the capital punishment no longer serves its penological goal of deterrence any better than life imprisonment. The law commission also concluded that the rehabilitative and restorative aspects of the justice system is lost while focusing upon capital punishment.

### History of Abolition Of Death Penalty

Abolition of death penalty is not something new to this world. Asian countries such as **Japan** and **China** had emperors who had abolished death penalty in the seventh century of its self. Under the reign of emperor **Shomu** capital punishment was banned in Japan in the year **724AD** of its self. Later after capital punishment was reinstated after the emperor **Shom's** reign. But again under the reign of **Emperor Saga** capital punishment was abolished in **818AD** under the influence of **Shinto** (a religion that originated in Japan). **Emperor Ming of Tang** the seventh ruler of the **Tang Dynasty** abolished capital punishment . He replaced it with scourging (whip) and exile.

**Peter Leopold II** the Grand Duke of **Tuscany** abolished death penalty throughout the nation in 1786, making Tuscany the first nation in modern history to do so. This was followed by **the Roman Republic** in 1849, **Venezuela** in 1863, **San Marino** in 1865. **San Marino** might have only abolished capital punishment officially in 1865 but capital punishment had stopped taking place in this country since 1469.



At present in **106** countries the use of capital punishment is not allowed by law. Only **56** countries follow Capital punishment. But even out of these 56 countries, **28** countries haven't executed anyone for the past 10 years and in 8 countries death penalty is only awarded in exceptional circumstances.

### Conclusion

From the late 1990's onwards the global trend has been towards the abolition of death penalty. In 1991 about 48 countries had abolished death penalty but now it has increased to 106. Even the Indian Judiciary's view about capital punishment has changed. The 35th law commission report supported capital punishment. But the 262nd law commission report suggested the abolition of capital punishment in all cases except in those related to terrorism and waging war against the nation. The Supreme court in **Bachansingh vs State of Punjab (1980)** made it clear that death penalty should only be awarded in rarest of rare cases. From this we can clearly come to a conclusion that Indian judiciary clearly wants to reduce the useage of death sentence and even abolish it in near future.

The Indian public in general have a mindset that rapists should be hanged. There was an instance when a **Rajyasabha MP** wanted rapists to be lynched in Public. This outrage is because people in India believe that rape is a far more outrageous than murder. They feel that a woman has lost her honour once she has been raped. But woman activists strongly feel that it's only because of the patriarchal notions of honour that has made them believe that rape can be the worst thing that can happen to them.

Instead feminists and woman activists strongly want to condemn this stereotype that once a woman has been raped or sexually assaulted she has no place in this society. As far as the activists are concerned rape is nothing but an act of violence and sexual assault and it has nothing to do with morality character or behaviour. Once when **M.P Sushma Swaraj** referred **Jyoti Singh** as "living corpse". Feminists came strongly against this notion as they thought that the idea that the woman's honour is linked with her sexuality is bizzare. Woman activists feel that giving death sentence to the rape accused is no way going to help them as the public outrage against rape is only because of the patriarchal values and it's no way going to help the rape victim.

When death penalty was awarded to the 4 rapists of the **Nirabhaya Case** the whole nation including the victim's family appreciated the Judiciary for the descision, even though justice was delivered after a seven year delay. But things haven't changed much after this issue. In 2013 the **NCRB** reported that about 66 girls were raped per day in India. But now the figures have increased to 91 in 2020. From this we can conclude not death sentence but sex education can reduce sexual assaults against women.

People who support death penalty state that it deters violent crime and makes society safer. But in reality evidence around the world seem to be contrary. In a research conducted by **Amnesty International** in 2004 stated that murder rates were more in states that had death penalty in USA (5.71 per 100,000) than those states in USA that had aboished death penalty (4.02 per 100,000).



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**Canada** was one such country that had abolished death penalty . There the murder rate fell by 44 percent from 1975(death penalty was still in practice) to 2003(death penalty was abolished by then).

It's high time India abolishes Capital punishment in interest of the society. Death penalty isn't the only through which the victim or the families of victim will attain closure. There are more civilized ways to do that.

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