

DIVERGENT PATHS TO JUSTICE: CAPITAL PUNISHMENT IN INDIA, CHINA AND USA

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Abstract

Capital punishment remains one of the most contested features of modern criminal justice systems. Positioned at the intersection of state authority and individual rights, it raises fundamental questions about justice, deterrence, proportionality, and the limits of state power. It also prompts continuing debate over whether the death penalty can ever be applied fairly in light of the possibility of irreversible error and the growing influence of human rights norms. This paper examines these concerns through a comparative analysis of three major jurisdictions—India, the United States, and China. While these reforms represent a substantial effort to modernise India’s criminal justice framework, their impact on the philosophical and judicial approach to capital punishment requires careful evaluation. The study argues that although India has revised its statutory structure, its underlying approach to the death penalty remains largely consistent with earlier jurisprudence. The new laws largely retain the substantive framework of capital punishment while introducing procedural and evidentiary reforms intended to strengthen due process. Indian courts continue to be guided by the “rarest of rare” doctrine, which reflects a cautious and restrictive approach to the imposition of the death sentence. A comparative perspective highlights significant contrasts. In the United States, capital punishment operates within a complex constitutional system characterized by federal diversity, extensive appellate review, and ongoing debates over fairness and proportionality. China, in contrast, retains a broader statutory scope for capital punishment and emphasises deterrence and social stability, though its practices remain subject to criticism for limited transparency.

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Beyond formal legal structures, this study also considers persistent systemic concerns associated with capital punishment. These include the continuing risk of wrongful convictions, socio-economic disparities affecting access to legal representation, and the widening gap between retentionist jurisdictions and global abolitionist trends.

In conclusion, while India's 2023 criminal law reforms enhance procedural safeguards, they do not resolve the deeper moral and legal challenges associated with capital punishment. As global legal discourse increasingly emphasises caution, transparency, and human rights, ongoing reassessment of the death penalty remains essential for the development of a more equitable criminal justice system.

Introduction

Throughout the world, there is a growing movement towards the abolition of the death penalty. This movement questions whether countries that still practice capital punishment, such as the USA, China, India, and Arab countries, view the death penalty as a violation of human rights or whether they prioritize the deterrent theory of punishment over the reformative theory. The purpose of punishment is closely tied to the concept of justice. If a punishment fails to achieve justice, it can be considered flawed. There are three main theories of punishment: deterrent, punitive, and reformative. As the world moves towards the abolition of the death penalty, it is evident that the focus has shifted away from the punitive approach and towards the reformative approach.

Among the countries that still carry out the death penalty, China stands out as having the highest number of executions, contributing to 60% to 80% of the total executions worldwide.

It is important to consider that the question of whether the death penalty is a human rights violation or the efficacy of different theories of punishment is a matter of debate and varies among different countries and legal systems. The trend towards abolition reflects a growing global consensus that capital punishment does not align with contemporary notions of justice and human rights.

The term “capital” in capital punishment finds its origin in the Latin word “capitalist,” which directly translates to “regarding the head” or “involving the head.” In ancient times, capital crimes were typically those serious offences that warranted the severing of the head from the

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body. This practice symbolised the ultimate form of punishment, signifying the severance of life itself.³

Capital punishment, also known as the death penalty, represents the most severe form of punishment in any society or democracy, aimed at maintaining law and order. However, taking the life of an individual in the name of justice is morally equivalent to committing murder. Our focus should be on eradicating crime itself rather than solely punishing the offender. China stands out as the only country where the death penalty remains prevalent, resulting in over 1000 executions annually. On the other hand, India follows the “Rarest of the Rare” doctrine and frequently commutes death sentences to life imprisonment. Nevertheless, India has executed a total of four criminals between 2002 and 2015. These countries share certain similarities in the procedures and laws surrounding capital punishment, but in China, once the death penalty is imposed, it is irreversible. This is the basis for the United Nations’ opposition to the death penalty, with the belief that life is invaluable and death is irrevocable. The UN further asserts that when we kill another human being in the name of justice, we undermine our own humanity. It is not our role to determine who lives and who dies. Instead of resorting to hanging someone to death, we should embrace alternative approaches, such as a reformatory approach, which allows individuals to improve themselves and lead peaceful lives.

Punishment can be understood as the use of lawful coercion by the State to ensure obedience to the law, making it an essential feature of modern civilised societies. It is primarily the responsibility of the State to punish offenders in order to preserve social order and stability. In earlier times, however, there were no clearly defined legal rules governing crimes, and punishments often depended on the personal discretion of the ruling monarch. With the evolution of legal systems, modern theories of punishment developed, and individuals gradually entrusted the State with the authority to exercise power on their behalf to maintain law and order.

The abolition of the death penalty remains a highly debated issue within the United Nations (UN), largely because it is often viewed as a violation of human rights. In its approach to criminal justice, the UN places greater emphasis on the reformatory theory of punishment rather than the deterrent theory, focusing more on rehabilitation than on harsh penalties. A crucial

³ “Suriname and Haiti to lead abolitionist way in the Caribbean” World Coalition Annual General Meeting in San Juan, Puerto Rico published on June, 27, 2014 retrieved on march , 02, 2026 from <http://www.worldcoalition.org>

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remark was made by “Justice V.R. Krishna Iyer” in the case of “Rajendra Prasad v. State of Uttar Pradesh”⁴, who said that the "special reason" had to be related to the criminal rather than the crime. Despite how horrifying the murder was, the perpetrator might not have deserved to die they says that “The special reason must relate, not to the crime but to the criminal. The crime may be shocking and yet the criminal may not deserve the Death Penalty”⁵

When we examine the different theories of punishment, it becomes evident that the Reformative Theory holds certain advantages over the Deterrent Theory. In the Reformative Theory, there exists a possibility for improvement and rehabilitation, whereas this opportunity is completely absent in the Deterrent Theory. In India, prisoners in Tihar Jail, for instance, engage in activities such as making essence sticks and incense cones, which can contribute to their adjustment and integration into society. Conversely, the Deterrent Theory lacks a humane essence and fails to provide opportunities for personal growth and improvement.⁶ Many societies throughout history have supported the use of the death sentence. An eye for an eye was the guiding principle of retributive justice in the ancient Roman and Jewish societies. The United States acquired its use of the death penalty from European settlers who arrived in the seventeenth century and held the opinion that grave crimes called for harsh punishment. But in the seventeenth century, intellectuals started to voice moral objections to the death penalty. Italian criminologist Cesare Beccaria opposed the death penalty as a deterrence to crime because it was both ineffectual and overly cruel. Immanuel Kant, a philosopher from Germany, on the other hand, thought that the death penalty was the most appropriate way to punish murderers because it would release them from their agony.⁷

History

Throughout centuries, the death penalty has been utilised as a means to deter crime, sometimes even incorporating brutal practices. However, despite these efforts, crime continues to persist.⁸

⁴ AIR 1979 S.C. 916

⁵ Rajendra Prasad vs State of UP, 1978 AIR 916

⁶ <https://journal.indianlegalsolution.com/2020/04/15/capital-punishment-in-india-a-critical-analysis-prateek-jain/>

⁷ Agrawal R.K. “Different Stages of Crime and mens rea,” Agrawal’s Thirty Questions on Indian Penal Code [with question index] (1998) P. No.11.

⁸ ALBERT CAMUS, Resistance, Rebellion and Death

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Capital punishment, once prevalent in nearly all societies, is now practiced by only 58 nations, while 95 countries have abolished it. The remaining countries either have not employed it for a decade or allow it only in rare cases such as during wartime. The topic of capital punishment stirs active controversy in different countries and states, and opinions can differ even within a single political ideology or cultural region. Notably, in European Union member states, the use of capital punishment is explicitly prohibited by Article 2 of the Charter of Fundamental Rights of the European Union.⁹

Currently, the majority of countries are recognized as abolitionist by Amnesty International¹⁰. Amnesty International has actively supported the promotion of abolition of the death penalty through a nonbinding resolution in the United Nations.¹¹ However, it is noteworthy that over 60% of the global population resides in countries where executions are carried out. This is due to the fact that the four most populous nations in the world, namely the People's Republic of China, India, United States, and Indonesia, still practice capital punishment. Interestingly, all four of these countries voted against the Resolution on a Moratorium on the Use of the Death Penalty during the United Nations vote.

Fairness In The Capital Punishments

In order to avoid mistakes in capital cases altogether, the Massachusetts Governor's Council Report¹² recommends that them be caught as early as feasible. This emphasis on early prevention is exemplified by the proposed limited definition of capital murder, restrictions on the prosecutor's discretion to pursue the death penalty, and assurances of excellent capital defence representation found in recommendations one, two, and three.

The Commission has flagged a vital issue: we need a clear, fair way to decide who gets the death penalty versus who gets life without parole. In the loud debates over whether we should even have the death penalty, we often overlook the nitty-gritty of how people are actually sentenced.

⁹Roger Hood, Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford University Press, 2015).

¹⁰Roger Hood and Surya Deva, *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion* (OUP Oxford, 2013)

¹¹Dr.S.D Moharana,, "A Critical Study on Abolition of Capital Punishment", Principal, *International Journal of Academic Research*, 2015.

¹² <https://www.mass.gov/files/documents/2016/08/mr/5-3-04governorsreportcapitalpunishment> (last visited 8 march, 2026)

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Without uniform standards, the process can feel like a toss-up, and that's a huge problem. If we want a justice system that actually values equality and fairness, we have to fix these inconsistencies. Establishing solid sentencing principles would ensure that similar crimes are treated similarly, making the system more predictable and a lot less arbitrary.

Capital Punishments In India

Capital punishment in India has a long history dating back to ancient times. In ancient Indian legal texts, such as the Manu smriti, there were provisions for the death penalty as a form of punishment for severe crimes. During the British colonial rule, capital punishment was widely used, and the British introduced the Indian Penal Code in 1860, which included provisions for the death penalty. After India gained independence in 1947, capital punishment remained in place and was incorporated into the Indian Penal Code. However, there have been ongoing debates and discussions about the application and effectiveness of the death penalty in India.¹³

The debate surrounding the death penalty in India reflects an ongoing tension between the demand for the harshest form of punishment and the growing emphasis on human rights. Although capital punishment continues to exist within the Indian legal system, it is not imposed casually or frequently. Instead, it is restricted to the "rarest of rare" cases, and courts generally adopt a cautious and restrained approach rather than a hurried one.

In India, the death penalty is not automatically imposed even for the most serious offences. Since the landmark decision in *Bachan Singh v. State of Punjab*,¹⁴ the judiciary has consistently followed the "rarest of rare" doctrine. Under this approach, judges are required to carefully weigh aggravating circumstances, such as the brutality or gravity of the offence, against mitigating factors like the offender's background, age, mental condition, and potential for reform. While capital punishment is most commonly associated with cases of murder, it may also be awarded for offences such as terrorism, treason, and certain aggravated forms of sexual violence. However, recent trends suggest a clear judicial preference for life imprisonment, with death sentences becoming increasingly rare.

¹³ Pillai, Manoj Kumar. "Capital Punishment: A Comparative Study of India, China, and the United States." *Indian Bar Review*, vol. 42, no. 4, 2015, pp. 470-486.

¹⁴ AIR 1980 SUPREME COURT 898, 1980 MADLJ(CRI) 827

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The process leading to execution in India is deliberately lengthy and layered with safeguards to minimise the risk of irreversible mistakes. A death sentence awarded by a Sessions Court must first be confirmed by the High Court. Thereafter, the convict has the right to appeal before the Supreme Court. Even after the exhaustion of judicial remedies, the convict may file a mercy petition before the Governor of the State or the President of India, both of whom possess the constitutional authority to commute the sentence. Where execution ultimately takes place, it is carried out by hanging.

In practice, India carries out very few executions compared to countries such as the United States or China. The most recent executions occurred in March 2020 in the Delhi gang-rape case. This cautious use of capital punishment reflects a legal system that remains hesitant to impose the ultimate penalty unless all available legal safeguards have been exhausted.

Public opinion on the issue remains deeply divided. Supporters argue that the death penalty serves as an effective deterrent for heinous crimes and offers a sense of justice to victims and their families. Critics, however, highlight concerns about wrongful convictions, socio-economic inequalities within the criminal justice system, and the lack of conclusive evidence regarding its deterrent effect. Additionally, international human rights bodies have repeatedly called upon India to consider a moratorium, pointing to the broader global movement toward abolition.

We really need to watch how things unfold in India after the massive legal shake-up in 2023. Even though the new laws—the BNS, BNSS, and BSA—didn't actually expand the list of crimes that qualify for the death penalty, they kept the old framework while modernising how trials are handled. The focus has shifted toward making the whole process faster and more transparent, with a much bigger emphasis on forensics and digital records to make sure the evidence is solid.¹⁵ Essentially, these reforms aren't about handing out more death sentences; they're about adding extra guardrails to the system. At the end of the day, the "rarest of rare" rule that judges use to decide these cases is still the gold standard—it's just operating under a more modern set of rules.

Overall, India continues to retain capital punishment in law, but its cautious application

¹⁵ <https://timesofindia.indiatimes.com/city/bhubaneswar/shah-to-inaugurate-exhibition-on-new-criminal-laws> (last visited on 10 march, 2026)

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demonstrates a system that is increasingly uneasy with its use. The procedural framework operates as a slow but deliberate process designed to ensure that the irreversible act of execution is undertaken only with the greatest possible certainty.

Capital Punishments In China

“Capital punishment has a long history in China, influenced by its legal traditions and philosophies. Throughout its history, China has had various dynasties and legal codes that included the death penalty as a form of punishment for serious crimes. Confucianism, which emphasizes social harmony and order, has played a significant role in shaping the Chinese approach to punishment. In modern times, China has been known for its high number of executions. The exact number of executions carried out in China is considered a state secret, but it is believed to be the highest in the world. China has faced international criticism for its use of the death penalty, with concerns raised about due process, transparency, and the potential for wrongful convictions. There have been efforts within China to reform and limit the application of the death penalty, including revising laws and regulations, as well as promoting alternatives such as suspended death sentences and commutations.”¹⁶ Capital punishment in China operates within a legal system that differs significantly from many other jurisdictions in both scale and transparency. While several countries are gradually moving toward abolition, China continues to make extensive use of the death penalty, although the exact number of executions remains unknown because such data is treated as a state secret. This lack of transparency is one of the central reasons the Chinese system remains controversial in global discourse.¹⁷

One of the defining features of China’s death penalty regime is the limited availability of reliable information. Independent organisations, including Amnesty International, have estimated that executions occur in large numbers each year, but official confirmation is not available. Unlike many jurisdictions that restrict capital punishment largely to cases of intentional homicide, Chinese law provides for its application to a wider range of offences, including certain non-violent crimes such as large-scale corruption and drug trafficking. In terms of methods, China

¹⁶Hood, R., & Hoyle, C. (2015). *The Death Penalty in China: Policy, Practice, and Reform*. Oxford University Press.

¹⁷<https://www.amnesty.org/en/latest/campaigns/2017/04/chinas-deadly-secrets> (last visited on March 01, 2026)

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has increasingly moved away from firing squads toward lethal injection, which is often administered through specially equipped mobile execution units.

The judicial process in China is comparatively swift and centralised. Death penalty cases are typically heard by Intermediate People's Courts or Higher People's Courts, and many proceedings are conducted with limited public scrutiny. Although every death sentence must be reviewed by the Supreme People's Court, a reform intended to reduce wrongful executions, the criteria and internal processes guiding these reviews remain largely undisclosed. Once approval is granted, executions are usually carried out without significant delay, and there is no prolonged death row period similar to that seen in countries like India or the United States. Domestically, capital punishment continues to receive considerable public support. It is often viewed as an important mechanism for maintaining social order and stability, particularly in cases involving serious violence or corruption. However, internationally, China faces sustained criticism regarding due process protections, restricted access to legal representation, and the continued use of the death penalty for non-violent offences, which many view as inconsistent with evolving human rights standards.

Although the Chinese government has undertaken gradual reforms, including reducing the number of capital offences and encouraging greater judicial caution, it remains the world's leading user of the death penalty. Overall, capital punishment in China reflects a system that prioritises deterrence and state authority while continuing to attract scrutiny for its limited transparency and procedural safeguards.

Capital Punishments In USA

Capital punishment in the United States has evolved over time. During colonial times, the death penalty was heavily influenced by English common law, and different colonies had their own laws regarding capital punishment. The use of the death penalty was widespread in the early years of the United States. In the late 18th century, the United States adopted the Fifth Amendment to the Constitution, which allowed for the use of capital punishment. The methods of execution have changed over the years, with hanging being the primary method until the late 19th century. Subsequently, other methods such as electrocution, gas chambers, and lethal injection were introduced. The use of the death penalty has been the subject of extensive legal

and public debates. There have been periods of moratoriums, challenges to its constitutionality, and discussions about racial disparities and wrongful convictions¹⁸.

Today, capital punishment remains legal in certain states, but there has been a decline in the number of executions carried out in recent years.¹⁹

The United States remains one of the few Western democracies that continues to retain capital punishment, though its application reflects a highly complex and fragmented legal system. Unlike more centralised models such as China or even India, the authority to impose the death penalty in the United States is divided between the federal government and individual states, resulting in significant regional variation. Consequently, the likelihood of facing capital punishment often depends heavily on geography.

At present, capital punishment is authorised in a number of states as well as at the federal and military levels, while several states have formally abolished it. Even among retentionist states, some have imposed moratoriums that effectively pause executions. Overall, the use of the death penalty in the United States has declined over time, with both death sentences and executions decreasing significantly since the late 1990s.

The American legal process governing capital punishment is extensive and procedurally rigorous, reflecting a strong emphasis on due process. Trials in capital cases are typically bifurcated, consisting of a guilt phase followed by a separate sentencing phase in which the jury weighs aggravating factors against mitigating circumstances, including the defendant's personal background and mental condition. Following conviction, defendants have access to multiple layers of appeal, including direct appeals and habeas corpus petitions in both state and federal courts. As a final safeguard, executive clemency may be granted by state governors or the President in federal cases. As a result of these safeguards, individuals often spend decades on death row before any execution is carried out.

Lethal injection remains the primary method of execution in the United States, although access to the required drugs has become increasingly restricted as pharmaceutical companies refuse to

¹⁸<https://deathpenaltyinfo.org/resources/high-school/about-the-death-penalty/history-of-the-death-penalty> (last visited on March 05, 2026)

¹⁹Banner, S. (2002). *The Death Penalty: An American History*. Harvard University Press.

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supply them for this purpose. This has led some states to consider or reinstate alternative methods, including electrocution, nitrogen hypoxia, firing squads, and gas chambers.

Despite procedural safeguards, the American death penalty system continues to face significant criticism. Scholars and advocacy organisations highlight concerns regarding racial disparities, geographic inconsistencies, and the risk of wrongful convictions. Data indicates that racial minorities are disproportionately represented on death row and that cases involving white victims are more likely to result in death sentences. Additionally, a substantial number of individuals have been exonerated after spending years on death row, raising serious concerns about the reliability of the system.

Public opinion in the United States remains divided. Although support for capital punishment persists, it has declined considerably in recent decades. Internationally, the United States faces criticism regarding its retention of the death penalty, its methods of execution, and debates over the treatment of individuals with mental illness within the criminal justice system.

Overall, the American death penalty system reflects a slow, costly, and highly decentralised process that continues to grapple with tensions between retributive justice and growing concerns over fairness, accuracy, and human rights.

Conclusion

In conclusion, capital punishment continues to be one of the most debated and divisive issues in contemporary legal discourse. At its core, the debate reflects a tension between retributive justice and the growing recognition of human rights, particularly the concern that the state should not exercise irreversible power in a system where error remains possible.

As this comparative study shows, the use and justification of the death penalty vary significantly across jurisdictions. India occupies a middle position, retaining capital punishment in law but restricting its application through the “rarest of rare” doctrine and multiple procedural safeguards, which together make executions relatively uncommon. China, by contrast, applies the death penalty more extensively across a broader range of offences and within a system marked by limited transparency, reflecting a stronger emphasis on deterrence and state authority. The United States presents a more fragmented picture, shaped by federalism, regional variation,

and an extensive appeals process, alongside ongoing debates over racial disparities, execution methods, and ethical concerns.

At the global level, the broader trend appears to be moving toward restriction and, in many regions, abolition of the death penalty. This shift is largely driven by human rights considerations and the growing awareness of wrongful convictions. Nevertheless, in several jurisdictions, public demand for severe punishment in response to particularly heinous crimes continues to sustain its retention.

Ultimately, the continuing debate over capital punishment highlights fundamental questions about justice, proportionality, and the role of the state. Whether viewed as a necessary deterrent or as an outdated and irreversible sanction, the death penalty remains a critical measure through which the values and priorities of legal systems are tested.

Suggestions

Although the law provides the structural foundation for justice, it is not static and must evolve alongside changing social values and human rights standards. In the context of capital punishment, there is an increasing global conversation about how legal systems can become more humane while still ensuring accountability for serious crimes. Several reform-oriented approaches deserve consideration.

First, many scholars and human rights advocates support a gradual move toward the abolition of capital punishment. The central argument is that public safety and effective punishment can be achieved through life imprisonment without requiring the state to impose an irreversible penalty. Abolition, in this sense, is viewed as a step toward aligning criminal justice systems with contemporary human rights norms.

Second, there is a strong need to strengthen procedural safeguards in capital cases. The possibility of wrongful convictions remains one of the most serious concerns in any legal system. Addressing this requires ensuring effective legal representation for all defendants, broader access to scientific evidence such as DNA testing, and independent mechanisms to review capital convictions before final sentencing.

Third, greater emphasis on rehabilitation offers an alternative perspective on punishment. Rather than treating imprisonment solely as a means of retribution, criminal justice systems can invest

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in education, vocational training, and mental health services to address underlying causes of criminal behaviour. A rehabilitative approach may contribute to long-term reductions in crime and better reintegration outcomes.

Fourth, restorative justice models present another valuable framework for reform. These approaches focus on repairing harm by involving victims, offenders, and communities in structured dialogue. By encouraging accountability and acknowledgment of harm, restorative processes may provide victims with a greater sense of closure while promoting constructive outcomes beyond punishment alone.

Finally, international engagement continues to play an important role in shaping domestic practices. Through dialogue, cooperation, and adherence to international human rights standards, states can influence one another and encourage gradual movement toward more humane approaches to criminal justice.

Overall, rethinking capital punishment requires balancing accountability with fairness, and deterrence with humanity. As legal systems evolve, continued reflection on these issues remains essential.

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