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DEATH PENALTY: COMPARATIVE ANALYSIS BETWEEN INDIA AND INTERNATIONAL IDEOLOGY

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ABSTRACT

Returning violence for violence multiplies violence, adding deeper darkness to a night already devoid of stars – Martin Luther King.

Capital punishment or the death penalty is the highest level of punishment that one can get or give, generally imposed for maintaining law and order in the nation. The death penalty is not just hanging, but a lot more like stoning, electrocution, shooting, and beheading.⁶⁵

This type of punishment is not new in our history, it's been practiced for many years now. The death penalty was a commonly used punishment in ancient days. Nowadays people are arguing that capital punishment is something that follows a revenge factor and is against the human rights of a person. Most countries have completely abolished the death penalty and some countries still have it for specific crimes like dangerous, inhumane, and war crimes.

In 2021 alone, 2052 death sentences were accomplished among the 28670 people who were given the death sentence have been recorded in 56 countries which is 39% higher than the previous year 2020. Around 60% of the world's population lives in countries still with the death penalty. Countries that have the death penalty even now are India, Pakistan, and China. In this article, we'll be discussing the death penalty around the world and the validating

point of them, about the death penalty if imposed.

KEY WORDS: Death penalty, Capital punishment, heinous crimes, Federal government, UDHR

INTRODUCTION:

Capital punishment or the death penalty is the punishment given by a court of law for any dangerous offence committed by a person. The term capital from the word capital punishment is from the Latin word capitalist which means "regarding the head".

The death penalty is a controversial topic that has been the subject of intense debate for many years. On the one hand, many believe that the death penalty is necessary for combating crime, while others maintain that it is too cruel and inhumane to use. The death penalty is the criminal punishment of killing an individual and executing him or her. In the United States, it is currently legal in 17 states and the District of Columbia. Still, its use has come under intense scrutiny in recent years due to a series of high-profile trials in which defendants were found guilty of capital murder, but were later pardoned by the state or the federal government. The idea behind capital punishment is that those who have committed heinous crimes such as murder or torture should face punishment in some form, but the severity of the penalty should depend on the specific crime that was committed and the individual who was responsible for it.

According to UDHR, (universal declaration of human right) which was adopted in 1948 by the UN (United nation), every person has the right to life and the right to live free from torture or cruel, inhuman treatment or punishment which is indeed against the death penalty's ideology in which people who are convicted for any higher offences done by them are sentenced to death which is directly against the human rights of that person. At the end of 2021 around 108 countries have abolished capital punishment, and many organizations like Amnesty International have taken great steps in abolishing the death penalty by conducting

⁶⁵ <https://www.legalservicesindia.com/article/2418/Death-Penalty-in-India.html>



much execution (like around 579 in 2020) around the world

HISTORY:

Initially, the death penalty was widely used by the **Greece** people in the 7th century BCE. Although Plato, the Greek philosopher was not happy about it as he thinks that the death penalty should be given to one only for incorrigible offence or incorrigible person. After the Greeks, the **Romans** were also using this widely, but this was not accepted by the people after the republic, this is mainly because of the religious search for justification by the people especially the followers of Judaism and Christianity in their holy books. In **Japan**, during the peaceful Heian period all the emperors were compelled to commute the death penalty and make it deportation to the remote area. In **Islamic countries**, capital punishment is considered to be condoned as mentioned in the holy book of the Quran, the death penalty is given to mostly all kinds of crime like robbery, the apostasy of Islam, adultery and rape in which murder is not considered among them because it is considered as a civil crime and is covered by the law of qisas⁶⁶.

INDIA: The British introduced the death penalty in India in the 17th century and was used as a deterrent to crime. In the modern era, the death penalty was reinstated in India in 1976 and has since been in use. There have been many debates surrounding the use of the death penalty in India, with many people arguing that it should be abolished because it is an unnecessary and barbaric punishment⁶⁷. However, many others argue that the death penalty is a necessary part of the criminal justice system and that it should be used for certain crimes. The main argument against the death penalty is that it is a cruel and unnecessary punishment. However, there are also arguments in favour of the death penalty as it has been used to deter criminals from committing violent crimes in the past. However,

many people in India are against the death penalty because they feel it is a terrible punishment and should not be used in the modern era.

DEATH PENALTY IN DIFFERENT COUNTRIES:

DEATH PENALTY IN UNITED STATES:

The United States has a long and tragic history of using the death penalty. It is one of the few countries that have never abolished the death penalty. The U.S. is a modern, democratic nation that has embraced the idea of using the death penalty as a form of punishment in certain cases. In the past, the death penalty was rarely used. However, as time passed, the death penalty was used more frequently as criminals became increasingly violent. Since the founding of the country, the death sentence has been a contentious topic in the United States. As the worst form of punishment, the death penalty is typically only applied to major offences such as aggravated murder, treason, and drug trafficking. The use of the death penalty has been a part of American law since the colonial era, and throughout the course of several centuries, it has undergone numerous changes.

The death sentence has been used in several crimes throughout history and in various situations. The death sentence has been used to deter crime and discourage crimes against society from the colonial era to the present. For instance, during the colonial era, a wide range of offences, such as treason, piracy, theft, and witchcraft, were punishable by death. Murder, rape, and arson were added to the list of crimes that could result in the death penalty in the eighteenth century. By the 20th century, only the most heinous offences, such as first-degree murder and treason, were being punished with the death penalty. Although the death penalty has been used for a very long time in the US, its legitimacy and application are now hotly contested. The argument put forth by many death penalty opponents is that it is a cruel and unusual punishment that goes against the Eighth Amendment's prohibition on such punishment. In addition, opponents contend

⁶⁶ <https://www.britannica.com/topic/capital-punishment>

⁶⁷ <https://www.legalserviceindia.com/legal/article-3844-the-evolution-and-historical-background-of-capital-punishment-in-india.html>



that the death sentence unfairly and inequitably targets underprivileged groups and people of colour and that it is impossible to carry it out. The argument put up by proponents of the death penalty is that it is an essential step in maintaining public safety and preventing crime. The effectiveness of the death penalty in generating deterrence has also been a topic of heated discussion.

Although research indicates that the death sentence has little effect on criminal conduct, the topic is still up for debate. The death penalty is also expensive because protracted appeals and prison expenses soon mount up. Mistakes in the application of the death sentence, such as erroneous convictions and executions, are another significant source of debate. The death penalty is generally a divisive topic in the United States. Opponents raise ethical, legal, and logistical issues with its use and implementation, countering the argument made by supporters that it is a necessary precaution to ensure public safety. In the end, deciding whether to use the death penalty is a tough decision that must be taken after carefully weighing the moral, legal, and practical ramifications.

DEATH PENALTY IN UNITED KINGDOM:

In Great Britain, the death penalty was used as a punishment from ancient times until the second half of the 20th century. In 1964, Peter Anthony Allen and Gwynne Owen Evans were the last people to be hanged on the same day in Great Britain. In 1965, the death penalty for murder was suspended and finally abolished for murder in 1969. In 1965, the suspension of public executions was a public experiment to see what would happen in such a situation, and it was later abolished definitively in 1969.

The death penalty remained a legally defined punishment for certain crimes, such as treason until it was completely abolished in 1998. In 2004, Protocol 13 to the European Convention on Human Rights was adopted and, as the UK is a party to the Convention, it became binding. The Protocol prohibited the reintroduction of the death penalty as long as Great Britain remained

a member of Congress. The Murder (Abolition of Death Penalty) Act 1965 is the law that currently abolishes the death penalty.

DEATH PENALTY IN CHINA:

The penalty in China is seen as one of the harshest penalties in the world. It has come under increasing scrutiny in recent years, with human rights groups and foreign nations pointing to China's need to reform its criminal justice system. It has been condemned by many for its lack of transparency and questionable use of the death penalty. In the Chinese legal system, the death penalty is the ultimate punishment for a range of offences. Offences such as murder, corruption, rape and drug trafficking all attract the death sentence. It can also be imposed on multiple offences in the same case, and foreign nationals are not exempt. This has caused outrage amongst human rights groups, who argue that this is a violation of the right to life and a breach of international human rights law. The Chinese government maintains that the death penalty is necessary to maintain social stability and deter crime. It is also used as a form of retribution, with victims or their families often pushing for capital punishment to serve as a deterrent to future criminals. Despite this, there is no evidence that it deters crime, with the recidivism rate remaining high. In addition to the death penalty, China also imprisons thousands of people every year for other criminal offences. These include life imprisonment, suspended sentences and administrative detention. These sentences often have little transparency, with convictions often taking place in closed courts and with little access to legal representation. This has led to many accusing China of using the death penalty and other forms of punishment arbitrarily and unjustly. The death penalty in China has also come under criticism for its secretive nature. Unlike many other countries, China does not release information on prisoners sentenced to death or even the number of people sentenced to death. This lack of



transparency has raised many concerns for those who are critical of the penal system, with some claiming that it is being used to suppress political dissent. Despite international pressure, the Chinese government continues to use the death penalty as a form of punishment. This has led to an increase in the number of executions each year, with some estimates suggesting that as many as 10,000 people have been executed in China since 2011. This has caused outrage amongst foreign governments and human rights groups, who argue that it is inhumane and violates the right to life. In conclusion, the death penalty in China remains controversial. Whilst the Chinese government insists that it is necessary to maintain social order and prevent crime, there is little evidence to support this argument and a growing scepticism around the use of capital punishment. As such, human rights groups are calling for the Chinese government to abolish the death penalty and introduce reforms that make the criminal justice system more transparent and fairer.

DEATH PENALTY IN INDIA:

India's history with the death penalty is lengthy and complicated. Many methods of execution, including harsh and unusual penalties, were used in ancient and mediaeval India. When the Indian Criminal Code was passed in 1861, the death penalty was officially sanctioned in colonial India for the first time. The death sentence is mostly applied to certain heinous crimes in contemporary India, such as justified homicide, abduction, and murder.

In India, the death penalty remained a legal sanction and a practice throughout the 20th century. The emergency of 1975–1977 saw a particularly high prevalence of the death sentence as hundreds of political opponents were imprisoned and put to death. The death sentence was changed to a discretionary punishment rather than a required one by the Supreme Court of India in 1983. The court held that "life" should be understood to imply life in prison. This represented a significant departure from the death penalty regulations of the colonial past, which mandated the death

sentence as the only acceptable punishment for specific crimes.

The death sentence has been viewed less as a punishment and more as a deterrence in recent years. According to the Supreme Court of India, a crime must be the "rarest of rare" to warrant the death punishment. This conveys the viewpoint that the death sentence ought to be applied solely in extreme circumstances. It has also been argued that because it is less expensive than life in jail, it is a more economical kind of punishment.

To improve fairness in the application of the death penalty, some amendments have been made. According to the Supreme Court, essential protections like suitable legal assistance during the trial process are required. Furthermore, according to the government, the death sentence cannot be applied before any mitigating circumstances, such as the criminal's mental state and the circumstances surrounding the crime, have been taken into account.

Yet, there is still opposition to the death penalty in India. According to Human Rights Watch, people from lower socioeconomic rungs are disproportionately subjected to the death penalty and frequently face worse sentences than those from higher socioeconomic rungs. In addition, certain human rights organisations have cited a lack of accountability and transparency in the execution process, pointing to some glaring gaps in both.

In conclusion, there is debate over the use of the death sentence in India. Critics point out several flaws and shortcomings in the process, such as the lack of transparency, the disproportionate use of the death penalty against the poor, and the prevalence of arbitrary judgements, while many governments maintain that it serves a purpose in punishing heinous crimes and acts as a deterrent. Ultimately, there is still disagreement over the use of the death sentence in India, and further research is required before any conclusions can be drawn.



CONCLUSION:

A penalty is a type of punishment meted out to people who violate the law. It was put in place to catch anyone trying to go around the rules that govern our daily lives. The punishment might range from a fine to life in jail, depending on how serious the offence was. Sanctions can also serve as a deterrent to prevent crimes from being committed in the first place.

It is evident that using fines effectively deters people from engaging in criminal conduct. They convey the idea that making the wrong decision can have dire repercussions, which may deter some people from committing crimes at all. This not only helps to keep individuals safe, but it can also serve to maintain social harmony since people are aware that their actions must adhere to a certain code of conduct.

Recognizing that a system of punishment should also incorporate rehabilitation is very crucial. People frequently commit crimes as a result of external factors like poverty or mental illness, and focusing only on punishment will not resolve the underlying problem. Hence, the emphasis of punishment must be on both chastising the wrongdoer and giving them the tools they need to transform their lives. Counselling, job training, or specialised education may be required. These measures can give individuals impacted by their crimes the tools they need to build enduring, fulfilling lives while also instilling in them a sense of accountability and responsibility.

Penalties' ultimate objective is to safeguard society as a whole. It is a crucial weapon for upholding law and order as well as advancing justice for offenders. But it's also important to make sure that those in need of rehabilitation have access to services. In this approach, the purpose of punishment is to aid wrongdoers in avoiding difficulty in the future as well as to punish wrongdoers. Society can ensure that people can remain secure while also receiving the support they need to stay healthy and productive citizens by developing a system where both retribution and rehabilitation exist.

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