

# ILE JUDICIAL AND LEGAL REVIEW



VOLUME 1 AND ISSUE 1 OF 2023  
INSTITUTE OF LEGAL EDUCATION



## ILE Judicial and Legal Review

(Free Publication and Open Access Journal)

Journal's Home Page – <https://jlr.iledu.in/>

Journal's Editorial Page – <https://jlr.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://jlr.iledu.in/category/volume-1-and-issue-1-of-2023/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://jlr.iledu.in/terms-and-condition/>

## DEATH PENALTY- "SANCTIONED PROCESS - TO ENSURE JUSTICE"

**Author-** Rubini B, Student at Sathyabama Institute of Science and Technology

**Best Citation** - Rubini B, DEATH PENALTY- "SANCTIONED PROCESS - TO ENSURE JUSTICE", *ILE JUDICIAL AND LEGAL REVIEW*, 1 (1) of 2023, Pg. 80-83, ISBN - 978-81-961120-0-4.

### ABSTRACT

As we know, in world several punishments prevail for particular crime, in that death penalty is one of the punishments. It is also known as death sentence or capital punishment. Death penalty is form of rigorous punishment which allows person (accurst), who is convicted severe crime to be killed by the state with the order of the curt. Such punishment is sanctioned by the government to get justice and to give answer for the victim who is affected by the accurst and to the society. The main aim of this paper is about capital punishment and its evolution in the world. This paper analysis whether the death penalty is wrong or not? By this article paper we know more about the need for the death sentence among people and it necessity and there are various methods for execution of death penalties. It makes people more alert from making mistakes (crimes) in country.

**Keywords:** Death, killing, hanging, capital punishment, crimes, execution

### INTRODUCTION:

Death penalty creates and ensures justice for all. Justice makes society to impose it on criminals, even though death penalty creates inhumaneness, lack of deterrent effect, economic bias among the people. Capital punishment is defendable in all grounds by making society has moral and legal obligation to protect the safety and welfare of all citizens. The reason for that rigouous punishment is to protect leyman and their safety. Still now 55 countries adopted and complementing death penalty. The decision of the jury is sentenced

the defendant to death. The first death penalty in world used by united states and Kendal, recorded as 1<sup>st</sup> execution of death penalty for being spy for spain in new colonies in 1608. In countries like central African, Zambia, Denmark, Norway abolished death penalty for all crimes.

### EVOLUTION OF CAPITAL PUNISHMENT:

In eighteenth century B.C first established death penalty laws. William the Conqueror didn't allow people to hang except in case of murder in eleventh century A.D. In 1608, Captain George Kendall becomes the first recorded execution in the new colonies and in 1632, Jane Champion becomes the first woman were executed in the new colonies. Cesare Beccaria's essay, *On Crimes and Punishment*, theorizes that there is no justification for the state to take a life in 1767 to create impact among people. In Late 1700s - United States abolitionist movement begins.

In Early 1800s, Many states were reduced their number of capital crimes and build state penitentiaries. But in 1823-1837, Over 100 of the 222 crimes punishable by death penalty in Britain are eliminated and abolished. Pennsylvania becomes the first state to move executions into correctional facilities in 1834. Discretionary death penalty statutes enacted in Tennessee in 1838. In 1847, Michigan becomes the first state to abolish the death penalty for all crimes except treason. William Kemmler, becomes first person executed by electrocution one of the method in death penalty in 1890.

In Early 1900s, the "Progressive Period" of reform in the United States begins. In 1907-1917, 9 states abolish the death penalty for all crimes and limit it. In 1920s-1940s, American abolition



movement loses support. The use of cyanide gas as an execution method started in 1924. In 1930s, Execution of death penalty reached high level in American history. In 1948, The United Nations General Assembly adopted the Universal Declaration of Human Rights proclaiming a "right to life." In 1950-1980, De facto abolition becomes the norm in Western Europe. In 1968, *Witherspoon v. Illinois*, Dismissing potential jurors solely because they express opposition to the death penalty held unconstitutional.

In 1970, *Crampton v. Ohio* and *McGautha v. California*, The Supreme Court approves of unfettered jury discretion and non-bifurcated trials. In June, 1972, *Furman v. Georgia*, Supreme Court effectively voids 40 death penalty statutes and suspends the death penalty. In 1977, Oklahoma becomes the first state to adopt lethal injection as a means of execution. In 1977, *Coker v. Georgia*, Held death penalty is an unconstitutional punishment for rape of an adult woman when the victim is not killed. In December 7, 1982, Charles Brooks becomes the first person executed by lethal injection. In 1984, Velma Barfield becomes the first woman executed since reinstatement of the death penalty. In 1988, *Thompson v. Oklahoma*, Executions of offenders age fifteen and younger at the time of their crimes is unconstitutional. In 1989, *Stanford v. Kentucky*, Eighth Amendment does not prohibit the death penalty for crimes committed at age sixteen or seventeen.

In 1994, President Clinton signs the Violent Crime Control and Law Enforcement Act expanding the federal death penalty. President Clinton signs the Anti-Terrorism and Effective Death Penalty Act restricting review in federal courts in 1996. In 1998, Karla Faye Tucker and Judi Buenoano executed. In April 1999, U.N. Human Rights Commission Resolution Supporting Worldwide Moratorium on Executions of death penalty. In June 1999, Russian President, Boris Yeltsin, signs a decree commuting the death sentences of all of the convicts on Russia's death row. In January 2000,

Illinois Governor George Ryan declares a Moratorium on executions and appoints a blue-ribbon Commission on Capital Punishment to study the issue.

In 2002, *Ring v. Arizona*, A death sentence where the necessary aggravating factors are determined by a judge violates a defendant's constitutional right to a trial by jury. In June 2004, New York's death penalty law declared unconstitutional by the state's high court. In March 2005, *Roper V. Simmons*, the United States Supreme Court ruled that the death penalty for those who had committed their crimes less than 18 years of age was cruel and unusual punishment. In February 2008, The Nebraska Supreme Court rules electrocution, the sole execution method in the state, to be cruel and unusual punishment, effectively freezing all executions in the state. In March 2009, Governor Bill Richardson signs legislation to repeal the death penalty in New Mexico, replacing it with life without parole and in March 2011, Governor Pat Quinn signs legislation to repeal the death penalty in Illinois, replacing it with life without parole.<sup>111</sup>

#### NEED FOR THE DEATH PENALTY:

- I. Prevent convicted murderers from killing again: The death penalty ensures that convicted murderers do not kill again. There are many cases of life-sentenced criminals who killed other prisoners or prison guards.
- II. Maintaining justice: This punishment maintains justice in society. "Life is sacred; an innocent life is higher than the life of a murderer". Innocent victims who are killed and tortured have no choice but to die prematurely and brutally, and justice must be served by punishing the perpetrators. *Bachan Singh, v. State of Punjab*, it was clarified that, the Constitutional Bench of the Supreme Court held Article 21 to be inclusive of the State's right to deny an

<sup>111</sup> <https://knowlaw.in/index.php/2020/10/14/capital-punishment/>

individual of his life. Also, there was no infringement of the essential character of the Constitution by capital punishment for the murder offence allowed under Section 302 of IPC.

- III. Historically Recognized: Historians, jurists and constitutional scholars agree that the death penalty is an acceptable and permissible form of punishment for wilful murder and that those who kill innocent people should be convicted.
- IV. Unreformable criminals: If their actions cause harm to society to a large number of people, and society is likely to suffer harm or threat in the future, then the concept of the death penalty is justified.

**ARGUMENTS AGAINST DEATH PENALTY:**

- I. Not proven to deter crime: There is no concrete evidence that the death penalty actually deters crime. Some people are not intimidated by the death of a death row inmate. In this case, the death penalty is useless.
- II. Thought Retribution: There is an "eye for an eye" mentality, whether if a man kills someone he should be killed too, but if reformation is the goal then the death penalty is unnecessary.
- III. More expensive than imprisonment: Contrary to popular belief, the death penalty is in fact more expensive than incarceration for criminals, even life imprisonment. While the actual costs of execution may be low, the overall costs in capital cases (where the death penalty is a potential penalty) are very high.
- IV. Does not bring closure: Studies have shown that the death penalty brings no comfort to those affected by violent and deadly crimes. The death penalty does not alleviate the suffering of victims or their families<sup>112</sup>

**DEATH PENALTY CRIMES:**

The wrongdoings and offences which are punishable by death penalty are:

- I. Aggravated Murder: Murder is deserving of the death penalty as per Section 302 of the Indian Penal Code, 1860. Terrorism related offences not bringing about death The utilization of any extraordinary classification of explosives to cause a blast that could imperil life or cause serious harm to property is deserving of capital punishment.
- II. Assault or Rape not bringing about death: An individual who injured in a rape that brings about death under the Criminal Law Act, 2013. Assaults are punishable with capital punishments.
- III. Kidnapping not bringing about death: In Section 364A of the Indian Penal Code, 1860, kidnapping not bringing about death is an offence deserving of death.
- IV. Drug Trafficking not bringing about death: If any individual is convicted for a commission or attempt to commit, abet, or financing conspiracy, the person can be condemned to death.
- V. Treason: Capital punishment is given to any individual who is pursuing or attempting to wage war against the legislature and helping Navy, Army, or Air Force officials, fighters, or individuals to commit a mutiny.
- VI. Military Offence not bringing about death: Abetment of attack, insurrection, or being spy for other nation, endeavouring to tempt an army, navy or air force officer from his obligation.
- VII. Different Offences not bringing about death: If an individual furnishes false evidence and information about any individual who belongs to SC or ST for committing a capital offence based on such proof, will be punished with capital punishment that brings about the conviction and execution of an innocent individual.<sup>113</sup>

<sup>112</sup> <https://blog.ipleaders.in/capital-punishment-executions/>

<sup>113</sup> <https://knowlaw.in/index.php/2020/10/14/capital-punishment/>

**METHODS OF EXECUTION OF DEATH PENALTY:**

- I. Hanging: In most countries still using hanging for capital punishment, it causes neck fracture and instant loss of consciousness. It is used by India, Japan, Singapore, Malaysia, Pakistan, and Iran. In Iran, short-drop hanging is used which involves pulling a stool, the drop is too short to cause breakage of the neck, resulting in a slower death.  
Rishi Malhotra v. Union of India, a writ petition was filed by Advocate Rishi Malhotra; He challenged the method of Execution of Death sentence in India i.e. by hanging by neck till the prisoner is dead. It states that execution should be as quick and as simple as possible and should produce immediate unconsciousness passing quickly into the death.
- II. Shooting: By a single shot (such as a shot to the back of a head, as in China, Taiwan, Belarus, and Russia before the moratorium). By firing squad (as in Indonesia) or by excessively powerful weaponry such as anti-aircraft guns.
- III. Lethal injection: it is First used in the United States in 1982, lethal injection is been adopted by China, Taiwan, Thailand, Guatemala, and Vietnam.
- IV. Electrocutation: It is used by the United States and Philippines only. But it is legal in Florida, Kentucky, Oklahoma, South Carolina, and Tennessee as a secondary method.
- V. Gas inhalation: In Nazi Germany, the United States and Lithuania used gas inhalation, but now it is legal in Arizona, California, Oklahoma, and Wyoming as a secondary method.
- VI. Decapitation: Used in many countries at ancient times but, now it is only used in Saudi Arabia with a sword.
- VII. Stoning: The victim is pummelled by stones thrown by a group of people with the injuries leading to death. It is legal in Somalia, Saudi Arabia, Iraq, Sudan,

United Arab Emirates, Northern Nigeria, Mauritania, Qatar, Iran, and Yemen.<sup>114</sup>

**CONCLUSION:**

At this point, capital punishment is more than punishment. It is murdering other human life, as it look like unconstitutional violating article 21 in Indian Constitution, but by the jury order , make it as ethical to take the life of one human due to their crime activity to protect the life of other people and to secure the society.

**REFERENCE:**

- I. <https://blog.ipleaders.in/capital-punishment-executions/>
- II. [https://en.m.wikipedia.org/wiki/List\\_of\\_methods\\_of\\_capital\\_punishment](https://en.m.wikipedia.org/wiki/List_of_methods_of_capital_punishment)
- III. <https://deathpenaltyinfo.org/stories/history-of-the-death-penalty-timeline>
- IV. <https://knowlaw.in/index.php/2020/10/14/capital-punishment/>
- V. <https://knowlaw.in/index.php/2020/10/14/capital-punishment/>

<sup>114</sup> [https://en.m.wikipedia.org/wiki/List\\_of\\_methods\\_of\\_capital\\_punishment](https://en.m.wikipedia.org/wiki/List_of_methods_of_capital_punishment)