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DEATH PENALTY IN COMPARATIVE JURISPRUDENCE: A STUDY OF INDIA, THE UNITED STATES AND THE UNITED KINGDOM

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ABSTRACT

The death penalty remains one of the most difficult issues in criminal jurisprudence because it combines the State's power to punish with the individual's right to life and dignity. Different legal systems have responded to this issue in different ways. India retains capital punishment but treats it as an exceptional sentence. The United States continues to permit it in a number of jurisdictions subject to constitutional restrictions, while the United Kingdom has abolished it for murder and moved towards a non-capital model of punishment. This article examines these three approaches from a comparative jurisprudential perspective. It uses doctrinal and comparative legal research, drawing on legislation, constitutional provisions, judicial decisions, international human-rights instruments, reports and academic literature. The study focuses on the legal basis of capital punishment, judicial safeguards, arbitrariness, wrongful conviction, deterrence and human dignity. The comparison shows that the status of capital punishment is shaped not by one principle alone, but by constitutional structure, judicial interpretation, human-rights commitments and changing ideas about punishment. The paper concludes that comparative study is useful for understanding why democracies may retain, restrict or abolish the same form of punishment.

Keywords: Abolition; Capital Punishment; Comparative Jurisprudence; Constitutional Law; Death Penalty; Human Rights; Rarest of Rare

1. INTRODUCTION

The death penalty is the most severe punishment available in a criminal justice system because its final effect is the permanent taking of a convicted person's life.¹

The issue has never been limited to sentencing policy.²³

It also raises questions about the purpose of punishment, the limits of State authority, individual dignity and the possibility of error in criminal adjudication.

For this reason, capital punishment continues to receive attention from courts, legislatures, jurists and human-rights institutions.

The traditional justification for the death penalty is usually connected with retribution and deterrence.

The retributive view treats punishment as a response to serious wrongdoing, while the deterrent view looks at punishment as a means of discouraging future offences.

In contrast, reformatory approaches emphasize rehabilitation, and human-rights approaches question whether the State should permanently take a person's life when other severe punishments are available.

A comparison of India, the United States and the United Kingdom is particularly useful because the three systems have adopted different legal positions.

India continues to recognize capital punishment, but judicial decisions have limited its application to exceptional cases.

The United States also retains capital punishment in a number of jurisdictions, but constitutional decisions have imposed important procedural and substantive restrictions.

The United Kingdom has taken a different path by abolishing the death penalty for murder and replacing it with life imprisonment.

The purpose of this article is not simply to classify the three countries as retentionist or abolitionist.⁴

It is to examine the reasoning and legal safeguards that have produced their different positions.⁵ Such a comparison also helps in understanding the relationship between criminal punishment and constitutional values.

¹ U.S. CONST. amend. VIII.

² INDIA CONST. art. 21.

³ Cesare Beccaria, *On Crimes and Punishments* (1764).

⁴ Law Commission of India, *The Death Penalty*, Report No. 262 (2015).

⁵ International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

1.1 RESEARCH PROBLEM

The central problem examined in this study is whether capital punishment can be justified within modern constitutional democracies that place increasing importance on human dignity, fairness and the protection of life.

The problem becomes more serious because an error resulting in imprisonment may be corrected, whereas an execution cannot be reversed.

Questions of unequal sentencing, access to competent legal representation, judicial discretion, quality of evidence and the possibility of wrongful conviction are therefore central to the death penalty debate.

The existence of these concerns does not by itself establish that capital punishment is unlawful in every legal system.

It does, however, require close examination of the safeguards used when the State seeks to impose an irreversible punishment.

1.2 RESEARCH QUESTIONS

1. What are the historical and jurisprudential foundations of the death penalty?
2. How is capital punishment regulated in India, the United States and the United Kingdom?
3. What similarities and differences exist in the constitutional and judicial approaches of these jurisdictions?
4. How do human rights, judicial safeguards, wrongful conviction and deterrence affect the death penalty debate?
5. What does the comparison reveal about changing approaches to punishment?⁶

1.3 OBJECTIVES⁷

The study aims to examine the historical and jurisprudential foundations of capital punishment; analyze its constitutional and statutory position in India, the United States and the United Kingdom; compare the role of courts and safeguards in the three systems; examine concerns of arbitrariness, inequality, wrongful conviction and deterrence; and assess the influence of human-rights principles on contemporary death penalty jurisprudence.

⁶ Law Commission of India, The Death Penalty, Report No. 262 (2015).

⁷ International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

1.4 HYPOTHESIS

The differing approaches of India, the United States and the United Kingdom demonstrate that the legitimacy and application of capital punishment are shaped by constitutional principles, judicial safeguards, human-rights standards, and changing approaches to punishment.

1.5 RESEARCH METHODOLOGY

This study adopts a doctrinal and comparative legal research method.⁸

Primary legal materials include constitutional provisions, statutes and judicial decisions.⁹

Secondary materials include books, scholarly writings, international instruments and institutional reports relating to capital punishment.

The comparative method is used because the legal status of the death penalty differs substantially among the three jurisdictions.

India is examined as a retentionist system with strict judicial limitations; the United States is examined as a retentionist system with federal constitutional restrictions and significant state-level variation; and the United Kingdom is examined as an abolitionist system.

The comparison therefore focuses on legal principles and institutional approaches rather than on a simple numerical comparison of executions.

1.6 SCOPE AND LIMITATIONS

The paper is limited to the legal and jurisprudential aspects of capital punishment in India, the United States and the United Kingdom.

It concentrates mainly on the punishment for serious offences, especially murder, and considers constitutional safeguards, judicial interpretation, human-rights principles and practical concerns surrounding capital sentencing.

The study does not attempt to provide an exhaustive account of every state law in the United States or every historical development in the United Kingdom.

2. HISTORICAL AND JURISPRUDENTIAL FOUNDATIONS

Capital punishment has existed in many legal systems for centuries.¹⁰

Earlier criminal justice systems often used execution for a wider range of offences than modern

⁸ Law Commission of India, The Death Penalty, Report No. 262 (2015).

⁹ International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Dec. 15, 1989, 1642 U.N.T.S. 414.

¹⁰ Immanuel Kant, The Philosophy of Law (1797).

systems.¹¹

The gradual development of constitutional government and human-rights thinking has contributed to a narrowing of the circumstances in which the death penalty is used.

The history of capital punishment also reflects changing ideas about the purpose of punishment. When punishment was primarily understood as retaliation, execution could be viewed as a natural response to grave wrongdoing.

With the growth of deterrent and reformative theories, however, questions arose about whether punishment should primarily inflict suffering, prevent future crime or attempt to reform the offender.

Modern jurisprudence therefore considers the death penalty through several competing principles rather than through one theory alone.

2.1 RETRIBUTIVE THEORY

Retribution is based on the idea that serious wrongdoing deserves a proportionate response.

Immanuel Kant's philosophy is commonly associated with a strong retributive justification of punishment.

On this approach, punishment is connected with justice for the offence already committed rather than only with future social benefits.

Applied to capital punishment, the retributive argument suggests that certain exceptionally grave offences may justify the highest possible punishment.

At the same time, the principle of proportionality creates a further question: whether execution is necessary to express society's condemnation when life imprisonment can also impose a very severe deprivation of liberty.

2.2 DETERRENCE THEORY¹²

The deterrence theory views punishment as a means of discouraging criminal conduct.¹³

Supporters of capital punishment sometimes argue that the possibility of execution creates a particularly strong disincentive to commit serious crimes.

The difficulty is that the severity of a punishment and its actual preventive effect are not necessarily the same thing.

A criminal justice system may deter crime through the certainty and promptness of detection

¹¹ Roger Hood & Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th ed. 2015).

¹² Cesare Beccaria, *On Crimes and Punishments* (1764).

¹³ Immanuel Kant, *The Philosophy of Law* (1797).

and punishment rather than by relying only on the maximum severity of punishment.

The deterrence argument therefore requires careful examination of evidence and cannot be assumed merely from the existence of the death penalty.

2.3 REFORMATIVE THEORY

The reformatory theory places emphasis on the possibility that an offender may change.

Capital punishment presents an obvious difficulty for this approach because execution permanently ends the possibility of rehabilitation.

Life imprisonment can provide an alternative that protects society while retaining the possibility of review, correction and, where legally appropriate, rehabilitation.

2.4 HUMAN RIGHTS APPROACH

The modern debate is also closely connected with the right to life and human dignity.¹⁴

Article 6 of the International Covenant on Civil and Political Rights regulates the use of the death penalty while establishing a broader international framework for the protection of life.¹⁵

The Second Optional Protocol to the ICCPR represents an international commitment towards abolition.

The human-rights approach does not depend only on whether an offender deserves punishment. It also asks whether the State should possess an irreversible power to take life and what safeguards are necessary where that power remains.

2.5 NEED FOR COMPARATIVE STUDY

India, the United States and the United Kingdom provide three useful models for comparison.

India retains capital punishment but restricts its use through judicial doctrine.

The United States retains it within a constitutional framework, while individual states differ considerably in their policies and practices.

The United Kingdom has abolished the death penalty for murder.

The comparison is significant because the same criminal justice objective—responding to serious crime—can be pursued through different legal models.

A comparative approach allows the researcher to identify the role of constitutional interpretation, legislation, judicial review and human-rights commitments in shaping those

¹⁴ International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

¹⁵ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Dec. 15, 1989, 1642 U.N.T.S. 414.

models.

3. COMPARATIVE LEGAL FRAMEWORK

3.1 INDIA

Capital punishment remains part of Indian criminal law.

Section 103(1) of the Bharatiya Nyaya Sanhita, 2023 provides death or imprisonment for life for murder.¹⁶

The present statutory framework therefore continues to recognize the death penalty as a possible sentence for the gravest offences.

The constitutional position is shaped principally by Article 21 of the Constitution, which protects life and personal liberty except according to procedure established by law.¹⁷

The Supreme Court has considered the compatibility of capital punishment with constitutional guarantees and has accepted its validity subject to strict limitations.

The most important principle is the “rarest of rare” doctrine developed in *Bachan Singh v. State of Punjab*.¹⁸

The Court treated life imprisonment as the ordinary punishment and death as an exceptional punishment, requiring careful consideration of both aggravating and mitigating circumstances. *Machhi Singh v. State of Punjab* subsequently discussed factors relevant to identifying cases in which the death sentence may be considered.¹⁹

Indian death penalty jurisprudence has therefore moved away from treating execution as an automatic consequence of murder and towards individualized sentencing and heightened judicial scrutiny.

3.2 UNITED STATES

The United States has a constitutional and federal structure in which capital punishment has developed through both federal law and state law.

The Eighth Amendment prohibits cruel and unusual punishments, and the Supreme Court has repeatedly examined whether capital sentencing procedures satisfy constitutional standards.²⁰

In *Furman v. Georgia*, the Supreme Court invalidated the death sentences before it because the

¹⁶ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 103(1) (India).

¹⁷ INDIA CONST. art. 21.

¹⁸ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).

¹⁹ *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 (India).

²⁰ U.S. CONST. amend. VIII.

existing system allowed the punishment to be imposed in an arbitrary manner.²¹

The decision produced major changes in American capital sentencing.

In *Gregg v. Georgia*, the Court later upheld revised procedures designed to provide greater structure to the sentencing process.²²

The American experience therefore illustrates that the retention of capital punishment is accompanied by constitutional requirements concerning the manner in which death sentences are imposed.

The United States cannot, however, be treated as a completely uniform capital punishment system.²³

State-level differences have produced substantial variation in whether and how executions are used.

This makes the American model different from both the more centralized Indian approach and the abolitionist approach of the United Kingdom.

3.3 UNITED KINGDOM

The United Kingdom represents the abolitionist approach in this comparison.²⁴

The Murder (Abolition of Death Penalty) Act 1965 abolished capital punishment for murder in Great Britain and substituted life imprisonment.

The abolitionist position was later reinforced by the development of the domestic human-rights framework and the United Kingdom's participation in international human-rights instruments.²⁵

The legal system therefore no longer uses execution as a punishment for murder.

The British position is significant for comparative jurisprudence because it demonstrates that serious criminality can be addressed through severe custodial punishment without retaining the State's power to execute an offender.

²¹ *Furman v. Georgia*, 408 U.S. 238, 239–40 (1972).

²² *Gregg v. Georgia*, 428 U.S. 153, 206–07 (1976).

²³ Death Penalty Information Center, State by State, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state> (last visited Sept. 26, 2026).

²⁴ Murder (Abolition of Death Penalty) Act 1965, c. 71, § 1 (U.K.).

²⁵ Human Rights Act 1998, c. 42, sch. 1, pt. 3 (U.K.).

4. COMPARATIVE JURISPRUDENTIAL ANALYSIS

4.1 CONSTITUTIONAL POSITION

The constitutional treatment of capital punishment differs in the three jurisdictions.

India permits the death penalty but subjects its use to constitutional safeguards and judicially developed standards.

The United States subjects capital punishment to the Eighth Amendment and extensive Supreme Court review.

The United Kingdom has moved from regulation towards abolition through legislation and human-rights commitments.

These differences show that constitutional democracies do not necessarily reach the same result when dealing with capital punishment.

Their institutional histories and interpretations of rights influence the legal position.

4.2 JUDICIAL SAFEGUARDS

Judicial safeguards are particularly important in retentionist systems because of the irreversible nature of execution.²⁶

In India, the rarest-of-rare doctrine requires courts to examine the circumstances of the offence as well as the circumstances of the offender.^{27,28}

The sentencing decision is therefore not supposed to depend only on the seriousness of the crime.

In the United States, the post-Furman framework emphasized structured sentencing procedures and judicial review.

The American cases show that constitutional regulation can require safeguards even where capital punishment itself remains permissible.

The United Kingdom does not require a comparable capital sentencing framework because execution has been abolished.

4.3 ARBITRARINESS AND INEQUALITY

A major concern surrounding capital punishment is the possibility that similar offenders may receive different sentences because of differences in judicial discretion, legal representation or social circumstances.

²⁶ Bachan Singh, (1980) 2 SCC 684.

²⁷ Furman, 408 U.S. at 239–40.

²⁸ Gregg, 428 U.S. at 206–07.

This concern becomes more serious when the punishment is irreversible.

In India, continuing discussion about consistency in applying the rarest-of-rare standard shows the difficulty of translating broad judicial principles into uniform sentencing outcomes.

In the United States, concerns about geography, resources and access to legal representation have also formed part of the broader capital punishment debate.

These concerns do not automatically determine the legality of capital punishment, but they demonstrate why procedural fairness is essential.

4.4 WRONGFUL CONVICTION

The possibility of wrongful conviction is one of the strongest objections to an irreversible punishment.²⁹

A wrongful imprisonment can, at least in principle, be corrected through appeal, review or exoneration.³⁰

An execution cannot be undone.

This makes capital cases especially dependent upon reliable investigation, accurate evidence, competent legal representation and careful appellate review.

The concern is not limited to any one country.

It arises wherever the legal system retains a punishment that cannot be corrected after it has been carried out.

4.5 HUMAN DIGNITY AND RIGHT TO LIFE

Human dignity has become increasingly important in discussions of capital punishment.

The right to life is recognized in international human-rights law, while domestic constitutional systems provide different levels of protection.

India attempts to balance the retention of capital punishment with Article 21 and judicial safeguards.

The United States approaches the issue through constitutional limitations on punishment.

The United Kingdom has taken the further step of abolition.

The international movement towards abolition also demonstrates the changing understanding of punishment.

The Second Optional Protocol to the ICCPR reflects an international commitment to ending

²⁹ International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

³⁰ Law Commission of India, The Death Penalty, Report No. 262 (2015).

capital punishment, although countries continue to differ in their legal positions.

4.6 DETERRENCE

Deterrence remains one of the principal arguments advanced in support of capital punishment.³¹

The argument assumes that the threat of execution may discourage potential offenders from committing serious crimes.³²

The opposing position questions whether the death penalty has a demonstrated advantage over other severe punishments.³³

The comparative experience does not provide a simple answer.

India retains capital punishment for exceptional cases, the United States continues to debate and apply it differently across jurisdictions, and the United Kingdom has abolished it.

The continued disagreement indicates that deterrence remains a contested issue rather than a settled justification.

4.7 ROLE OF PUBLIC POLICY AND SOCIAL CHANGE

Capital punishment is not shaped by legal doctrine alone.

Public attitudes, legislative policy, criminal justice priorities and changing social values can influence the direction of punishment law.

At the same time, courts operate within constitutional limits and cannot simply treat public demand as a substitute for legal standards.

The history of the three jurisdictions shows this interaction.

India has retained capital punishment while narrowing its judicial application.

The United States has experienced significant constitutional intervention in capital sentencing while leaving substantial room for state-level policy choices.

The United Kingdom has moved towards abolition.

4.8 PRESENT LEGAL POSITION: COMPARATIVE VIEW

India may therefore be described as a retentionist system with strong judicial restrictions.^{34,35}

³¹ International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

³² Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Dec. 15, 1989, 1642 U.N.T.S. 414.

³³ Death Penalty Information Center, State by State, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state> (last visited Sept. 26, 2026).

³⁴ Murder (Abolition of Death Penalty) Act 1965, c. 71, § 1 (U.K.).

³⁵ Human Rights Act 1998, c. 42, sch. 1, pt. 3 (U.K.).

The United States represents a retentionist system in which constitutional review operates alongside substantial state-level variation.³⁶

The United Kingdom represents an abolitionist model.

The comparison is important because it shows that the death penalty question is not simply a choice between punishment and no punishment.

It involves decisions about proportionality, dignity, reliability, deterrence, judicial responsibility and the acceptable limits of State power.

5. FINDINGS AND DISCUSSION

5.1 MAJOR FINDINGS

First, capital punishment has moved from being a widely accepted punishment towards greater restriction or abolition in many legal systems.

This change reflects developments in constitutionalism and human-rights thinking.

Second, the three jurisdictions studied in this paper do not follow a single model.

India retains the punishment but restricts it.

The United States retains it under constitutional constraints and state-level differences.

The United Kingdom has abolished it.

Third, judicial safeguards are particularly important wherever the death penalty remains available.

A legal system must ensure that the punishment is not imposed through arbitrary or inconsistent procedures.

Fourth, wrongful conviction is a serious concern because execution is irreversible.

This strengthens the need for accurate evidence, competent representation and effective appellate review.

The severity of a punishment cannot by itself establish its effectiveness in preventing crime.

5.2 HYPOTHESIS ANALYSIS³⁷

The hypothesis proposed in this study is that the differing approaches of India, the United States and the United Kingdom demonstrate that the legitimacy and application of capital punishment are shaped by constitutional principles, judicial safeguards, human-rights standards and

³⁶ Law Commission of India, The Death Penalty, Report No. 262 (2015).

³⁷ Bachan Singh, (1980) 2 SCC 684.

changing approaches to punishment.³⁸³⁹

The comparison supports this hypothesis.

India demonstrates the importance of constitutional interpretation and judicial sentencing standards.

The United States demonstrates how constitutional review can reshape the administration of a punishment that remains legally available.

The United Kingdom demonstrates how legislative abolition and human-rights commitments can remove capital punishment from ordinary criminal law.

The comparison therefore suggests that the legal status of capital punishment cannot be understood only by asking whether a country retains or abolishes it.

The reasons for retention, restriction or abolition are connected with the constitutional structure and the broader philosophy of punishment adopted by each jurisdiction.

5.3 RESEARCH GAP

Existing discussions of the death penalty often examine individual jurisdictions separately.

A comparative approach provides a broader understanding of how constitutional values and legal institutions influence capital punishment.

Further research may examine the consistency of death sentencing, the effect of legal representation, wrongful convictions, socio-economic inequality, public attitudes, life imprisonment as an alternative and the practical operation of international human-rights standards.

Fifth, the deterrence justification remains contested.⁴⁰

6. CONCLUSION AND SUGGESTIONS⁴¹

The death penalty remains a difficult issue because it combines the State's authority to punish with the irreversible loss of life.

The comparison of India, the United States and the United Kingdom shows that there is no single legal response to this issue.

India has retained capital punishment but has developed strong judicial restrictions.

The United States continues to retain it in several jurisdictions while constitutional decisions

³⁸ Furman, 408 U.S. 238.

³⁹ Gregg, 428 U.S. 153.

⁴⁰ Law Commission of India, The Death Penalty, Report No. 262 (2015).

⁴¹ International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

regulate its application.

The United Kingdom has abolished capital punishment for murder and relies on life imprisonment.

The comparison also shows why safeguards matter.

Where an irreversible punishment is retained, accuracy in investigation, fairness in trial, competent legal representation, consideration of mitigating circumstances and meaningful appellate review become particularly important.

6.1 SUGGESTIONS

1. Courts should continue to apply strict safeguards whenever capital punishment is considered.
2. Persons facing a possible death sentence should receive effective and competent legal representation.
3. Sentencing principles should be applied consistently so that similar cases are not treated arbitrarily.
4. Investigating agencies and trial courts should give particular attention to the reliability of evidence in capital cases.⁴²⁴³
5. Life imprisonment should remain an important alternative where the purposes of punishment can be achieved without execution.
6. Legislatures and courts should continue to consider developments in international human-rights law.
7. Further empirical and comparative research should examine whether capital punishment achieves objectives that cannot be achieved through other serious punishments.

The central conclusion of this study is that the death penalty cannot be examined only as a question of whether a particular offence deserves the harshest punishment.

It is also a question of constitutional principle, judicial responsibility, human dignity and the limits of State power.

The experience of India, the United States and the United Kingdom demonstrates how different legal systems can respond differently to the same fundamental question.

The hypothesis is therefore supported in the sense that the comparative legal position is closely

⁴² Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Dec. 15, 1989, 1642 U.N.T.S. 414.

⁴³ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 103(1) (India).

connected with constitutional values, judicial safeguards, human-rights standards and changing theories of punishment.

The comparison does not produce one universal answer for all legal systems; instead, it demonstrates the factors that shape each jurisdiction's approach.

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