

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 5

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

The Capital Punishment: An Analytical Study of the Indian Death Penalty and its' International Counterparts

R. ARTHI¹

ABSTRACT

No person should be condemned unheard. The chances that a person might be innocent after being accused at the outset are the reason the Indian system of punishment is tolerant. The death penalty is awarded in India in the rarest of rare cases. A life that is lost once cannot be retrieved back. Even in rare cases, the process of awarding capital punishment has remedies along its way. From the proceedings in trial courts to appeals in the High Courts with jurisdiction, then the Supreme Court of India, and finally the President's pardon- the death warrant is not awarded unless it is unquestionable that the accused deserves the sentence. While India values justice, the situation can be compared to the Kingdom of Saudi Arabia and the United Kingdom- both on opposite ends of the scale. In a recent incident, Saudi Arabia ordered the mass execution of 81 people for various crimes. These included being part of anti-government protests and charges such as "allegiance to foreign terrorist organizations". It is known as the largest mass execution in the kingdom in its neoteric history. On the other hand, the United Kingdom has abolished the death penalty entirely by Article 13, Protocol 1 of the Human Rights Act. The crime rate for Saudi Arabia in 2017 was 1.27, which was a 14.49% decline from 2015. The crime rate in the United Kingdom was 79.52 per 1,000 people in 2021–2022. The overall UK crime rate saw a 1.18% increase from 2020. This paper traces the death penalty's history and crime rates of all three and compares the same effect. It also looks into the international conventions and changes introduced. The ultimate question asked is - Which is better: To mitigate the loss of the death penalty or to avoid it?

Keywords: *Death Penalty, Republic of India, Kingdom of Saudi Arabia, The United Kingdom, Capital Punishment*

I. INTRODUCTION

In Audi Alteram Partem (No man should be condemned unheard)

The role of natural justice has evolved with time as society changes and adapts to the world and

¹ Author is a Student at SASTRA Deemed University, India.

people around it. The principles of natural justice rely on the concepts of the Common Law which institutes fairness, reasonableness, equity and equality. The Indian Death Penalty is an example of natural justice at play- it is offered in the rarest of rare cases where the offence is so heinous, one cannot justify the actions invariably. The process of hanging a person is tumultuous and long so that no man's life is lost on a wrong accusation or assumption. A life once lost is always lost and because of the importance placed on human life, the death warrant in India is issued infrequently. The first step is the trial of the accused person who has the right to appeals and counter-suits. The first judicial authority that can award the death penalty to a convicted person is the High Court of the concerned states. Despite the death penalty that has been awarded, the convicted person can appeal to the Apex Court, the Supreme Court of India for reversal of the charges and the punishment. When the Supreme Court also passes the same order/ direction/ instruction as the High Courts, the accused can further ask for pardon from the President of India. Only after the President's Pardon is denied, the *Death Warrant* is issued and the Capital Punishment executed. But what is the purpose of awarding the death penalty so rarely? What is the goal of placing the importance of human life in cases where another party is so aggrieved that the death penalty, so rarely mete-out is being considered? Is the Indian death penalty effective in a society increasingly advancing in terms of technology and with it, the types and range of crimes? There are also various conventions and countries that support the delay and abolition of the death penalty. Human life and dignity are given more importance than anything else. The recent developments in India, shocking incidents from Saudi Arabia, and the adoptions by several nations across the globe represent that the death penalty might be considered for abolition more strongly than ever. India had the highest number of people on death row in 2021- 488 people. Similarly, the Kingdom of Saudi Arabia mass executed 81 people that were condemned strongly by the United Nations and several other components. Following the UK, Kazakhstan and Sierra Leone have also abolished the death penalty. The research paper analyzes the various scenarios and paints an overall image of the death penalty across the world.

(A) The Code of Hammurabi

The Code of Hammurabi is the first known instance in history that advocated and implemented the death penalty dating back to the eighteenth century B.C. Hammurabi, who was a God-fearing king ensured that the classes in his reign would not oppress the poor and helpless, as given in the prologue²-

² Robert Francis Harper, Ph.D., *The Code Of Hammurabi- King Of Babylon* 3 (The University of Chicago Press

“ ... Hammurabi, the exalted prince, the worshipper of the Gods, to cause justice to prevail in the land, to destroy the wicked and the evil, to prevent the strong from oppressing the weak, to go forth like the Sun over the Black Head Race, to enlighten the land and to further the welfare of the people...”

The laws which were codified by the King Hammurabi of Babylon was a structured manuscript inscribed in stone that codified the death penalty for 25 different crimes including but not limited to theft, false accusation, sorcery, unethical trade, stealing the property of God, stealing another man's son, harboring slaves who deserted their owner, brigandage and more. The code also solidified trust in the judiciary in section 5 as per the translated text-

“If a judge pronounces a judgment, renders a decision, delivers a verdict duly signed and sealed and afterward alter his judgment, they shall call that judge to account for the alteration of the judgment which he had pronounced, and he shall pay twelve-fold the penalty which was in said judgment; and, in the assembly, they shall expel him from his seat of judgement, and he shall not return, and with the judges in a case he shall not take his seat.”³

It is very evident that Hammurabi warranted equality above everything else. Sections 1-3 in the translated text go to say that any accuser, who fails to prove the crime he accused another person of committing would be sentenced to death for the false accusation. The burden of proof in Hammurabi's laws was laid upon the accuser and not the accused. India follows the same ideology- *Innocent until proven guilty*. Hammurabi's code strived to maintain a level of fairness and equality among the three classes in his kingdom and guaranteed justice to any who was stripped of their rights. It can also be said in other words that where the laws seemed stringent, they aimed from the ideas of equity, justice, and good conscience.

The Code is to date the oldest known manuscript that warrants the death penalty. Others that have been discovered by archeologists include the 14th century B.C.'s Hittite Code, 7th century B.C.'s Draconian Code of Athens (which is claimed to have made death the only punishment for all crimes), and the 5th century B.C.'s Roman Law of the Twelve Tablets. Crucifixion, drowning, beating to death, burning alive and impalement were the most commonly used methods of the death penalty in these codes⁴.

1904).

³ *ibid* at p 11-12.

⁴ Death Penalty Information Centre, <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty> (last visited Sept. 25, 2022).

(B) Punishment: It's Kind and Purpose

Punishment in a crime is awarded for various purposes depending on the nature of offence and the perpetrator of the same. The types of punishment awarded are one of the following five⁵:

a. Retribution: Retributive punishments are offered with the ideology that those who commit an offence have rationality and are capable of decision-making, allowing them to induct themselves into the offence with the intention of committing or omitting it. Thus, it is assumed that anyone who commits an offence has *mens rea* without question. However, there arises a problem in matching the varying severity of the offence to the punishment. There is no way to scale what punishment is satisfactory or apt for the crime that has been committed.

b. Incapacitation: Incapacitating punishments are awarded when the court feels that it needs to ensure that future happenstance due to an offence in the present can be avoided. It is believed that those who are given incapacitation as punishment are always at risk of recommitting their crimes. It goes with the belief that courts and the judiciary have a duty to protect the public from future harm and wrongs. The accused are restricted from their personal liberty, movements, or any ability to commit further crimes. The death penalty is considered the most extreme form of incapacitation.

c. Deterrence: The aim of the deterrence theory is to discourage people from doing the same crime again in the future. It is based on the utilitarian principle of Jeremy Bentham and his 'fundamental axiom' captured in the maxim "the greatest happiness of the greatest number". Deterrence can be individualistic or general, depending on the nature of the offence. However, there has been criticism that the punishment for the crime does not match when the deterrent theory is followed. It is found to be neither effective nor morally acceptable.

d. Rehabilitation or Reformation: Just like incapacitation and deterrence, rehabilitation focuses on the happenstance of a future crime. But unlike the other two, rehabilitation involves training and teaching so that the offender or the perpetrator may understand and accept their wrongdoing and change it depending on societal standards. It involves educational and vocational programs, counseling, intervention programs, and skill training among others so that the possibility of a future crime may be prevented by reforming the individual. Reformation to this date remains a key part of the penal system. This theory is connected to criminology,

⁵ Justifying Punishment in the Community, United Nations Office on Drugs and Crimes <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-7/key-issues/2--justifying-punishment-in-the-community.html>.

anthropology, sociology and psychoanalysis and states that every crime is the result of insanity. It aims to correct those with criminal minds so they can also lead normal lives.

e. **Reparation:** The reparation theory works on the idea that those who have been wronged must be compensated by the person who committed the offence. It upholds that restitution and compensation to family and relatives must be key objective in the administration of criminal justice. It is good to note the criticism that follows this system- that rather than empowering stakeholders, reparation might actually undermine the rights of the victims and offenders.

Death penalty in India is given under a theory called Preventive Theory- "*Prevention is better than cure*". Here the main objective of any punishment is to set an example to others and prevent them from doing the same crimes or activities. The major method is to keep the perpetrator away from society. The theory has received several supporters who claim that there is a real effect on the offenders and that it has humanizing penal law. It follows that a man has taken the life of another and he is thus responsible for the life that is lost due to his actions⁶. As of 31st December 2021, 488 prisoners are on death row which is said to be a 21% rise from 2020. The crimes majorly involved murders of varying degrees and the highest were calculated under murder involving sexual offences⁷.

(C) The Doctrine of Rarest of Rare Cases: Judicial and Constitutional Journey

India has a lengthy and thoughtful process where the death penalty is considered- even if it is only considered in the most extreme cases. It is a form of incapacitation, where the offence is so heinous that no defense can be considered morally or legally satisfactory. The doctrine of the rarest of rare cases⁸ was laid down in *Bacchan Singh v. State of Punjab*⁹. The five-judge Bench held that the death sentence can only be awarded "*where other remedies seem unquestionable and unjust for the victim and his/her family*". The Hon'ble Supreme Court further laid down conditions for the execution of the death sentence in the rarest of rare cases in the case of *Macchi Singh & Ors. v. State of Punjab*¹⁰.

The sphere of these conditions falls under the scope of the motive behind the act, the manner of committing the act, the extent and nature of crime, and the character of the offender. The conditions that ought to have been fulfilled can be summed as follows:

⁶ M.Swathi, K.Roja, A Critical Study on Capital Punishment In India, IJPAM Volume 120 No. 5, 911-922 (2018).

⁷ Hrishika Jain, Adrija Ghosh, *Project 39A- Death Penalty in India*, p 9-16 (6th ed. 2022) <https://www.project39a.com/annual-statistics-page-2021>.

⁸ Adhip Narayan Banarjee, Dr. Sunita Singh Khatana, Capital Punishment in India- Is It Time to Outstrip It?, IJLMH Vol. 4 Iss 1; 651 (2021).

⁹ *Bacchan Singh v. State of Punjab* 1980 Cr. LJ at pp. 653- 657 (SC).

¹⁰ *Macchi Singh & Ors. v. State of Punjab* 1983 SCR (3) 413.

- a. Abominable murder which instituted outrage in the community or the society;
- b. Dowry deaths or terrorizing people for vengeance and making them give up their assets and (or) benefits;
- c. Multiple members of the same family, caste, race, or creed;
- d. The victim is an innocent child, aged person, or a decrepit individual; and
- e. The victim is a public figure who was murdered for reasons other than personal feud.

The doctrine was further segregated as a two part circumstance in the case of *Ramnaresh and Ors. v. State of Chhattisgarh*¹¹, where the victim was gang-raped and then brutally killed through strangulation by the accused and his brothers:

- a. Aggravating Circumstances: The Hon'ble Courts may award the capital punishment on Their Lordship's discretion when the below-given conditions are fulfilled:
 - The murder is pre-planned and entails cruelty with extraordinary depravity;
 - Murder of a public servant who is on the line of duty; and
 - Any consequences rendered by lawful discharge of the duty of a public servant under Section 43 of the Code of Criminal Procedure, 1898¹².
- b. Mitigating Circumstances: These are circumstances that can be considered in order to decrease the charges pressed against the accused and the sentence pronounced by way of verdict. The conditions are:
 - The act is committed when the person is going through mental or emotional imbalance;
 - When the accused is of young age;
 - When there is a likelihood that the accused will not commit a crime again against society; and
 - When the Hon'ble Court believes that the act was morally justified.

Again in the case of *Maneka Gandhi v. Union of India*¹³, the Apex Court ordained several standards that should be kept in mind while sentencing a person to the death penalty:

- a. It must be pronounced in cases with extraordinary circumstances and facts;

¹¹ *Ramnaresh and Ors. v. State of Chhattisgarh* AIR 2012 SC 1357.

¹² The Code of Criminal Procedure, 1898, Act No. V of 1898, § 43.

¹³ *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

- b. Capital punishment should be treated as an exceptional punishment to be imposed for extraordinary reasons;
- c. The accused must have freedom of speech and expression in trial court;
- d. The accused must have a right to hearing and the right to appeal;
- e. The accused must not undergo any form of cruelty under the due process of law;
- f. Individuals must be considered as individuals for each individual circumstantial perspective; and
- g. The accused has the right to pray for pardon under Articles 72 and 161 of the Constitution of India before the Indian President and Governor respectively.

The question of constitutional validity of capital punishment was raised in the cases of *Jagmohan Singh v. State of U.P.*¹⁴ and *Deena v. Union of India*¹⁵. It was challenged based on the belief that no one should be disadvantaged of their life and idiosyncratic autonomy. The Hon'ble Supreme Court held that the capital punishment was not violative of Article 21 of the Constitution of India and that the usual method of executing the sentence, i.e., hanging, could not be considered as cruelty. Moreover, the accused has the right to Legal Aid under Article 39A, right to appeal under Article 21, and the right to pray pardon to the President of the Nation and to the Governor of the State under Articles 72 and 161 respectively. The process of securing the sentence is never-ending and an entire lifetime may pass before the final decision is made and the accused is convicted or acquitted. There are also many NGOs and organizations working for the accused and their family in order to secure a judgement that is justified after hearing all sides and evidences. The National Law University, Delhi through its Project 39A recently announced that it was able to acquit one Mr. Chotkau¹⁶, who was on the death row for 8 years and had spent 10 years in prison after being wrongfully convicted by the trial court and the High Court of rape and murder of a minor. It is incidents like this that is the main reason the Indian punishment system puts effort in deterring of the death penalty. 10 years of Mr. Chotkau's life and his reputation are something he can never retrieve back.

II. THE KINGDOM OF SAUDI ARABIA AND THE CASES OF MASS EXECUTION

On March 12, 2022 the Kingdom of Saudi Arabia executed 81 people in the *largest mass execution in modern history of the country*, which elicited outrage and condemnation from the

¹⁴ *Jagmohan Singh v. State of U.P.*, AIR 1973 SC 947, Cr. LJ 3301973 SCC 162.

¹⁵ *Deena v. Union of India*, 1983 AIR 1155.

¹⁶ National Law University, Delhi, LINKEDIN (Oct. 10, 2022, 1:00 PM) https://www.linkedin.com/posts/nludofficial_deathpenalty-deathrow-supremecourt-activity-6985141375809798144--NwJ

United Nations and several non-governmental human rights organizations. This mass beheading has now exceeded the total of 67 executions that reportedly took place in the country in the whole of last year. Among the executed, it has been claimed that 41 were Muslims from the Shiite minority who had taken part in the anti-governmental protests in 2011-12 calling for greater political participation. Another 7 were Yemenis and 1 was a Syrian national¹⁷. The European Saudi Organization for Human Rights (ESOHR) has found that in multiple cases, the defendants have been denied access to lawyers and were tortured into confessions without any communication to the outside world¹⁸. To quote Ms. Michelle Bachelet, the United Nations High Commissioner for Human Rights, “*Our monitoring indicates that some of these executed were sentenced to death following trials that did not meet fair trial and due process guarantees, and for crimes that did not appear to meet the most serious crimes threshold, as required under the international law...This risks criminalizing people exercising their rights to freedom of expression and peaceful assembly.*” She has stated that the extremely broad definition of terrorism in the Saudi legislation that includes non-violent acts that endangers national unity or which undermines the States reputation is very worrisome. In conclusion to her statement she has called on Saudi authorities to halt all execution, immediately establishing a moratorium on the use of death penalty and to commute the death sentences against those on the death row¹⁹. But this is not the first incident of unfair execution of people in the Kingdom of Saudi Arabia. On the 2nd of May, 2022 Abdullah-Al-Howaiti was given the death sentence for crimes he allegedly committed as a child. He was convicted by the Criminal Court in Tabuk Province for shooting dead a police man while robbing a jewelry shop in the town of Duba. The experts from the UN claimed that the sentence was initiated without any investigation into the allegations of torture or determining the veracity of the coerced confession of guilt²⁰.

(A) Crimes that mete out Death Penalty in the Kingdom of Saudi Arabia

Death penalty in the Kingdom of Saudi Arabia is offered on a variety of circumstances. The Merriam-Webster dictionary defines them as follows:

- a. Apostasy: It is *the abandonment of religious or political beliefs or principles.*

¹⁷Saudi Arabia- Death Penalty, Global Security, <https://www.globalsecurity.org/military/world/gulf/sa-execution.htm>.

¹⁸ Saudi Arabian Mass Execution of 81 People Draws Condemnation from U.N. High Commissioner, Rights Activists, Death Penalty Information Centre (16 Mar. 2022) <https://deathpenaltyinfo.org/news/saudi-arabian-mass-execution-of-81-people-draws-condemnation-from-u-n-high-commissioner-rights-activists>.

¹⁹UN rights chief decries mass execution of 81 people in Saudi Arabia, UN News, (14 Mar. 2022) <https://news.un.org/en/story/2022/03/1113922>.

²⁰Saudi Arabia: Death Penalty against juvenile offender amounts to arbitrary deprivation of life, says UN experts, OHCHR, (31 May 2022) <https://www.ohchr.org/en/press-releases/2022/05/saudi-arabia-death-penalty-against-juvenile-offender-amounts-arbitrary>

- b. Treason: It is defined as the *crime of betraying one's own country, especially by attempting to kill or overthrow the Government or the sovereign.*
- c. Homosexuality: It is the *romantic or sexual attraction or behavior towards members of the same gender or sex.*
- d. Espionage: It is the practice of using spies or *spying on governmental or political organizations and information, especially foreign organizations.*
- e. Murder: It is the *unlawful premeditated killing of one person by another.*
- f. Rape: It is the *unlawful sexual activity, usually sexual intercourse carried out forcibly or under threat of injury against a person's will or with a person who is beneath a certain age or incapable of valid consent because of mental illness, mental deficiency, intoxication, unconsciousness, or deception.*
- g. Terrorism: The *systematic use of terror as a means of coercion.*
- h. Drug smuggling: The *cultivation, manufacturing, distribution and sale of prohibited drugs.*
- i. Armed robbery: The *robbery conducted while carrying a gun or other weapons.*
- j. Blasphemy: The act of *insulting or showing contempt or lack of reverence for God.*

Other than the above-mentioned it is also given for: burglary with an aggravated circumstance, adultery, witchcraft or sorcery and waging war on God.

(B) Methods of Death Penalty in the Kingdom of Saudi Arabia

The Kingdom of Saudi Arabia has a criminal justice system based on the Shari'ah Law. The execution sentences are usually given based on confessions and done in public at around 9 a.m. A 2018 report by ESOHR found that the number of beheadings in the Kingdom during the first quarter of 2018 rose by over 70% when compared to that of the year 2017. The death penalty is executed through three methods²¹:

- a. Execution by beheading or crucifixion: The Islamic doctrines suggest that executions must be swift and painless- one quick motion to the back of the neck must be employed to sever the neck and head from the body. Beheading with a sword is the most prominently used method of execution in the Kingdom of Saudi Arabia.

²¹ Methods of Execution in the Kingdom of Saudi Arabia, REPRIEVE, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/SAU/INT_CAT_CSS_SAU_23596_E.pdf.

Where beheading is the most predominant, crucifixion is rarely used as a method of death penalty- it entails that the convicted must be beheaded followed by a public display of the body for a certain period of time.

- b. Execution by the firing squad: In the instance that a trained swordsman/ executioner is unavailable, the execution may be carried out by the firing squad. Although not much is known about this form of execution, it is still being carried out in the Kingdom based on various reports. Al Youm, a Saudi Arabian Daily reported that the firing squad had been used to carry out the death sentence against a convicted female in the northwestern Saudi Arabia a few years ago²².
- c. Execution by stoning: Stoning as a method of executing the death penalty is specifically reserved for those who have been charged with adultery. The perpetrator is usually buried up till their knees or chest and people throw stones at them until their death is confirmed. In a similar incident in 2016, 47 people were executed for terrorism offences, 4 out of whom were under 18. The UN condemned this behavior and an UN rights watchdog called on the Kingdom to repeal laws that allow the stoning, flogging and amputation of children²³.

III. THE UNITED KINGDOM: CONDEMNATION OF THE DEATH PENALTY

*“The UK believes that the use of the death penalty undermines human dignity; any miscarriage of justice leading to its imposition is irreversible and irreparable, and there is no conclusive evidence of it working as a deterrent to crime.”*²⁴

- Rita French, UK International Ambassador for Human Rights

Abolition is defined as the act of ending or stopping something in the Merriam-Webster Dictionary. In the 1500s, eight capital crimes were formally defined, including treason, petty treason, murder, robbery, larceny, rape and arson. The Capital Punishment was used until the second half of the 20th century, and the most commonly used method was by hanging. The capital punishment for the crime of murder was stopped in the year 1965 and finally abolished for the same in the year 1969. Although unused, the death penalty still remained a legal punishment until it was completely abolished in 1998. In January 1999, the then Home Secretary- Jack Straw signed the Sixth Protocol of the ECHR, formally abolishing the death

²² Reuters Staff, *Saudis may carry out executions by firing squad*, REUTERS (11 March 2013, 9.50PM) <https://www.reuters.com/article/us-saudi-executions-idUSBRE92A0PK20130311>.

²³ Stephanie Nebehay, *UN body tells Saudi Arabia to end child stonings, execution*, REUTERS <https://www.reuters.com/article/saudi-un-children-idINKCN1270SN>.

²⁴ Abolition of Death Penalty, BIHR <https://www.bih.org.uk/abolition-of-the-death-penalty>.

penalty in peacetime and in December that year, the Government ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). This was followed by ratification of Protocol 13 in 2002, thereby totally abolishing capital punishment in the UK, including during times of war²⁵.

Below given are the last dates of executions and death sentences passed in the United Kingdom:

Last Executions	Last Death Sentences
<p>a. England and in the United Kingdom- 13th August 1964- Peter Anthony Allen, Gwynne Owens Evans were executed for the murder of John Alan West on 7th April 1964.</p> <p>b. Scotland- 15th August 1963- Henry John Burnett for the murder of seaman Thomas Guyan.</p> <p>c. Northern Ireland- 20th December 1961- Robert McGladdery for the murder of Pearl Gamble.</p> <p>d. Wales- 6th May 1958- Vivian Teed for the murder of a sub-postmaster William Williams.</p>	<p>a. Northern Ireland- May 1973- Liam Holden for the murder of a British soldier during the Troubles. He was removed from the death cell in 1973 and in 2012 his conviction was quashed.</p> <p>b. England- 1979- David Chapman was awarded to be hanged in November 1965 for the murder of a swimming pool night-watchman, but was released from prison in 1979.</p> <p>c. Wales- 6th November 1963- Edgar Black was reprieved as he has never shot his wife's lover.</p>

(A)Murder: Abolition of Death Penalty Act, 1965

THE LONG TITLE PROVIDED TO THE ACT CAN BE QUOTED AS FOLLOWS:

“An act to abolish capital punishment in the case of persons convicted in the Great Britain of murder or convicted of murder or a corresponding offence by the court-martial and, in connection therewith, to make further provisions for the punishment of persons so convicted”

The Homicide Act 1957 further prohibited the death penalty for certain types of murder. This change reduced hangings to three or four a year. The last people to be executed by hanging were Peter Allen and Gwynne Evans for the murder of a taxi driver in the year 1964. A few months later the Murder (Abolition of the Death Penalty) Act suspended death penalty and later abolished it permanently in 1998. However, the death penalty was permanently abolished for

²⁵ Capital Punishment, <https://www.politics.co.uk/reference/capital-punishment/>.

all crimes including treason, piracy with violence and arson, both in practice and in law. This ultimately led to the ratification of the European Convention on Human Rights (ECHR) in the Great Britain and the incorporation of the Human Rights Act of 1998. It banned the capital punishment except ‘in times of war or imminent threat of war. After the then Home Secretary Jack Straw signed the Sixth Protocol of the ECHR, the death penalty was formally abolished in peacetime, followed by ratification of the Second Optional Protocol to the International Covenant on the Civil and Political Rights (ICCPR) in December of the same year²⁶.

(B) The Debate on Reintroduction

YouGov, an international research data and analytics group, published a survey in March 2022 where it stated that 40% of the Britons support the death penalty, with half of them opposed and 10% unsure of where they stand. Given below in Fig. 1 is the graphical depiction of the data researched and analysed by YouGov.

Conservative voters and older Britons are more likely to support the death penalty

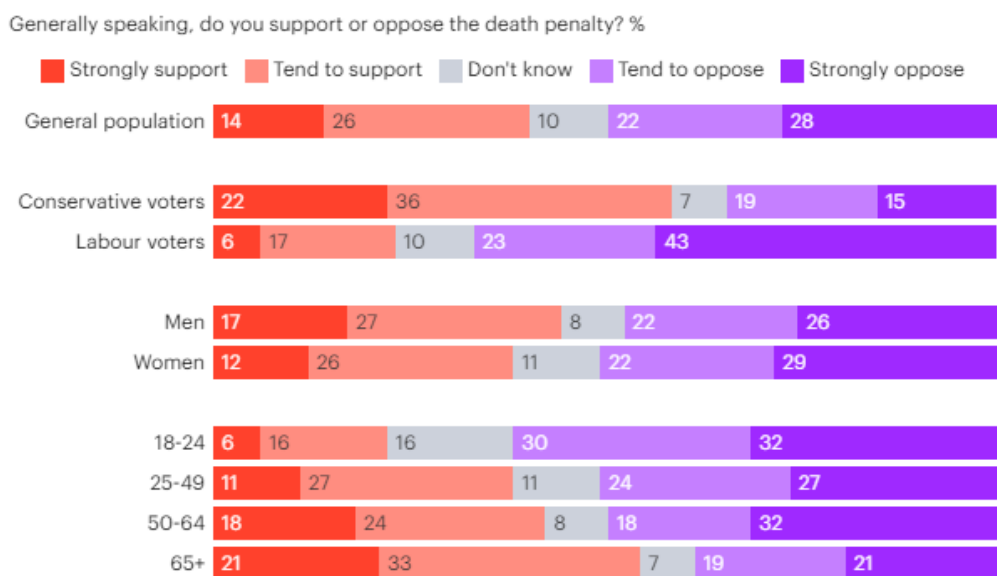


Fig. 1: Graphical depiction by YouGov of the survey conducted by it²⁷

In 2018, the Parliament had to re-discuss their stand on the abolition of the death penalty when the UK government was criticized over its position in 2018 in an extradition case. Alexandra Kotey and El Shafee Elsheikh were alleged by the UK government to be members of the Islamic state cell known as the ‘Isis Beatles’ and were charged with the execution of the US and UK

²⁶ Death Penalty: A History of UK Capital Punishment, LAWBLE, <https://www.lawble.co.uk/death-penalty/>
²⁷ Isabelle Kirk, Britons don’t tend to support the death penalty... until you name the worst crimes, YouGov, <https://yougov.co.uk/topics/politics/articles-reports/2022/03/30/britons-dont-tend-support-death-penalty-until-you>.

captives. These claims were denied by Kotey and Elshiekh. However, their British citizenship was stripped and this decision was challenged by them as unlawful. The UK governments' act of stripping them of their citizenship came under attack as putting their Human Rights at risk, namely their right to a fair trial and their right to be protected from the Death Penalty. The US intended to send the men to Guantanamo Bay without trial²⁸.

IV. RECENT INTERNATIONAL CONVENTIONS AND DEVELOPMENTS WITH REGARDS TO THE DEATH PENALTY

There are several international conventions when it comes to the concept of life and the right to be protected by the death penalty. The aim of these conventions is to promote human rights and mitigate the loss of life by ensuring that the death sentence is not propagated in a manner that would cause harm to the human life and dignity. The conventions stated below all advocate the delay and abolition of the death penalty placing higher importance on human life.

a. The International Covenant on the Civil and Political Rights (ICCPR): The Preamble to the Covenant establishes the core intent of the parties to the covenant- "...*recognition of the inherent dignity and of equal and inalienable rights of all members of the human family in the foundation of freedom, justice and peace in the world...*" Article 2 promotes equality in humans that all States party to the covenant must ensure, regardless of the race, color, sex, language, religion, political or other opinion and so on. Further Article 6 acts as a protecting sphere of the right to life and covers essential safeguards to be followed by the countries that retain the death penalty. It is important to note that ICCPR does not rule against the employment of the capital punishment, rather it promotes the idea that no human being should be arbitrarily deprived of their life. The covenant is signed by 167 countries, 67 by signature or ratification²⁹. India ratified to the same on 10 April 1979 and came into force on 10 July 1979.

b. The Second Optional Protocol: The provisions of the protocol are an addition to the ICCPR according to Article 6. It is directly concerned with abolishing the death penalty. It was enacted in 1991 and has 81 state parties and 3 signatories. It was adopted on 15th December 1989 and came into force on 11 July 1991³⁰.

²⁸ LAWBLE, *supra* note 26.

²⁹ *International Covenant on Civil and Political Rights*, UNHR (last visited 9 Aug. 2022, 10:25 AM) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

³⁰ *Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty*, UNHR (last visited 22 Aug. 2022, 11:21 PM) <https://www.ohchr.org/en/instruments-mechanisms/instruments/second-optional-protocol-international-covenant-civil-and>.

c. Other Conventions: The Convention on the Rights of Child in its Article 37(a) claims that no person under the age of 18 can be awarded the death sentence. Similarly, the United Nations General Assembly has called for a delay while employing the death penalty. In 2007, it urged countries to gradually reduce and restrict the use of the capital punishment. In 2008, the General Assembly reaffirmed its stance, which was again re-enacted in 2010, 2012 and 2014. In 2014, where many people have favored the recent resolutions, India did not³¹.

According to the Annual Survey Report³² by Project 39A of the National Law University, Delhi, four major contributions were made in order to further the agenda of delaying and abolishing the death penalty:

a. Abolition of the death penalty in Kazakhstan: On January 2, 2021 the President of Kazakhstan ratified the Second Optional Protocol to the International Covenant to Civil and Political Rights by signing a bill that was passed by the Kazakhstan Parliament on December 29, 2020.

b. Abolition of the death penalty in Sierra Leone: On July 23, 2021 by an unanimous resolution in the Sierra Leone Parliament, abolished the death penalty making it the 22 country in Africa and the 109 in the world to do so. The resolution replaced the death sentence with punishments ranging from imprisonment for 30 years to life sentence for crimes of murder, treason, mutiny and robbery with aggression.

c. The Malawi Supreme Court declares death sentence as constitutional: Malawi, a country in the south-eastern Africa declared the death penalty as unconstitutional to the right to life guaranteed under the Constitution of Malawi in the case of Khoviwa v. Republic. But on August 8, 2021, this decision was reversed by a nine judge bench, 7 out of whom were part of the original bench in the Khoviwa's case stating that "*the original opinion reflected the views of a single judge and not that of the full court.*" Charles Khoviwa, a Malawian resident was convicted by the Malawian High Court in 2003 of murder and was sitting on a delayed death row for several years. In its' judgement, the Court observed that the "*The essence of right to life is life itself- the sanctity of life. The right to life is the mother of all rights*³³".

d. India voted against the UN Resolution of the Question of Death Penalty: Along with the Bahamas, China, Japan, Libya, Mauritania, Pakistan, Bahrain, Bangladesh, Cameroon, Somalia

³¹ UNODC, *supra* note 5.

³² Project 39A, *supra* note 7.

³³ Shashwat Kaushik, *Right to Life is the mother of all rights: A look into the case of Khoviwa v. The Republic MSCA*, iPLEADERS, <https://blog.iplayers.in/right-to-life-is-the-mother-of-all-rights-a-look-into-the-case-of-charles-khoviwa-v-the-republic-msca/>

and Sudan, India voted against the UN Resolution on the Question of the Death Penalty dated 18th October, 2021. The United Nations had called upon the States to consider acceding or ratifying the Second Optional Protocol to the ICCPR for the abolition of the death penalty.

V. CONCLUSION

Death penalty does not result in deterring crime- this can be understood from a report of Amnesty International which states that, in 2004 in the USA, the average murder rate for states that used the death penalty was 5.71 per 100,000 of the population as against 4.02 per 100,000 in states that did not employ the same. In 2003 in Canada, 27 years after the country abolished the death penalty the murder rate had fallen by 44 percent since 1975, the period pre-abolition of capital punishment³⁴. The crime rate for Saudi Arabia in 2017 was 1.27 which was a 14.49% decline from 2015³⁵. The crime rate in the United Kingdom was 79.52 per 1,000 people in 2021–2022. The overall UK crime rate saw a 1.18% increase from 2020³⁶. These contrasting locus in varying states proves that changes to the death penalty alone is not enough to deter crimes.

As a nation India values its people more than anything. For the sake of administering justice, India has a long and tiring process for the execution of death sentences. This infringes the right to fair and speedy trial instituted under Article 21- Right to Life and Liberty. 94 people were sentenced to capital punishment in 2020 out of 400 prisoners on the death row³⁷. But this sentence is only given in rare cases where no cause or consequence can justify the acts of the perpetrator. There is not much difference when it comes to deterrence of crime. As a democracy, the process can be sustained but as a form of punishment that requires being implemented, the death penalty should either be abolished or made more stringent. The state of affairs with regards to the death penalty in India seems to be in addendum of the various international conventions and ideologies. Thus it can be concluded that death penalty is not a preventive form of punishment but rather given for crimes that are unjustifiable and heinous in nature. But for a process that is not deterrent, it is too lengthy and tiring in a democracy such as India. Considering the fact that India voted against the UN's Question of the Death Penalty it is vital to state as such- while keeping the punishment, the nation should consider more methods of rehabilitation and education while also speeding up the process of trials and

³⁴ Fact check: No proof the death penalty prevents crime, ABC NEWS, <https://www.abc.net.au/news/2015-02-26/fact-check3a-does-the-death-penalty-deter3f/6116030?nw=0>.

³⁵ Saudi Arabia: Crime Rate and Statistics 1999-2022, MACROTRENDS <https://www.macrotrends.net/countries/SAU/saudi-arabia/crime-rate-statistics>.

³⁶ UK crime rates 2021-2022, CRIMERATE <https://crimerate.co.uk/>.

³⁷ Over 400 death row prisoners in Indian jails till 2020: Data, The Economic Times, <https://economictimes.indiatimes.com/news/india/over-400-death-row-prisoners-in-indian-jails-till-2020-data/articleshow/89245586.cms>.

courtroom proceedings.
