



# INTERNATIONAL RESEARCH JOURNAL OF MULTIDISCIPLINARY STUDIES

Vol. 3, Issue 7, July, 2017 | ISSN (Online): 2454-8499 | Impact Factor: 1.3599(GIF), 0.679(IIFS)

## EXCLUSION OR WITHHOLD OF DEATH PENALTY: A CRITICAL EVALUATION, STUDY OF AURANGABAD CITY

**Dr. Pooja Deshmukh**

Associate Professor and Research Coordinator  
MGM Institute of Management Aurangabad

### Abstract:

*Death penalty, often referred to as the death penalty, has been used as a method of crime deterrence since the earliest societies. Historical records show that even the most ancient primitive tribes utilized methods of punishing wrongdoers, including taking their lives, to pay for the crimes they committed. Murder most often warrants this ultimate form of punishment. "A life for a life" has been one of the most basic concepts for dealing with crime since the start of recorded history. The death penalty is a controversial subject in our society. Research has explored why people support or oppose death penalty. Most the literature to date looks at the reasons provided one at a time. In this study, critical analysis was conducted to see which reasons best explain the support and opposition for death penalty. While research is focuses on attitudes and opinion toward capital punishment in the India, such work has been lacking in our nation in India, the world's largest democracy. Data recently collected have revealed variance in levels of support for the death penalty among Aurangabad citizens.*

**Keywords-** Death Penalty, Death Penalty Execution, Crime

### Introduction:

Death penalty has been a mode of punishment since time immemorial. The arguments for and against has not changed much over the years. At this point of time when the issue [whether capital punishment must be abolished or not] is still raging, it will be appropriate to remind ourselves as to how the legislatures and the apex Court have dealt with this issue every time it has come up before them.

**Death penalty Definition:** Execution of an offender sentenced to death after conviction by a court of law of a criminal offense. Capital punishment should be distinguished from extrajudicial executions carried out without due process of law. The term *death penalty* is sometimes used interchangeably with *capital punishment*, though imposition of the penalty is not always followed by execution (even when it is upheld on appeal), because of the possibility of commutation to life imprisonment.

### Origins of Capital Punishment

As tribal societies developed into social classes and humankind created its own self-governed republics, capital punishment became a common response to a variety of crimes, including sexual assault, treason, and various military offenses. Written rules were created to notify the people about the penalties they would face for participating in any of these misdeeds. One of the earliest written documents that supported the death penalty was the Code of Hammurabi, which was written on stone tablets around 1760 BC. It contained 282 laws that were collected by the Babylonian King Hammurabi, including the theory of an "eye for an eye." Several other ancient documents supported capital punishment, including the Jewish Torah, the Christian Old Testament, and the writings of an

Athenian legislator named Draco, who proposed the death penalty for a large variety of misdeeds in ancient Greece.

Early forms of capital punishment were designed to be slow, painful, and torturous. In some ancient cultures, law breakers were put to death by stoning, crucifixion, being burned at the stake, and even slowly being crushed by elephants. Later societies found these methods to be cruel and unusual forms of punishment, and sought out more humane practices. During the 18th and 19th centuries, legal bodies found faster and less painful approaches to the death penalty, including hanging and beheading with the guillotine. While these were still violent and bloody practices that were often large public spectacles, the end result was usually instantaneous and therefore seen as more compassionate.

In the United States, capital punishment has existed since the founding of the original colonies, and was utilized for a large number of crimes including burglary, murder, treason, counterfeiting, and arson. Outside of the law, lynch mobs often formed to bring the accused to justice. Law makers in the U.S. began to review and revise policies behind the death penalty around the time of the American Revolution. In 1791, the Constitution was amended for the eighth time, to prohibit any form of punishment considered “cruel and unusual.” Although this was not an attempt to ban capital punishment, it did begin a movement towards carrying out more humane executions. By the late 1800s, employees of Thomas Edison introduced the electric chair to accomplish this goal. Later, in the 1970s, lethal injections entered the foray as another option.

Over time, the death penalty has become even more controversial throughout the world. Opponents to the practice declare it to be inhumane and unfair, and believe that no life should be taken, regardless of the crime that has been committed. DNA testing has proven the innocence of several individuals on death row, and the argument that no one should be executed to avoid killing an innocent individual has grown in response. Several states in the U.S. no longer support the death penalty, and many countries have abolished the practice completely.

### **History:**

During the reign of Mughal emperors, barbaric methods of putting an offender to death were used. It is interesting to note that the Sikh Emperor Maharaja Ranjit Singh never hanged anyone during his reign. The British, however, used death by hanging as the only legalized mode of inflicting capital punishment. In the British era, death sentence was executed by hanging the convict by the neck till death. The same was reflected in the Indian Penal Code, 1860 (hereinafter referred to as the IPC) drafted by Lord Macaulay, which is still in force. There have been unsuccessful attempts in independent India to abolish death penalty. A bill was introduced in the Lok-Sabha in 1956 to abolish the capital punishment, which was rejected by the House. Efforts made in the Rajya-Sabha in 1958 and in 1962 were also fruitless. The Law Commission of India in its 35th Report (1967) under the Chairmanship of Justice J.L. Kapur has supported the continuing of death penalty for serious offences.

### **Objectives**

1. To understand the death penalty execution in India
2. To know the view of the people about the death penalty
3. To study whether the death penalty prevent the crimes to which it is applied.

---

**Research Problem:**

**Is death exclusion really preventing the crime in the nation?**

A research is trying to analyze the opinion of people about death punishment, exclusion or withhold of death penalty. There are 100 views of various people regarding the topic

A descriptive study was carried out on in Aurangabad city. A sample of 100 people was selected by using convenience sampling technique. A self administered structured Likert scale questionnaire was distributed amongst the respondents after explaining the purpose of study and taking the informed consent. Hypothesis was made SPSS were used to analyze the data.

**H0- There is no significant effect of death penalty and crime prevention**

**H1 -There is a significant effect of death penalty and crime prevention**

**Execution of death penalty:**

In India, the mode of execution of death sentence is hanging. Section 354 (5) of the Code of Criminal Procedure Code, 1973 (hereinafter referred to as the CrPC) provides that when any prisoner is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead. Hanging is still the most common method of executing convicts. The issue regarding the constitutionality of the Section 354 (3) first came up before the Supreme Court in Deena v. Union of India. Though the Court asserted that it was a judicial function to probe into the reasonableness of a mode of punishment, it refused to hold the mode of hanging as being violative of Article 21 of the Constitution.

The issue of the mode of execution of the death sentence was once again raised in Shashi Nayar, Union of India. It was submitted that capital punishment being barbaric and dehumanizing should be substituted by less painful method. The Court held that since the issue had already been considered in Deena (supra), there was no good reason to take a different view. The issue of execution of death penalty by public hanging came before the Supreme Court in Attorney General of India.

It challenged the order of the Rajasthan High Court regarding the execution of the petitioner by public hanging at one of specified venues in Jaipur after giving widespread public hanging, even if permitted under the rules, would violate Article 21 of the Constitution being “barbaric, disgraceful and bringing shame on any civilized society.”

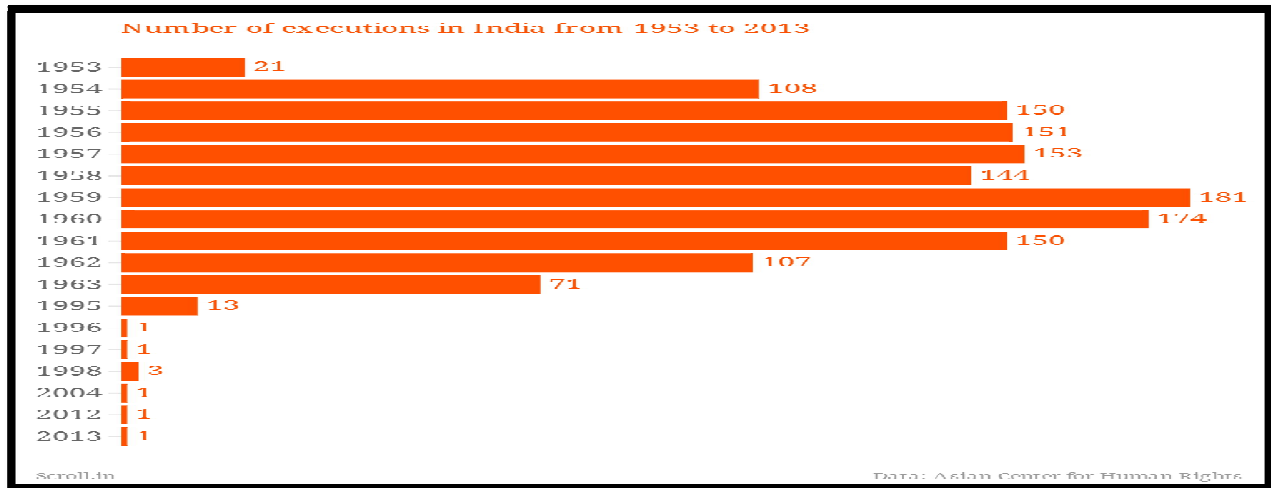
As per Section 366 of the CrPC, after awarding death sentence to a person, the Sessions Court has to submit the entire case proceedings to the High Court for confirmation. Such a sentence of death penalty cannot be executed until confirmed by the High Court. Under Section 368 of the CrPC, the High Court may confirm the death sentence or pass any other sentence warranted by law, or may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, order a new trial on the same or amended charge, or may even acquit the person.

All this varies from particular case to case and is largely dependent upon material facts and questions of law involved in the concerned case. Section 415 of the CrPC provides that when a person is awarded a death sentence by the High Court and consequently he makes an appeal to the Supreme Court under Article 134 (a) / (b) of clause (1) of the Constitution, the High Court has to order the execution of the sentence to be postponed until the period allowed for preferring such an appeal has expired, or, if an appeal is preferred within that period, until such appeal is disposed of.

When the Sessions Court passes a death sentence to a murderer, the convict shall be committed to jail custody as provided in Section 366 (2) of the CrPC.

Accordingly, under Section 30 (2) of the Indian Prison Act, 1894 the prison authorities used to keep such convicts in a cell known as the condemned cell. But more often than not, such imprisonment actually meant solitary confinement in practice. In *Sunil Batra v. Delhi Administration*, the Apex Court held that a convict who is awaiting death sentence cannot be subjected to solitary confinement. The same view was further reiterated by the Supreme Court in *Triveniben v. State of Gujarat*.

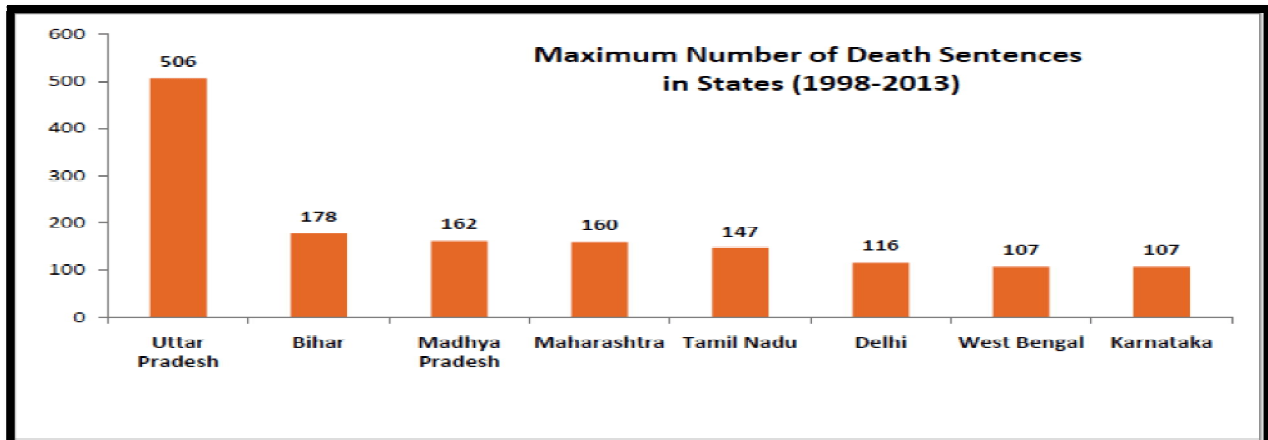
**Chart No -1 Number of Executions in India**



Source: **Asian center for Human Rights**

As per the above chart majority of execution happen in 1959 according to the data of Asian center for human rights.

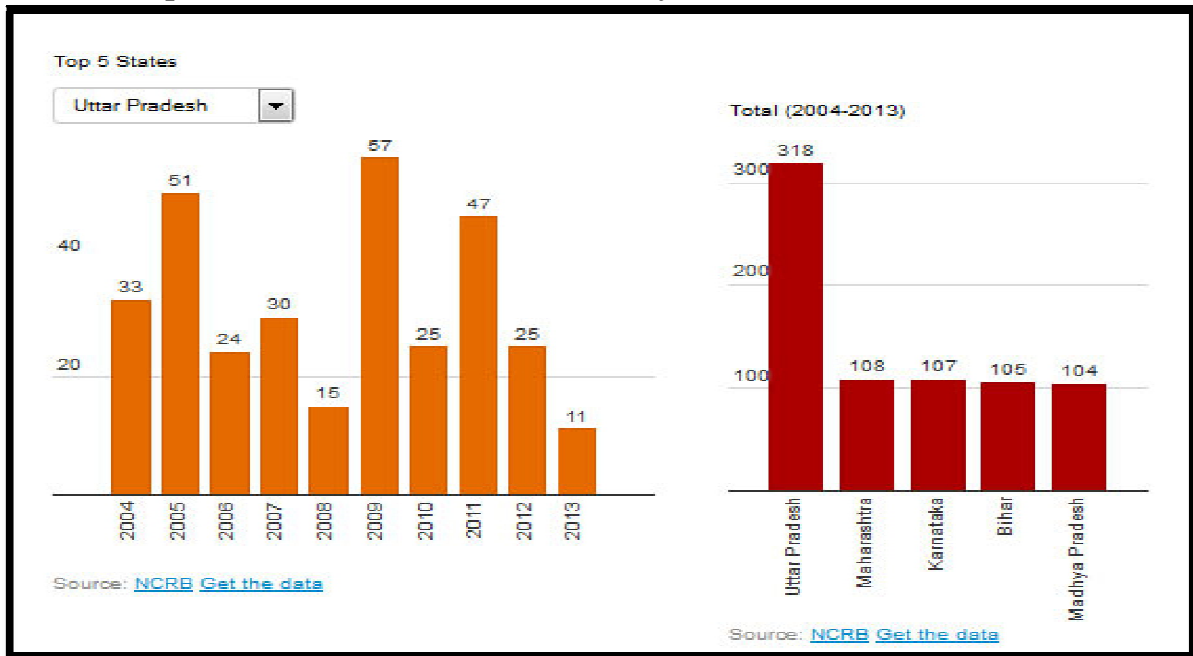
**Chart No -2 Maximum Number of Death Sentences in States**



Source: **Asian center for Human Rights**

The number of death convictions in India since Independence is difficult to establish. According to research by the Asian Center for Human Rights, there was an average of 130 executions per year during the period between 1953 and 1963. The number of executions then dropped sharply after 1995. In many years, no executions were carried out.

**Chart No -3 Top Five States Executed Death Penalty**



Source: **Crime Museum**

In 1983, the Supreme Court laid out clear guidelines for the "rarest of rare" circumstances under which a death penalty could be awarded, although this does not seem to have been followed very diligently. The figures above are in stark contrast to the number of death penalties awarded by lower courts: 1,455 since 2001, with an average of 132 such sentences every year.

**Opinion of People about the Death Penalty:**

Public support for the death penalty has declined over the past decade, but polls reveal that the majority of still support capital punishment for those convicted of murder, rape and dowry cases. For those who have shifted away from the death penalty, one of the most commonly cited concerns is the growing number of demonstrated instances of mistaken capital convictions, as evidenced by persons later found innocent and released from death row.

An important reason often cited by governments for retaining the death penalty is that public opinion demands the same. The 35th Report of the Law Commission also considered public opinion as an important factor in the context of the death penalty.

One could argue that public opinion is indeed a factor to be considered while making important decisions which effect the population at large. However, it is not necessary for the government to follow public opinion on every issue. Indeed, the Government has a duty to drive public opinion

towards options which support fairness, dignity and justices, which are constitutionally, protected ideals.

There are multiple instances where governments around the world have abolished the death penalty contrary to current public opinion, both in Asia and in the West. Very few of the current Abolitionist countries would have been able to ever abolish the death penalty had they waited for public opinion to change on the issue.

Moreover, once the death penalty was abolished, the legal framework caused the public opinion to change drastically on the issue, and now the death penalty is thought of as unthinkable. The Indian experience of laws governing social issues, such as *Sati*, dowry prohibition, untouchability, and child marriage is testament to the fact that the government has the *power* to lead public Opinion even against deeply entrenched cultural norms and indeed *an obligation* to do so when faced with issues concerning human dignity and equality. In focusing on death penalty as the ultimate measure of justice to victims, the restorative and rehabilitative aspects of justice are lost sight of. Reliance on the death penalty diverts attention from other problems ailing the criminal justice system such as poor investigation, crime prevention and rights of victims of crime.

A major development in the late-twentieth century was the focus on the rights and needs of victims of crime. Restorative theories of criminal justice also emerged during that time. The need for police reforms for better and more effective investigation and prosecution has also been universally felt for some time now and measures regarding the same need to be taken on a priority basis.

**Hypothesis:**

**Null hypothesis- H0** -There is a no significant effect of death penalty and crime prevention

**Alternate hypothesis H1**- There is significant effect of death penalty and crime prevention

Confidential level is 95% and significant level 5%

Alpha = 0.05

Chi-Square Test

**NPar Tests**

**Descriptive Statistics**

	N	Mean	Std. Deviation	Minimum	Maximum
Death penalty abolishment	100	3.6600	1.56489	1.00	5.00

### Chi-Square Test

#### Frequencies

<b>Death Penalty Abolishment</b>			
	Observed N	Expected N	Residual
Strongly disagree	14	20.0	-6.0
Disagree	19	20.0	-1.0
Neutral	3	20.0	-17.0
Agreed	15	20.0	-5.0
Strongly agreed	49	20.0	29.0
<b>Total</b>	<b>100</b>		

<b>Test Statistics</b>	
	Death penalty abolishment
Chi-Square	59.600 <sup>a</sup>
Df	4
Asymp. Sig.	.000

a. 0 cells (0.0%) have expected frequencies less than 5. The minimum expected cell frequency is 20.0.

**Interpretation** - As significant level is  $0.000 < 0.05$  so null hypothesis is rejected. Hence, alternate hypothesis is accepted. So, there is a significant effect of death penalty and crime prevention.

#### Conclusion:

The process of globalization has made the world smaller and brought many problems also. One of the serious threats arising recently is the phenomenon of global terrorism. When terrorists groups strike at free will at innocent civilians and institutions of civil society then all arguments in favor of abolition of death penalty fail. These are exemplified by the December 2001 terrorist attack on the Indian Parliament, attack on Akshardham Temple, 9/11 attack on WTC in USA, train bombings at Madrid, bomb blasts in public transport in London, killing of an IIT professor emeritus in Bangalore, bomb blasts at holy places such as Varanasi temple, Mosque in Andhra Pradesh, Ajmer Sharif Dargah and at the Lord Hanuman Temple in Jaipur in May 2008.

Since most of these strikes are made by suicide squads (*Fidayeen*), hence, if such culprits or their kingpins are caught, then death penalty is the only mechanism to save the civil society from the unscrupulous ideologies or evil designs of hate mongers. Does any issue of human rights stand Validity for these terrorist outfit runners. In the wake of modernization, globalization and advancement of extreme material values, there is a relative erosion of moral pressure of the community, family, religion, etc. on the individual.

This has led to a situation where severe penalties such as death penalties stand justified. In a world with so much of acute disparity in terms of development between nations, no rhetoric can work or bring reformation but for severe punishments such as death penalty.

On one hand, there is a demand for abolition of death penalty and on the other hand, there is an increased rhetoric for capital punishment for rape, heinous crimes against women, trade and trafficking of women and narcotics. Much of the arguments for provisions of death penalty have strong rationale on moral and social grounds. Therefore, death penalty must be retained for incorrigibles and hardened criminals but its use should be limited to the 'rarest of rare cases'. The courts may make use of death penalty sparingly but its retention on the statute book seems necessary as a penological expediency. Therefore, it can be safely concluded that death penalty should not be subjected to untimely death penalty.

### References:

1. Justice M.Rama Jois, *Legal and Constitutional History of India, Ancient Legal, Judicial and Constitutional System*, Universal Law Publishing Co. pg.332-333. [6]
2. *The Constitutional Law of India*. [7]
3. *India: Death Penalty has no Deterrence*, Asian Centre for Human Rights. Pg.5 [8]
4. Dr. Jasvinder Singh, *Chawla Publications, Legal Essays, Rarest of rare case*, pg.420 [9]
5. *Sunday Times of India*, dt. 30 August, 2015, pg.1 [10]
6. Justice M.Rama Jois, *Legal and Constitutional History of India, Ancient Legal, Judicial and Constitutional System*, Universal Law Publishing Co. pg.333. [11]
7. *Government of India, Law Commission of India, Report 262, The Death Penalty August, 2015*. Pg.ii
8. *Law z*, Vol.14 No.1 Issue 149, January, 2014 pg. no.32 [2] N.H.Jhabvala,(2010).
9. *The Elements of Jurisprudence*, C. Jammadas & Co., Mumbai.pg. no.57 [3]
10. *Law Teacher, UK*. (November 2013). *Life Imprisonment For Life Law Essays*. Retrieved from <http://www.lawteacher.net/free-law-essays/indian-law/life-imprisonment-for-life-law-essays.php?cref=1> [4] <http://>
11. [deathpenalty.procon.org/view.answer.php?questionID=000988&print=tur](http://deathpenalty.procon.org/view.answer.php?questionID=000988&print=tur). [5]
12. *Death Penalty Information Centre*, "Governor Bill Richardson signs repeal of the death penalty"
13. "Bill Richardson", *International Commission against the Death Penalty*, available from [www.icomdp.org/bill-richardson](http://www.icomdp.org/bill-richardson).
14. *International Commission against the Death Penalty*, "How states abolish the death penalty",
15. *Commissioners Ms Hanne Sophie Greve and Mr Ibrahim Najjar leads ICDP mission to*
16. *Lebanon*" (Geneva, 16 June 2014), available from [www.icomdp.org/cms/wp-content/uploads/](http://www.icomdp.org/cms/wp-content/uploads/2014/06/18-ICDP-Press-Statement-Lebanon-16-June-2014.pdf)
17. [2014/06/18-ICDP-Press-Statement-Lebanon-16-June-2014.pdf](http://www.icomdp.org/cms/wp-content/uploads/2014/06/18-ICDP-Press-Statement-Lebanon-16-June-2014.pdf).
18. *Amnesty International*, "Momentum against death penalty continues as Washington state Governor announces moratorium on execution" (AI Index No. AMR/51/011/2014, 12 February 2014).
19. *International Commission against the Death Penalty*, "How states abolish the death penalty" (Geneva, 2013),