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IJIEMR Transactions, online available on 26<sup>th</sup> Dec 2022. Link

[:http://www.ijiemr.org/downloads.php?vol=Volume-11&issue=Issue 12](http://www.ijiemr.org/downloads.php?vol=Volume-11&issue=Issue 12)

**10.48047/IJIEMR/V11/ISSUE 12/146**

TITLE: "NAVIGATING THE CHALLENGES IN ENDING THE DEATH PENALTY IN INDIA"

Volume 11, ISSUE 12, Pages: 1092-1096

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## **“NAVIGATING THE CHALLENGES IN ENDING THE DEATH PENALTY IN INDIA”**

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### **ABSTRACT**

This research identifies and addresses the challenges inherent in abolishing the death penalty in India, including political and public opinion considerations, the need for legislative reforms, and capacity-building within the judicial and correctional systems. Ultimately, this paper advocates for a more humane and just criminal justice system in India, one that upholds the inherent dignity and worth of every individual. The study underscores the irreversible nature of capital punishment, the potential for wrongful executions, and its disproportionate impact on marginalized communities. The right to life and dignity inherent in the death penalty, while also addressing its disproportionate impact on marginalized communities and the risk of wrongful execution.

**Keywords:** Death, Penalty, Right, System, India.

### **I. INTRODUCTION**

The death penalty, a centuries-old practice of executing individuals as a punishment for certain crimes, remains a subject of intense debate and scrutiny in the modern era. Across the globe, the clamor for its abolition has grown louder and more urgent, with many nations reevaluating their stance on this form of punishment in light of evolving societal norms, human rights principles, and a deeper understanding of its implications. India, the world's largest democracy and a country with a rich tapestry of cultures, traditions, and legal systems, stands at a crossroads in its approach to the death penalty. This research paper embarks on a critical examination of the death penalty in India, asserting the compelling argument that it should be abolished in alignment with international human rights standards and principles.

After gaining independence in 1947, India's leaders grappled with the question of whether to retain the death penalty. The Constituent Assembly of India, tasked with drafting the nation's Constitution, extensively deliberated on the issue. Ultimately, they chose to retain the death penalty as a lawful means of punishment, subject to certain restrictions and safeguards. Since then, the death penalty has remained a part of India's legal framework, administered primarily for the most heinous crimes.

The abolition of the death penalty aligns with the broader human rights framework that seeks to uphold the principles of justice, fairness, and the prohibition of cruel, inhuman, or degrading treatment or punishment. This paper asserts that India, and as a nation that upholds democratic values, should strive to harmonize its criminal justice system with these principles. The death penalty, due to its

irreversible nature, inherent flaws, and disproportionate impact, stands in stark contrast to these principles, making it imperative to reevaluate its continued existence in India's legal landscape.

As we delve deeper into the multifaceted aspects of the death penalty in India, it becomes evident that this issue extends far beyond legal discourse. It raises questions about ethics, morality, social justice, and the very essence of what it means to be a society that values human rights and the sanctity of life. To address these complex questions, we will explore the historical evolution of capital punishment in India, its legal framework, ethical and human rights implications, global perspectives on abolition, alternatives to the death penalty, the challenges in its abolition, and successful case studies of nations that have embarked on this path. This research paper ultimately endeavors to provide a comprehensive analysis and persuasive argument for the abolition of the death penalty in India, in consonance with the global movement towards a more humane and just criminal justice system.

India's history with the death penalty is as old as its civilization itself. From ancient times, the practice of imposing the ultimate punishment has been deeply entrenched in the country's legal and cultural ethos. Over the years, India has witnessed various rulers and dynasties employing the death penalty for a myriad of offenses, from political dissent to crimes against the state. During the British colonial period, the death penalty was utilized as a tool of suppression, often applied indiscriminately to quell dissent and control the Indian populace.

## II. RIGHT TO LIFE AND DIGNITY

The right to life is the most fundamental of all human rights, forming the cornerstone of the entire human rights framework. It is enshrined in various international instruments, including the Universal Declaration of Human Rights (UDHR), Article 6 of the International Covenant on Civil and Political Rights (ICCPR), and numerous regional conventions. These documents unequivocally affirm the inherent and inalienable right of every human being to life and emphasize that no one shall be arbitrarily deprived of this right.

In the context of the death penalty, the imposition of capital punishment directly contradicts the principle of the right to life. Capital punishment involves the intentional and deliberate taking of a human life by the state, thereby infringing upon the very essence of this fundamental right. It establishes a paradox wherein the very institution tasked with safeguarding life becomes the instrument of its termination.

Furthermore, the death penalty often necessitates a prolonged and emotionally draining legal process, wherein individuals condemned to death endure extended periods of anxiety, fear, and psychological distress. This protracted state of limbo, known as death row phenomenon, inflicts severe mental and emotional suffering, contravening the spirit of the right to life.

### **Dignity:**

Dignity, an integral aspect of human rights, is intertwined with the right to life. It encompasses an individual's inherent worth, value, and the recognition of their humanity. The imposition of the death

penalty can be seen as a direct affront to human dignity. It reduces individuals to mere objects of punishment, stripping away their inherent worth and reducing them to their most heinous acts.

The process leading up to execution often subjects the condemned individual to a state of heightened vulnerability and emotional turmoil. The looming specter of imminent death, coupled with the psychological strain of awaiting one's fate, constitutes a severe infringement on human dignity. The dehumanizing effect of the death penalty contradicts the principles of treating all individuals with respect, regardless of their actions.

Furthermore, the manner in which executions are conducted, especially in cases where there is a lack of transparency or where they are carried out in a manner that is excessively cruel or inhumane, further undermines the dignity of the individual. These instances not only violate the right to life but also erode the inherent worth and dignity of the person being executed. The right to life and dignity are inseparable, intertwined rights that lie at the heart of the human rights framework. The imposition of the death penalty directly contradicts these principles by intentionally ending a human life and subjecting individuals to conditions that undermine their inherent worth and value. It is imperative that a society committed to upholding human rights and dignity reevaluates its stance on the death penalty, recognizing it as incompatible with these foundational principles. Abolishing the death penalty is not only a legal imperative but a moral and ethical one, aligning with the broader human rights framework that seeks to

uphold the principles of justice, fairness, and the prohibition of cruel, inhuman, or degrading treatment or punishment.

### III. CHALLENGES IN ABOLISHING THE DEATH PENALTY IN INDIA

While the imperative to abolish the death penalty in India is clear from a human rights perspective, there exist numerous challenges that complicate this endeavor. These challenges span legal, political, social, and practical dimensions, and they necessitate careful consideration in any efforts towards abolition.

#### Political and Public Opinion

One of the primary obstacles to abolishing the death penalty in India lies in the political and public opinion landscape. The issue of capital punishment is deeply divisive, with differing ideological, religious, and cultural perspectives influencing attitudes towards its retention. Some political leaders and segments of the population argue that the death penalty serves as a necessary deterrent and a form of retribution for heinous crimes.

Political considerations, including concerns over being perceived as 'soft on crime' or facing opposition from influential interest groups, can dissuade policymakers from pursuing abolition. Additionally, the fear of backlash from a significant portion of the electorate can hinder politicians from advocating for the abolition of the death penalty.

Moreover, public opinion, often shaped by sensationalized media coverage and emotional reactions to high-profile crimes, can be resistant to change. Awareness campaigns and public discourse are crucial in shifting these perceptions, but they

require time, resources, and sustained effort.

### **Implementation and Legislative Reforms**

The practical challenges of transitioning from a system that employs the death penalty to one that does not are formidable. This transition requires a comprehensive overhaul of the legal framework, including amendments to various statutes, regulations, and procedural guidelines.

Ensuring that the legal system is equipped to handle cases previously punishable by death, with appropriate sentencing guidelines and rehabilitative measures, is a complex task. It necessitates meticulous planning, capacity-building within the judiciary and corrections system, and extensive training for legal professionals. Furthermore, establishing safeguards against wrongful convictions and ensuring due process is critical in a post-abolition scenario. This involves strengthening mechanisms for legal representation, forensic analysis, and access to exculpatory evidence.

### **Capacity Building for Judicial and Correctional Systems**

The abolition of the death penalty demands a substantial investment in the training and capacity-building of both the judiciary and the correctional system. Judges, prosecutors, defense attorneys, and other legal professionals require specialized training to handle cases without resorting to capital punishment.

In addition, the correctional system must be prepared to manage individuals sentenced to life imprisonment or other alternative forms of punishment. This includes providing rehabilitative programs,

mental health support, and creating environments conducive to reintegration into society.

The transition also necessitates establishing effective systems for clemency and commutation, ensuring that individuals previously sentenced to death are provided a fair opportunity for review and potential release.

### **IV. CONCLUSION**

The ethical and human rights implications of the death penalty are profound. It infringes upon the inherent right to life, subjects individuals to potential cruelty and suffering, disproportionately impacts marginalized communities, and carries the risk of irreversible miscarriages of justice. These implications are not abstract concepts; they represent the lived experiences of individuals who find themselves entangled in a system that ultimately seeks to extinguish their lives. The challenges in abolishing the death penalty in India, ranging from political and public opinion considerations to the practical and logistical reforms required, are formidable. However, they are not insurmountable. They serve as a call to action for policymakers, legal experts, civil society, and the public to come together in a concerted effort to forge a more humane and just criminal justice system. The experiences of nations that have successfully abolished the death penalty serve as beacons of hope and inspiration.

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