

Comparative Analysis Of Capital Punishment Between India And EU

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Abstract

In many countries, the law says that people must be put to death. This can be done by hanging, giving them a lethal injection, shooting them, or using other cruel methods and we talk about European countries, the death penalty has been abolished in the vast majority of Western democracies, particularly in Europe, as well as in all of the nations that uphold freedom both in their institutions and in their daily lives." On the eve of the 10th of October, when we commemorate the World Day Against the Death Sentence, Robert Badinter summed up the European exception on this issue with his remarks during the vote to abolish the death penalty in France under all circumstances. With the notable exception of Belarus, Europe is the only continent where the death penalty has been abolished entirely.

Introduction

Capital punishment or the death penalty is the harshest punishment that can be given for a serious crime. It is given for murder, rape with murder, and other terrible crimes in order to keep the law and order in society. The criminal is always held accountable by the law. Therefore, many stringent regulations are being developed in an effort to uplift and improve society, yet the act of taking another person's life is not consistent with the concept of justice. There is no denying that India possesses an exceptionally robust legal system¹. The execution of a criminal is referred to as the death penalty, which literally translates to "to be hanged till death." This is not the answer to the problem of crime in society and should not be considered as such. India adheres to the reformatory theory of punishment, which, rather than focusing on the execution of criminals, places primary emphasis on the improvement and rehabilitation of those who have committed crimes. There is no justification for the existence of the death

¹Vaasawa Sharma and Pooja, Death Penalty: The Breaking of Fundamental Human Right for Life, *INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES*, [Vol. 4 Iss 6; 255]

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penalty under Indian statute because Article 21 of the Indian Constitution grants every Indian native the fundamental right to life and liberty².

In many countries, the law says that people must be put to death. This can be done by hanging, giving them a lethal injection, shooting them, or using other cruel methods and we talk about European countries, the death penalty has been abolished in the vast majority of Western democracies, particularly in Europe, as well as in all of the nations that uphold freedom both in their institutions and in their daily lives." On the eve of the 10th of October, when we commemorate the World Day Against the Death Sentence, Robert Badinter summed up the European exception on this issue with his remarks during the vote to abolish the death penalty in France under all circumstances. With the notable exception of Belarus, Europe is the only continent where the death penalty has been abolished entirely³.

Capital Punishment

Capital punishment, also known as "the death penalty," is the practise of putting an individual to death as a purposeful response to their assumed or proven wrongdoing, after an approved, rule-governed process has determined that they are accountable for violating norms that necessitate execution. Throughout history, punitive executions have been enforced by a wide variety of powers for a wide variety of actions, including political and religious views and practises, one's socioeconomic level, and so on, and sometimes without major due process procedures. There have been and still are cases of extralegal executions being carried out by groups including terrorist organisations, criminal street gangs, and mobs. But for decades, Western Europe and the United Nations have debated capital punishment as an institutionalised, rule-governed practise of contemporary states and legal systems.⁴

²Ibid.

³ Benjamin Couteau, Abolition of Death Penalty: A European Exception to be Promoted, <https://institutdelors.eu/en/publications/abolition-de-la-peine-de-mort-une-exception-europeenne-a-promouvoir-2/>

⁴ Capital Punishment, Internt Encyclopedia of philosophy, <https://iep.utm.edu/death-penalty-capital-punishment/>

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The existence of ancient law codes and Plato's renowned portrayal of Socrates' trial and execution by democratic Athens in 399 B.C.E. both show that capital punishment has been practised for millennia. The death penalty was rarely discussed explicitly or systematically by significant European thinkers until the last few hundred years. Proponents of penal reform, as principled, moral appraisal of law and social practise, or within conceptions of the modern state and sovereignty, are generally credited with bringing modern philosophy's focus on capital punishment into the open. The emergence of an international human rights regime and American constitutional controversies in the middle of the twentieth century sparked a renewed philosophical interest in theories of punishment and the death penalty, including the possibility of arbitrariness, error, or bias in the American system.⁵

Capital Punishment in India

In India, the death sentence can be enforced by law. The death penalty is in place in India for the most heinous of crimes. The death penalty is reserved in India for the worst of the worst criminals.

The right to life and personal liberty is guaranteed by Article 21 of the Indian Constitution. *'No person shall be deprived of his life or personal liberty except as according to procedure established by law'*. According to this article, all Indian people have the legal right to live.⁶ The Indian Penal Code (IPC) mandates the death penalty for a wide range of crimes, including criminal conspiracy, murder, rape, waging war against the government, abetment of mutiny, dacoity with murder, and anti-terrorism. The President of India can exercise clemency in cases involving the death penalty, as is provided for under the Indian Constitution. Section 303 of the Indian Penal Code, which mandated the death penalty for certain crimes, was overturned by the Supreme Court in the case "Mithu vs. state of Punjab".⁷ India opposed a motion to abolish the death penalty in the United Nations General

⁵Ibid.

⁶Art. 21, Constitution of India

⁷AIR 1983 SC 473

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Assembly. India's position on the death penalty has not changed, and in November 2012, the country once again voted against a proposal at the UN General Assembly to outlaw the practise.

There are often two major reasons why a penalty is given for wrongdoing:

- 1.) One is that the individual who committed the wrong must suffer for it.
- 2.) Punishing a criminal sets a good example for future offenders, which is the second reason.

The case of *Bachan Singh V. State of Punjab* established the doctrine of the "rarest of the rare test" as the basis for considering death sentence cases in India. In other words, the death penalty will be handed out only in the most exceptional of circumstances.⁸

The Doctrine of Rarest of Rare

The Supreme Court made clear in the case *Bachan Singh V. State of Punjab*⁹, that it believes the death penalty should only be used in the most extreme of circumstances. There was widespread approval for the Supreme Court's position since it sought to minimise the frequency with which the death penalty is applied.

The Supreme Court's Ratio Decidenti or Rule of Law in the *Bachan Singh* case held that the death penalty is only legal when it is used as a punishment alternative to life in prison.

Only in the most exceptional circumstances, when all other options have been exhausted, will the same be applied.

Supreme Court Justice R.M. Lodha wrote in *Santosh Kumar Bariyar v. State of Maharashtra*¹⁰, "The rarest of rare dictum only serves as a guideline in enforcing the provisions mentioned in Section 354(3) of CrPC and entrenches the policy that life imprisonment is the rule and death punishment is an exception."

Article 21 of the Indian Constitution guarantees that no one can be killed without following the rules of law. If a death sentence is handed down, it severely limits the

⁸AIR 1980 SC 898

⁹Ibid.

¹⁰Crl. A. No. 1478 of 2005 SC.

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opportunity to introduce new evidence or legal precedent. Once a sentence is carried out, there is no turning back.

Methods of Execution in India

Both hanging and gunshot are used as methods of capital punishment in India.

Hanging: The death penalty in India is always carried out via hanging. Godse was the first Indian to be put to death in a capital case after the country gained its independence, and it was for his role in the case against Mahatma Gandhi. The Indian Supreme Court ruled that capital punishment should be reserved for the most extreme of instances.

Shooting

The use of the death penalty in India is legitimised under the country's Army Act and Air Force Act. For the types of crimes listed in subsections (a) through (o) of Section 34 of the Air Force Act of 1950, a court martial has the authority to impose the death penalty.

The Indian government frequently employed the use of the death penalty by means of hanging.¹¹

India's death penalty breaches human rights yet benefits society.

Article 5 of the 1948 UDHR prohibits torture, cruel treatment, and immoral punishment. The UN General Assembly teaches that every country that uses the death sentence must follow strict procedural guarantees and use a fair, reasonable, and just manner. In the thirteenth convention of the European convention for the protection of Fundamental Rights and Human Rights, many people signed to abolish capital punishment. As one of the most debasing, brutal, and harsh disciplines, it violates the transgressor's human rights under Article 3 of the European Convention on Human Rights.

¹¹M Swathi and K Roja, A Critical study on Capital punishment in India, International Journal of Pure and Applied Mathematics Volume 120 No. 5 2018, 911-922

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Article 3 of the UDHR gives everyone the right to liberty, security, and enjoying their lives. Each state handles lawbreakers differently. Discipline focuses on preventing public infractions. There are deterrent, retributive, reformatory, rehabilitative, and preventive theories. Deterrent theory believes punishment is a warning to others. This philosophy aims to reduce crime through eliminating offenders. The public and those who commit wrongdoings should see capital punishment as an example for how to respond to wrongdoings. This hypothesis has four justifications: prevention, elimination, isolation, and public risk.

The Economic and Social Council of the UN set guidelines regarding capital punishment:

- Capital discipline should not be performed in an intrigue or exoneration.
- The inconvenience of capital punishment should only be caused for offensive infractions by part nations that have not annulled the training.
- Capital punishment isn't given to pregnant women or the mentally ill, nor to minors under 16.

Article 5 of the 1948 UDHR states, "No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment."¹²

Article 3 of the UDHR guarantees "life, liberty, and security of person."

- According to Article 14 of the ICCPR, the death penalty is only granted following a fair trial. Death penalty impact won't be reviewed.

The Indian legal executive employs all UNECOSOC regulations for dispensing capital sentence in the rarest of rare cases since it may affect the general public everywhere and the regulation doesn't damage UNECOSOC rules either.

Article 21 of the Indian Constitution states that no one can be denied their right to live, unless prohibited by law. This means if a person is denied capital punishment, it is rational and just. Even though capital punishment is an infringement of someone's human rights, it doesn't contradict Article 21 of India's Constitution nor is it uncalled

¹²Saiba Meher Rajpal, A Study on Execution of Death Penalty, IJARIIIE-ISSN(O)-2395-4396, Vol-7 Issue-3 2021

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for according to the Indian Constitution. In India, it is said that if a criminal affects the public repeatedly, he should be executed.

Take control of miscreant consequences for wrongdoing. These activities can produce public disorder and lawbreaking, which can destabilise society.

To prevent such crimes, we need strict rules, hence capital punishment is beneficial to society.¹³

Indian History

Indian culture has always had capital punishment. Death penalty has been won since ancient times, as seen in early documents and law texts. Death sentence was applied randomly with a curse of anguish. When Ahimsa was the ideal of leadership, King Ashoka didn't ban death penalty. The Mahabharata mentions the potential of capital punishment, stating that if killing an individual or family makes the public safe and reduces danger, then it should be done.

One of the best old law-providers, Manu, said that capital punishment should be won in the public to make a dread among the people so they don't commit horrifying wrongdoings. Without this training, rebellion will win and people will eat each other like fish do in the water, the stronger eating the weaker.¹⁴

India's attempt to abolish capital punishment

In India, attempts to abolish capital punishment failed. Before independence, a 1931 private bill to abolish capital punishment for crimes was rejected by the British Home Secretary.

The Independent Indian Government prevented the Lok-Sabha Session from passing a bill to ban capital punishment. 1958 and 1961 RajyaSabha attempts also failed. Law

¹³Ibid.

¹⁴ G., Vijay. "A Study on Execution of Death Sentence." <https://Acadpubl.eu/Hub/2018-120-5/3/228.Pdf>.

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Commission reports assumed capital penalty will win and leaders must exercise leniency. The government and Lok-Sabha received this report in 1967 and 1971.¹⁵

Capital Punishment in European Union

The death penalty was imposed at many periods and places throughout history and in a wide variety of cultures and religions for both the most heinous crimes, such as murder, and for lesser offences. Whether it should be kept or eliminated is a topic of heated intellectual and ethical debate that has raged for over two centuries.

The importance of discouraging would-be offenders and meting out just punishment have both been raised as arguments. Increased public understanding of the value and right to life, the dignity of human beings, the risk of judicial errors, and the reality that execution involves torture fueled the abolitionist campaign after World War II's end. Protocol No. 6 to the European Convention on Human Rights, the first legally enforceable instrument eliminating the death penalty in peacetime, was adopted by the Council of Europe in 1982. The majority of the 47 member nations of the Council of Europe have approved this treaty. In 1989, the United Nations enacted the first international instrument seeking global abolition: the Second Optional Protocol to the International Covenant on Civil and Political Rights. So far, 86 states have ratified it.¹⁶

As of July 2018, 106 countries had abolished the death penalty for all crimes, plus another 8 had done so for ordinary crimes only. Most recently, in 2017–2018, Burkina Faso and Guatemala (for minor offences) and Guinea and Mongolia abolished capital punishment (for all crimes). The death sentence is morally reprehensible, according to a 2018 Vatican document. Many nations meet the criteria for being "abolitionist in practise" (Amnesty International lists 28, but this might be higher depending on the definition used). Approximately 56 states still have it on the books, however only

¹⁵ Shantanu Jugtawat and Hirdesh Singh ,Capital Punishment: Revisiting the Abolition-Retention Debate, https://www.legalserviceindia.com/articles/cap_pp.htm

¹⁶ European Parliament, The death penalty and the EU's fight against it, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/635516/EPRS_ATA\(2019\)635516_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/635516/EPRS_ATA(2019)635516_EN.pdf)

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about half actually use it (23 in 2016 and 2017). Abolition is not progressing in a straight line. After a steep fall in favour from 1996 to 2016, 54% of those polled in 2018 were in favour of the death penalty in the United States. After a slew of incidents rocked public opinion in India and beyond, the death penalty was recently extended to include some forms of rape.¹⁷

Why European Union Abolished Death Penalty

European Union members view the death penalty to be an extreme violation of fundamental human rights and decency. The EU will keep up its long-running campaign against the death penalty in light of the growing global momentum towards abolition. The advancement of human rights is aided by abolishing the death penalty. The death penalty is cruel and unnecessary. There is insufficient proof to conclude that the death sentence prevents future criminal behaviour. There is also the risk that state officials will kill an innocent person because of a wrongful conviction.

Belarus: last country in Europe to carry out death penalty

Belarus is the only European country that still uses the death sentence. And they're doubling down with a new amendment.

The last person to be put to death in Europe was a Ukrainian national in 1997. Although Belarus is eager to join the Council of Europe in order to strengthen regional alliances and establish itself as a legitimate state, the fact that it still uses the death sentence prevents it from being fully accepted by its neighbours.

Human rights groups are concerned about a move by Belarusian President Alexander Lukashenko to expand the death penalty to include individuals convicted of "attempting an act of terrorism" in May 2022.

In addition to being an abuse of power in and of itself, Amnesty International is concerned that the nature and timing of the amendment will lead to the law being used

¹⁷ibid.

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to silence political dissent, in particular activism in opposition to Russia's invasion of Ukraine, which Belarus has actively supported.¹⁸

Belarus is not a direct participant in the fight, but it has allowed Russian forces access to its territory, medical facilities, and supply lines. The government of Belarus is angry at activist groups like BYPOL for reportedly trying to stop the shipment of Russian weapons and troops to Ukraine during the so-called "railway conflict."

Among European and Central Asian countries, only Belarus still has a death penalty in place. Since Belarus's 1991 declaration of independence from the Soviet Union, the death penalty has been in effect, albeit it has been strictly applied to "particularly heinous crimes" such as genocide, terrorism, crimes against humanity, and murder with specific circumstances.

This new provision adds "attempting an act of terrorism" to the list of capital offences, bringing the total number of such offences to 14. The death penalty could not be imposed for "preparation for a crime" or "attempted crime" under Belarus' Criminal Code before this amendment.¹⁹

Conclusion

Death is something nearly everyone dread, thus making it the punishment for serious misbehaviour could make people reluctant to do such acts in the first place. This is not a time when it is desired to abolish the death penalty entirely. This custom should be upheld for the good of society as a whole, and it should be awarded only in the most extreme of wrongdoings.

The current lawsuits are overly complicated and lengthy, which could lead to a mild procedure and a poor execution rate. Cases will be handled more quickly, and the offender will receive appropriate discipline, more quickly. There needs to be a

¹⁸Belarus stands alone as Europe's last defender of the death penalty, <https://360info.org/belarus-stands-alone-as-europes-last-defender-of-the-death-penalty/>

¹⁹Ibid.

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balance between the severity of the crime and the person's personal responsibility for it if the death penalty is to be imposed. After a death sentence has been announced, it cannot be postponed.

The use of capital punishment dates back centuries in India. Several countries have abolished the death penalty. In light of the fact that capital penalty is no longer a deterrent for criminals, crime rates continue to rise. The death penalty in India has to be revisited and revised. About his illegal demonstrations, our laws should alter and the discipline should be so strong that it serves as a model for those around him.

We we talk about the capital Punishment in European Countries, Belarus is the only European country with an active death penalty in the current era (last execution done in 2021).

In the 21st century, no Council of Europe member has ever executed anyone. In 1997, Ukraine carried out the last execution within the boundaries of the current Council of Europe. Western European countries and countries that are more similar to Western European countries in terms of political structure and the influence of intellectual elites have successfully implemented versions of the European model of death penalty abolition.