CHAPTER- IV

WORLDWIDE PERSPECTIVE OF CAPITAL PUNISHMENT
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"An eye for an eye would make the whole world blind."
- Mahatma Gandhi

4.1 Introduction
The background regarding the death penalty both in terms of international law as well as state practice has changed in the last decades. As compared to 1967, when the 35th Report of the Commission was issued, and in 1980, when the Bachan Singh judgement was delivered, a majority of the countries in the world have abolished the death penalty. Even those who retain this penalty, bring out far fewer executions than the situation before some decades ago.

The conversion in the international scenery over the past decades and the marked trend towards abolition in both international and domestic laws, through a study of appropriate international law, political promises and state exercise.

According to Amnesty International, countries are categorized on their capital punishment status, as follows:

- **Death penalty Abolished for all crimes.**
- **Death penalty Abolished for ordinary crimes**: The death penalty has been abolished for all ordinary offences committed, such as those contained in the criminal encryption or those predictable in common law such as robbery, dacoity, murder, kidnapping and rape. The Capital Punishment is retained only for some exceptional surroundings, such as military offences in time of war, or crimes against the State, such as treason, terrorism or armed rebellion.

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309 (1980) 2 SCC 684
311 Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Report of the Secretary- General, E/2015/49 at page 4.
• **Abolitionist de facto**\(^{312}\): It states that “the punishment of death remains lawful and where this punishment may still be prominent but where executions have not taken place for 10 years”, or states “that have carried out executions within the previous 10 years but that have made an international commitment through the establishment of an official suspension” Amnesty International follows a slightly different definition that the countries which retain the death penalty for ordinary crimes such as murder but can be deliberated abolitionist in practice that they have not executed anyone during the last 10 years and are believed to have a policy or established practice of not carrying out executions.

- **Retentionist**: means that the death penalty in practice for some defined offences. Fifty eight countries are considered as retentionist, who have the death penalty on their statute book, and have used it in the recent past.\(^{313}\)

At the end of 2015, ninety eight countries were abolitionist of death penalty for all offences, seven countries were abolished death penalty for ordinary crimes only, and thirty five were abolitionist in practice, making 140 countries in the world abolitionist in law or practice. The list of nearly one hundred forty countries includes some of them formally abolished the death penalty in 2015.\(^{314}\) While only small number of countries retains the death penalty, includes some of the popular nations in the world, including United Nations, China, India and Indonesia, making a majority of people in the world tentatively subject to this punishment.

In future number of execution may rise in of death penalty, however, because it is often marked by the population growth, which has restrained the rise in retentionist countries. In Japan, Korea, Taiwan, and America death penalty has only been developed in democratic countries, death penalty is a tool of political pressure that often works on a grand scale and the death penalty is in the poor, autocratic and authoritarian states. In 1980s, the democratization of Latin America had a record of

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\(^{312}\) Report of the Secretary- General, Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015

\(^{313}\) The Economist, Available at www.economist.com/news/intemational (visited on 12/09/2015) at 01:00 PM

\(^{314}\) On the way out with grisly exceptions, Available at: www.economist.com. (visited on 20/08/2015) at 01:02 PM
slave states. In Asia, on the other hand, rapid industrialization, democratization or democratic and developed countries are increasing in favour of abolition.

4.2 Developments in the International Human Rights Law Framework an Death Penalty

Death penalty has been systematized in the international Human Rights Framework with various Protocols or treaties.

4.2.1 Death Penalty in International Human Rights Treaties

Death Penalty has been arranged in international human rights treaties as one aspect of the right to life, as enclosed in the International Covenant on Civil and Political Rights. Some facets of the imposition and application of death penalty have also been creating to violate the prohibition against unpleasant, inhuman, and degrading conduct and punishment. After the Second Optional Protocol to the ICCPR coming into force the international community saw the first international legal instrument that aimed at abolishing the Capital Punishment.

4.2.1.1 The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights ('ICCPR') is one of the important documents conferring the imposition of death penalty in international human rights law. The ICCPR does not abolish the use of the death penalty, but Article 6 contains guarantees about the right to life and covers vital safeguards to be followed by parties who retain the death penalty.

Article 6(2) states:

"In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court" 315.

Article 6(4) requires states to ensure that

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315 Article 6(2) of ICCPR, 1966
"Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases".

Article 6(5) mandates that a

"Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."

The UN Human Rights Committee argued Article 6 of the ICCPR in detail in its General Comment in 1982. The Committee clarified that while the ICCPR did not clearly want the abolition of the death penalty, abolition was desirable, and the Committee would reflect any move towards abolition as progress in the enjoyment of the right to life. The Committee also said that "Capital punishment should be an exceptional measure. It restated important procedural safeguards including that the death penalty can only be imposed in accordance with the law in force at the time of the commission of the crime and that the right to a fair hearing by an independent tribunal, the presumption of innocence, minimum guarantees for the defence and the right to review by a higher tribunal must all be harshly observed."317

The Committee also reviews timely reports of state-parties to the ICCPR, and has often stated to abolition of the death penalty in its observations on reports of retentionist states.318 For example, in 2014, it recommended that Sierra Leone should expedite its efforts to abolish the death penalty and to ratify the Second Optional Protocol to the Covenant.319 In 2009, it noted that while Russia had a de facto suspension on executions since 1996, it should take the necessary measures to abolish the death penalty de jure at the earliest possible moment, and consider granting to the

316 Human Rights Committee, General Comment No 6 (1982) at para 6, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1\Rev.1 at 6 (1994) - "The article also refers generally to abolition in terms which strongly suggest ( paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee".


319 UN Human Rights Committee, Concluding observations on the initial report of Sierra Leone.
Second Optional Protocol to the Covenant. In other cases, the Committee has also restated the importance of following the safeguards listed in Article 6 and other provisions of the ICCPR, and provided a roadmap to abolition. For example, in its 2008 review of Japan, the Committee recommended:

"Regardless of opinion polls, the State party should favourably consider abolishing the death penalty and inform the public, as necessary, about the desirability of abolition." Similarly, in 2006 the Committee asked the United States to "review federal and state legislation with a view to restricting the number of offences carrying the death penalty the State party should place a moratorium on capital sentences bearing in mind the desirability of abolishing death penalty."

At present, one hundred and sixty eight states, including India, are parties to the International Covenant on Civil and Political Right. The Committee revised India’s report in 1996 and recommended that India “abolish bylaw the imposition of the death penalty on minors and limit the number of offences carrying the death penalty to the most serious crimes, with a view to its ultimate abolition.”

4.2.1.2 The Second Optional Protocol to the ICCPR

The Second Optional Protocol to the International Covenant on Civil and Political Right, targeting at the abolition of the death penalty is the only treaty directly concerned with abolishing the death penalty, which is open to signatures from all countries in the world. It came into force in 1991, and has 81 states parties and 3 signatories. India has not signed this treaty.

Article 1 of the Second Optional Protocol states that “No one within the jurisdiction of a State Party to the present Protocol shall be executed”, and that “Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.” No reservations are permitted to the Second Optional Protocol, “except

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320 UN Human Rights Committee: Russian Federation, 24 November 2009
for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime." Some state parties have made such reservations.

4.2.1.3 The Convention on the Rights of the Child

Similar to the ICCPR, Article 37(a) of the Convention on the Rights of the Child (CRC) explicitly prohibits the use of the death penalty against persons under the age of eighteen. As of July 2015, 195 countries had ratified the CRC. Article 37(a) states:

"States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

The Committee on the Rights of the Child has explained that while some presumed the rule only prohibited the execution of persons below the age of eighteen, death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction.

4.2.1.4 The Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment

There is an analysis of the penalty of death as violating norms against torture and cruel, inhuman, and degrading treatment or punishment. In this context, the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention) and the UN Committee against Torture have been sources of jurisprudence for limitations on the death penalty as well as necessary safeguards.

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324 Article 2 (1), Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty
325 Committee on the Rights of the Child, available at www.ohchr.org (visited on 25/08/2015) at 12:05 PM.
The Torture Convention does not esteem the imposition of death penalty per se as a form of torture or cruel, inhuman or degrading treatment or punishment. However, some methods of execution and the phenomenon of death row have been seen as forms of CIDT by United Nation bodies. In its Concluding Observations or Kenya’s report, the Committee against Torture said that it remained concerned about the uncertainty of those who serve on death row, which could amount to ill-treatment and advised Kenya to take the necessary steps to establish an official and publicly known moratorium of the death penalty with a view of eventually abolishing the practice.

While reviewing China’s periodic report, the Committee against Torture expressed concern “at the conditions of detention of convicted prisoners on death row, in particular the use of shackles for 24 hours a day, amounting to cruel, inhuman or degrading treatment.”

In the context of Japan, the Committee found that unnecessary secrecy and arbitrariness surrounding the time of execution and principle of solitary confinement after the final sentence is handed down could amount to CIDT. While India has signed the Torture Convention, it has yet not ratified it.

4.2.1.5 International Criminal Law

The international movement towards abolition of the punishment of death is also perceptible in the development of international criminal law. The penalty of death was an allowable punishment in the Nuremberg and Tokyo tribunals, both of the countries were well-known following World War II. Subsequently, however, 

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327 The Committee against Torture was “specially troubled by the recent cases of botched executions in Arizona, Oklahoma, and Ohio” and asked the US to “review its execution methods in order to prevent pain and prolonged suffering”, in para 25, Concluding observations on the combined third to fifth periodic reports of the United States of America, 19 December 2014, CAT/C/USA/CO/3-5.
328 UN Committee against Torture, Concluding observations of the Committee against Torture: Kenya, 19 January 2009
329 UN Committee against Torture, Concluding observations of the Committee against Torture: China, 12 December 2008
330 UN Committee against Torture, Conclusions and Recommendations of the Committee against Torture: Japan, 3 August 2007
international criminal courts - including the Statute of the International Criminal Tribunal for the former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda, the Statute of the Special Court for Sierra Leone and the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia exclude the death penalty as an allowable punishment. The same is true for the Rome Statute of the International Criminal Court, where judges may only impose terms of imprisonment. It must be noted that these tribunals do not use the death penalty, notwithstanding routinely dealing with the most serious crimes under international law, including genocide, war crimes, and crimes against humanity. It is pertinent to that India is not signatory to the Rome Statute.

4.2.1.6 International Treaty Obligations in Indian Law

India has ratified the International Covenant on Civil and Political Rights and the CRC, and is signatory to the Torture Convention from the above discussed treaties but has not ratified it. Under the international law, treaty requirements are binding on states once they have ratified the treaty. Even where a treaty has been signed but not ratified, the state is bound to refrain from acts which would defeat the object and purpose of a treaty.

In India, local legislation is required to make international treaties enforceable in Indian law. The Protection of Human Rights Act, 1994, incorporates the ICCPR into India law through section 2(d) and 2(f).

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333 Statute of the International Criminal Tribunal for the former Yugoslavia, available at: www.icty.org (visited on 15/08/2015) at 2:20 PM
335 Statute of the Special Court for Sierra Leone, available at: www.rscsl.org (visited on 15/08/2015) at 2:25 PM
338 See Article 26, Vienna Convention on the Law of Treaties (VCLT): "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."
339 Article 18, Vienna Convention on the Law of Treaties (VCLT)
340 Jolly George Verghese & Anr v. The Bank Of Cochin, 1980 AIR 470
Section 2 (d) states that, "human right means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

Section 2(f) states that, "International Covenants means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights adopted by the General Assembly of the United Nations on the 16th December, 1966."

Further, according to Article 51(c) of the Indian Constitution, the state shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another.

While this does not make all of India's treaty commitments automatically binding on India, courts have respected rules of international law where there is no contradictory legislation in India.\(^{341}\) For example, the Supreme Court of India said Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into those provisions, e.g., Articles 14, 15, 19 and 21 of the Constitution to enlarge the meaning and content thereof and to promote the object of constitutional guarantee.

4.2.2 Safeguards regarding Capital Punishment in International Law

Resolutions, comments and reports by the bodies of the United Nations by special procedures, have also contributed to international law standards regarding the penalty of death and essential safeguards where it is being used. The trend in most of these instruments is towards limiting the scope of the death sentence globally and inspiring abolition where possible.

4.2.2.1 The ECOSOC Safeguards

The main body of United Nations, Economic and Social Council (ECOSOC) have delivered several resolutions advising safeguards regarding how the death penalty should be imposed in countries where it is not abolished. These safeguards include important limitations to the scope and application of the death penalty in international law.

\(^{341}\) National Legal Services Authority v. Union of India, (2014) 5 SCC 438,
"The first ECOSOC resolution titled *Safeguards guaranteeing protection of the rights of those facing the death penalty* was adopted in 1984,\textsuperscript{342} and contained the following nine safeguards:

1. In countries which have not abolished the penalty of death, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely serious consequences.

2. Death penalty may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.

4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

\textsuperscript{342} Safeguards guaranteeing protection of the rights of those facing the death penalty, Approved by Economic and Social Council resolution 1984 available at: www.ohchr.org (visited on 3/08/2015) at 12:00 PM
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering."

A 1989 ECOSOC resolution added “more safeguards, including encouraging transparency in the imposition of the death penalty (including publishing information and statistics on the issue); the establishment of a maximum age beyond which a person cannot be executed; and abolishing the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.”

In 1996, a third ECOSOC resolution encouraged states to ensure that each defendant facing a death sentence is given all guarantees to ensure a fair trial. It specifically urged states to ensure that that defendants who do not sufficiently understand the language used in court are fully informed of the charges against them and the relevant evidence, and that they had enough time to appeal their sentence and ask for clemency. It also asked states to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency."

4.2.2.2 Reports by the Special Rapporteur on extrajudicial, summary or arbitrary executions

Where the imposition and execution of a death sentence does not follow norms of international law, it can be measured an extrajudicial execution by the state,

343 Implementation of safeguards guaranteeing protection of the rights of those facing the death penalty, ECOSOC Resolution 1989/64, available at: www.unode.org (visited on 3/08/2015) at 12:10 PM

and the Special Rapporteur on extrajudicial, summary or arbitrary executions has, over time, commented on several aspects of the capital punishment debate.

For example, in 2006, the Special Rapporteur on Extrajudicial, summary or arbitrary execution released a report on transparency in the use of the death penalty. In 2007, “the Special Rapporteur on Extrajudicial, summary or arbitrary execution, in a survey of existing treaty obligations, jurisprudence, and statements by UN treaty bodies, said “the death penalty can only be imposed in such a way that it complies with the stricture that it must be limited to the most serious crimes, in cases where it can be shown that there was an intention to kill which resulted in the loss of life.”

4.2.2.3 The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

The Special Rapporteur on torture has specifically discussed whether penalty of death can be considered cruel, inhuman or degrading punishment. In his report on the issue, the Special Rapporteur noted the developments in jurisprudence by international bodies, which had found that corporal punishment often amounted to Cruel Inhuman or Degrading Treatment, because of its impact on human dignity. While the Special Rapporteur did not go so far as to say that “death penalty probably the most extreme form of corporal punishment always amounted to CIDT, he noted that the permissibility of the death penalty is increasingly being challenged by obvious inconsistencies deriving from the distinction between corporal and capital punishment and by the universal trend towards the abolition of capital punishment. The Special Rapporteur has also urged certain states to impose moratoriums on death sentences.”

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348 See UNHCHR, UN experts urge Pakistan not to execute juveniles, 20 March 2015, available at: http://www.ohchr.org (visited on 3.08.2015); and US/Death penalty: UN experts call for federal
4.3 Political commitments regarding the Death Penalty globally

The trend towards abolition of the penalty of death is also evident in a series of political commitments made at the United Nations, through resolutions at bodies such as the General Assembly and the United Nations Human Rights Council.

4.3.1 General Assembly Resolutions

Several resolutions of the United Nations General Assembly (UNGA) have called for a suspension on the use of the death penalty. In 2007, the UNGA called on states to "progressively restrict the use of the death penalty, reduce the number of offences for which it may be imposed" and "establish a moratorium on executions with a view to abolishing the death penalty." In 2008, the GA reaffirmed this resolution, which was reinforced in subsequent resolutions in 2010, 2012, and 2014. Many of these resolutions noted that, "a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights."

These resolutions have been increasing support from countries over time; 117 states voted in favour of the most recent resolution in 2014, as compared to 104 in 2007. India has not voted in favour of these resolutions.

4.3.2 United Nations Human Rights Council

The UN Human Rights Council in recent times started a new enquiry on the death penalty, using the human rights of children of parents sentenced to the death penalty or executed as an initial point. In a 2013 resolution, the Human Rights Council acknowledged:

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moratorium as Boston bomber gets death sentence 26 June 2015, available at: www.ohchr.org (visited on 3/08/2015) at 05:30 PM

“The negative impact of a parent’s death sentence and his or her execution on his or her children, advised States to provide those children with the protection and assistance they may require, and mandated a study on this specific issue.” \(^{354}\) It also called on states “to provide those children or, where appropriate, giving due consideration to the best interests of the child, another member of the family, with access to their parents and to all relevant information about the situation of their parents.” \(^{355}\) A 2014 Human Rights Council resolution noted that “States with different legal systems, traditions, cultures and religious backgrounds have abolished the death penalty or are applying a moratorium on its use” and deplored the fact that “the use of the death penalty leads to violations of the human rights of those facing the death penalty and of other affected persons. The Human Rights Council states to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.” \(^{356}\)

4.4 Death Penalty and the Law of Extradition

The law of extradition has been another tool for countries assertive for the abolition of the Capital Punishment. \(^{357}\) For example, “those countries that abolish the death penalty put pressure on those countries that retain the death penalty by rejecting extradition requests for persons wanted for offences carrying the penalty. Several abolitionist countries either require guarantees that retentionist extraditing countries not impose the death penalty, or have included such a clause in bilateral extradition treaties.” \(^{358}\) For example, China has signed extradition treaties with Spain, France and Australia, saying it will not impose the death penalty on individuals extradited from these countries. Abolitionist countries are often bound to ensure this. For example, Article 19(2) of the Charter of Fundamental Rights of the European Union states:

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\(^{354}\) Human Rights Council, Panel on the human rights of children of parents sentenced to the death penalty or executed, 15 March 2013, A/HRC/22/L.18

\(^{355}\) Ibid


\(^{357}\) Roger Hood, Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th ed. 2015)

\(^{358}\) Ibid
“No one may be removed, expelled or extradited to a State where there is serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”

Several courts have made important statements on the issue. For example, in the case of *Soering v. UK*, the European Court of Human Rights held that the extradition of a person from the UK to Virginia, a state in USA which imposed the death penalty, would violate the European Convention of Human Rights because the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant’s extradition to the United State would expose him to a real risk of treatment going beyond the threshold set by Article3 on Prohibition of Torture.”

In the case of *US v. Burns*, the Apex Court of Canada held that in cases of extradition to a country that retain the death penalty, pledges “that the death penalty would not be imposed, or, if imposed, would not be carried out were essential in all but exceptional cases.”

Similarly, in the case of *Mohamed and Another v. President of the Republic of South Africa*, the South African constitutional court held that “a ‘deportation’ or ‘extradition’ of Mohamed without first securing an assurance that he would not be sentenced to death or, if so sentenced, would not be executed would be unconstitutional,” adding that such an extradition violated his “right to life, his right to have his human dignity respected and protected and his right not to be subjected to cruel, inhuman or degrading punishment.”

Similar jurisprudence can also be found in international law. In *Judge v. Canada*, the United Nation Human Rights Committee, dealing with a man deported...
from Canada to the United States, held that “Canada, as a State party which has abolished the death penalty, irrespective of whether it has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, violated the author's right to life under article 6, by deporting him to the United State, where he is under sentence of death, without ensuring that the death penalty would not be carried out.”

India’s Extradition Act, 1962, reflects this principle in Section 34C:

"Notwithstanding anything contained in any other law for the time being in force, where a fugitive criminal, who has committed an extradition offence punishable with death in India, is surrendered or returned by a foreign State on the request of the Central Government and the laws of that foreign State do not provide for a death penalty for such an offence, such fugitive criminal shall be liable for punishment of imprisonment for life only for that offence."

4.5 International Trends on the Death Penalty

The position and practice of the death penalty today advises a distinctive trend towards abolition of the penalty. When the United Nation was formed in 1945, only seven countries in the world had abolished the penalty of death. In disparity, as of 31 December 2014, one hundred and forty countries in the world had abolished the punishment of death in law or practice.

The United Nation Secretary General, issues a periodic report on the status of the penalty of death worldwide; the up to date of these reports surveyed the international situation between 2009 and 2013. In this period, the number of fully abolitionist states increased by six, and almost all retentionist countries reported reductions in the number of executions and the number of crimes subject to the penalty of death. Amongst retentionist countries, only 32 carried out judicial

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363 Ibid
364 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Available at: www.dacess-ddnny.un.org (visited on 5/08/2015) at 05: 50 PM
366 Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Available at www.ohchr.org (visited on 5/08/2015) at 05:55 PM
executions. This report confirmed "the continuation of a very marked trend toward abolition and restriction of the use of capital punishment in most countries".367

The trend is also evident from the signatories to the International Covenant on Civil and Political Rights Second Optional Protocol, aiming at abolishing the death penalty, to which 81 states have signed or acceded.

4.6 Regional Trends regarding the Death Penalty

4.6.1 The Americas

The American Convention on Human Rights 1969 pointedly restricts the application of the penalty of death. Article 4 of this convention states that "it can only be imposed for serious crimes following a fair trial, it cannot be inflicted for political offences or related common crimes, it cannot be re-established in states that have abolished it, and it cannot be imposed on persons under the age of 18, over 70 or pregnant women."

The Americas also have a specific convention on abolishing the punishment of death. Under Article 1 of the Protocol to the American Convention or Human Rights to Abolish the Death Penalty which is ratified by 13 countries, "The States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction."

Notwithstanding some till now keeping it in law, number of countries in the America has abolished the penalty of death in law or practice.

Like many of its South American neighbours,368 Brazil, in 1882, abolished the punishment of death for ordinary crimes many years ago. The abolition only applies to the death penalty for ordinary crimes, and the sentence of death for crimes in extraordinary times of war still remains in practice. The Brazilian Constitution provides "that there shall be no punishment by death, except in the case of war".369

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367 Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty Available at www.ohchr.org (visited on 5/08/2015) at 04:04PM
368 These include Argentina, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Nicaragua, Paraguay, Venezuela, and Uruguay.
369 An English version of the Brazilian Constitution, Available at www.stf.jus.br/repositorio/cms/portals (visited on 10/08/2015) at 04:05 PM
The same Article also "provides that there shall be no life imprisonment, making Brazil one of the few countries in the world where both capital punishment and life imprisonment do not exist. In the twentieth century, in the face of political instability and military rule, Brazil reintroduced the death penalty twice: in the years 1939-45 (for politically motivated crimes of violence) and 1969-79 (for political crimes against national security), but no death penalties were imposed on any person during these years."  

"The United States is a prominent exception in the Americas in terms of its approach to the penalty of death. In 2014, the United States was the only country in its region to bring out executions. Even within the United State, for a period of time following the case of Furman v. Georgia, there was a de facto suspension on the death penalty for about four years, between 1972 and 1976. While the death penalty has since been re-established, court decisions have narrowed down its scope and introduced safeguards. For example, in Roper v. Simmons, the Supreme Court held it was unconstitutional to impose the death penalty for crimes committed when the individual was below 18 years of age. Further, in Atkins v. Virginia, the Supreme Court held that executing persons with intellectual disabilities amounted to cruel and unusual punishment, and was thus unconstitutional. An increasing number of states in the US have been officially or un-officially imposing moratoriums. Nineteen states in the US have abolished it; the most recent among them have been Connecticut in 2012, Maryland in 2013, and Nebraska in 2015. In 2014, 35 people were executed in the US, which was the lowest number since 1995."

4.6.2 Europe

All European countries, except Belarus, has either properly abolished the penalty of death or preserve moratoriums.

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371 Furman v Georgia, 408 U.S 238  
374 Based on data from the Death Penalty Information Centre, Available at: www.deathpenaltyinfo.org (visited on 20/08/2015) at 04: 57 PM  
The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention") originally stated:

"No one shall be deprived of his life intentionally save in the execution of sentence of a court following his conviction of a crime for which this penalty provided by law."  

In 1983, the European Convention regarding the abolition of the death sentence said, "The death penalty shall be abolished. No one shall be condemned to such penalty or executed except in respect of acts committed in time of war or imminent threat of war." Finally, in 2002, the European Convention abolished the death penalty in all circumstances. Forty four countries have acceded to this protocol including all member states of the European Union.

The European Court of Human Rights (ECHR) has grown rich jurisprudence for countries that have not yet ratified the two optional protocols. On several occasions, "the court has held that extradition to a country that does not abolish the penalty of death could violate the right to life and prohibition against torture." In 2010, the European Court of Human Rights distinguished the high number of signatories of the European Convention who had not retained the penalty of death. It said "These figures, together with consistent State practice in observing the moratorium on death penalty, are strongly indicative that Article 2 has been amended so as to prohibit the death penalty in all circumstances." It held that "the words ‘inhuman or degrading treatment or punishment’ in Article 3 could include the death penalty."

Like the rest of Europe, France abolished the death penalty notwithstanding public opinion to the contrary. The death penalty in France was abolished on 9 October 1981, after the voting in the National Assembly decided in

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376 Article 2(1), Convention for the Protection of Human Rights and Fundamental Freedoms, Available at: www.conventions.coe.int/treaty/en/Treaties/Html/005.htm (visited on 20/08/2015) at 04:40PM
377 Articles 1 and 2, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, Available at: http://conventions.coe.int/Treaty/EN/Treaties/Html/114.htm (visited on 20/08/2015) at 04:44PM
379 Al-Saadoon and Mufidi v. The United Kingdom, 61498/08 (2010) ECHR 282, at para 120
against the retention of the penalty of death.\textsuperscript{380} It noticeable the end of two centuries of debate in the National Assembly on the issue, the first motion having been presented as far back as in 1791. \textsuperscript{381}

The abolition was incorporated into the French Constitution in 2007, Article 66(1) of which reads that “no one shall be sentenced to death”.\textsuperscript{382} Public opinion supported the punishment of death for many years after it was abolished; a 2006 poll showed that 52% of the population were against it.\textsuperscript{383} Robert Badinter, the minister for Justice in France in 1981, who led the legislative amendment, has suggested that “it usually takes about 10 to 15 years following abolition for the public to stop thinking of it as useful and to realise that it makes no difference to the level of homicide, which forecast has found support in many countries.”\textsuperscript{384}

The history of the punishment of death in the \textbf{United Kingdom} is also relevant to the Indian context. The abolitionist leaning Labour government that was elected in post-war Britain measured the issue of death penalty at least six times before setting it aside when put on the table its Criminal Justice Bill in 1947, deciding that retaining the penalty of death was not its key priority; and by the 1950s, however, a chain of sick touched cases and executions had run to the creation of a strong public movement in favour of abolition.\textsuperscript{385} The last penalty of death in the United Kingdom took place in 1964.\textsuperscript{386} In 1965, the House of Commons in Great Britain voted to impose a moratorium on and suspend the death penalty for murder for a period of 5 years by law. \textsuperscript{387}
The penalty of death for murder was formally abolished in 1969, when the UK Parliament decided that the 1965 Act should not expire,\(^\text{388}\) despite recent opinion polls showing that about 80% of the population was against the abolition of the penalty of death.\(^\text{389}\) After the sentence of death for murder was abolished, the House of Commons held a vote during each parliament (until 1997) to restore the penalty, but the motion was never passed.\(^\text{390}\) The capital punishment was finally removed for all crimes in the United Kingdom only in 1999, further to the United Kingdom’s sanctions of and obligations under the European Convention on Human Rights and the Second Optional Protocol to the ICCPR.\(^\text{391}\)

Despite the penalty no longer being a part of UK law, the UK Privy Council has discussed the punishment of death in various decisions pertaining to cases in the Caribbean countries, where the death penalty remains standing. The most notable of these was the 1993 case of *Pratt & Morgan v. Attorney-General for Jamaica*.\(^\text{392}\) In this case, the UK Privy Council held that that “it was unconstitutional in Jamaica to execute a prisoner who had been on death row for 14 years. According to the Privy Council, the Jamaican Constitution prohibits inhuman or degrading punishment, as a result of which excessive delays cannot occur between sentencing and execution of the punishment. Specifically, it held that a delay of more than five years between sentencing and execution was *prima facie* evidence of inhuman or degrading punishment. In cases of such excessive delay, it said that the death sentence should be commuted to life imprisonment.”

The *Pratt & Morgan case* had a “ripple effect on similar cases from other Caribbean countries, where the sentence for convicts on death row was commuted to


\(^{390}\) Charles Hanson, The death penalty issue, *Available at*: www.insidetime.org (visited on 20/08/2015) at 05:10PM


\(^{392}\) Privy Council Appeal No. 10 of 1993, *Available at*: www.bailii.org/uk (visited on 20/08/2015) at 05:05PM
life imprisonment. This has led to a separate and long-enduring debate about the appellate powers of the Privy Council on countries other than the UK.\footnote{192}

4.6.3 Africa

As on October 2014, seventeen African countries had formally abolished the death penalty, and twenty five others had not directed an execution in over ten years.\footnote{394} The countries that continue to impose the death penalty are Egypt, Equatorial Guinea, Sudan, and Somalia. Several African countries like Angola, Namibia have abolished the penalty of death through the Constitution, while in other countries, notably South Africa, the courts have taken the prime.


The **Kenya** retains the penalty of death for many offences, including murder, armed robbery and treason. The last known execution in Kenya, however, took place in 1987, and the country is regarded as abolitionist de facto. In the case of **Mutiso v. Republic** (2010), “the Court of Appeal at Mombasa struck down the mandatory death penalty for murder, holding that the penalty was in violation of the

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\footnote{192}{Owen Bowcott and Maya Wolfe-Robinson, British court to rule on death sentences for two Trinidad murderers, The Guardian, \textit{Available at} www.theguardian.com (visited on 20/08/2015) at 05:06PM}

\footnote{394}{Statement by the Chairperson of the Working Group on Death penalty of the African Commission on Human and Peoples’ Rights on World Day against the Death Penalty, \textit{Available at}} www.achpr.org (visited on 20/08/2015) at 05:07PM}

\footnote{395}{Resolution calling on State Parties to observe the moratorium on the death penalty, \textit{Available at}} www.old.achpr.org/english (visited on 20/08/2015) at 05:08PM}

\footnote{396}{Declaration of the Continental Conference on the Abolition of the Death Penalty in Africa, \textit{Available at}} www.achpr.org/news (visited on 20/08/2015) at 05:09PM}
right to life, and amounts to inhuman treatment; and that keeping a person on death row for more than three years would be unconstitutional. It also suggested that its reasoning would apply to other offences having a mandatory death sentence."  

However, in the case of *Joseph Njuguna Mwaura v. Republic* (2013), the Court of Appeal at Nairobi upheld the punishment of death for armed robbery. It said that "the legislature had to decide whether the mandatory death penalty should be retained or not. The conflict between these two decisions is expected to be resolved by the Supreme Court."  

In South Africa, the death penalty was abolished through a decision of the Constitutional Court, shortly after the end of the apartheid regime. In an early ruling in 1995, in *State v. Makwanyane*, the South African Constitutional Court held that the death penalty was unconstitutional. In doing so, the Court said:

"The rights to life and dignity are the most important of all human rights, and the source of all other personal rights in Chapter Three. By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does, including the way it punishes criminals. This is not achieved by objectifying murderers and putting them to death to serve as an example to others in the expectation that they might possibly be deterred thereby."

And that Retribution cannot be accorded the same weight under our Constitution as the rights to life and dignity, which are the most important of all the rights. It has not been shown that the death sentence would be materially more effective to deter or prevent murder than the alternative sentence of life imprisonment would be. Taking these factors into account, as well as the elements of arbitrariness and the possibility of error in enforcing the death penalty, the clear and convincing

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397 The Death Penalty Project, Kenya, *Available at:* [www.deathpenaltyproject.org](http://www.deathpenaltyproject.org) (visited on 20/08/2015) at 05:10PM
398 Death Penalty Worldwide, Kenya, *Available at:* [www.deathpenaltyworldwide.org](http://www.deathpenaltyworldwide.org) (visited on 20/08/2015) at 05:11PM
399 Howard French, South Africa's Supreme Court Abolishes Death Penalty, *Available at:* [www.nytimes.com](http://www.nytimes.com) (visited on 20/08/2015) at 05:10PM
400 1995 (6) BCLR 665
case that is required to justify the death sentence as a penalty for murder, has not been made out.

At the time of this decision, public opinion in South Africa on the death penalty was very separated, with a huge support for retaining death penalty. Crime was a massive problem, and during the apartheid regime, there had been widespread use of the death penalty. The last execution was just four years before its abolition. In 1997, the South African Parliament repeated the Court's decision through law.

In Nigeria, the death penalty is chiefly a state issue, as the country has a federal system, where criminal laws differ through its 36 states. Each state stipulates crimes and punishments within its territory, and have laws created on both Shariah and common law systems. A mandatory death penalty is agreed for an extensive range of offences in various Nigerian states.

In 2012, the High Court of Lagos State declared that the mandatory death penalty was unconstitutional in James Ajulu & Others v. Attorney General of Lagos. The Court held that "the prescription of mandatory death penalty for offences such as armed robbery and murder contravenes the right of the applicants to dignity of human person and their right not to be subjected to inhuman or degrading punishment under S.34 of the constitution of the Federal Republic of Nigeria, 1999." As a result of this ruling, the mandatory imposition of the death penalty is now banned in the state of Lagos, and the death penalty is now the maximum, but not the only, penalty possible. This holding is only enforceable in the state of Lagos.

According to a report by a UN Special Rapporteur, the average in 2006 was already 20 years four prisoners were executed in 2013 in Nigeria, which had

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401 Roger Hood, Carolyn Hoyle, The Death Penalty: A Worldwide Perspective 89 (5th ed. 2015)
403 Country profile: Nigeria, Available at: www.deathpenaltyworldwide.org (visited on 20.08.2015) at 05:15PM
404 Suit No. ID/76M/2008, October 2012
406 Roger Hood, Carolyn Hoyle, The Death Penalty: A Worldwide Perspective 204 (5th ed. 2015)
otherwise not carried out an execution since 2006.407 As of September 2013, the number of death row inmates stood at 1,233, with many prisoners having remained on death row for over 10 years.

4.6.4 Asia and the Pacific

About 40% of the countries in the Asia-Pacific are retentionists, maintain and use the death penalty. China, Iran, Iraq and Saudi Arabia remain amongst the highest executors worldwide, and the past few years have also seen Pakistan and Indonesia breaking their de facto suspensions to return to executions.

A 2015 OHCHR publication examining movements in the death penalty in South East Asia, found that “The Global movement towards abolition of the death penalty has also been reflected in South-East Asia”.408 At the time of the report, Brunei Darussalam, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand and Viet Nam had retain the capital punishment, while Cambodia, Timor-Leste and the Philippines had done so.

Indonesia, for example, “is a retentionist country that practices the death penalty for numerous crimes, including drug-related offences. Earlier in 2015, Indonesia executed eight people by firing squad, including foreign nationals, for drug-related offences.” Indonesian president Joko Widodo has defended the death penalty, saying “We want to send a strong message to drug smugglers that Indonesia is firm and serious in tackling the drug problem, and one of the consequences is execution if the court sentences them to death”409 Indonesia had a brief unofficial suspension on executions between 2008 and 2012, but has since restarted executions.410

China is one of the main executing countries in the world. There is very inadequate information of even how many executions take place in China, as they are

407 Country profile: Nigeria, Available at: www.deathpenaltyworldwide.org (visited on 20.08.2015) at 06:06 PM
408 Moving Away from the Death Penalty Available at:www.bangkok.ohchr.org (visited on 20/08/2015) at 06:10PM
409 Joko Widodo: “A strong message to drug smugglers”, Available at www.aljazeera.com (visited on 20/08/2015) at 06:10PM
410 Roger Hood, Carolyn Hoyle, The Death Penalty: A Worldwide Perspective 98 (5th ed. 2015)
all carried out in secret. However, estimations suggest that 90% of the world’s executions happen in Asia, and most of them occur in China,\(^{411}\) and that China executes more people than all other countries.\(^{412}\) In 2010, 68 crimes were punishable by the death penalty in China. A 2011 amendment reduced this number to 55. Hong Kong and Macau, both Special Administrative Regions of China, have not retained the death penalty.

Similarly, **Japan** also retains the penalty of death,\(^{413}\) and conducts executions in secret. At that the families are usually informed after it has taken place.\(^{414}\)

The **Philippines** was one of the first countries in Asia to abolish death penalty. Its 1987 Constitution, broadcasted after President Marcos was overthrown,\(^{415}\) stated: “Article III, Section 19(1): Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetual.”\(^{416}\)

By 1994, the mood in some quarters of the nation had changed, and Republic Act No. 7659, also called “An Act to Impose the Death Penalty on Certain Heinous Crimes”, was passed. The preamble of this law said that “the Congress, in the justice, public order and the rule of law, and the need to rationalize and harmonize the penal sanctions for heinous crimes, finds compelling reasons to impose the death penalty for said crimes.”\(^{417}\)
This act reintroduced the penalty of death for a range of offences including for murder, treason, and certain forms of rape. Death sentences were imposed, and executions were recommenced.

The Philippines saw strong public debate on the penalty of death in this period. In 2000 President Estrada announced “a moratorium on executions, which President Arroyo continued.”418 In April 2006, President Arroyo decided “to commute all death sentences and block executions.”419 Later that year, a Bill abolishing the death penalty completely was passed.420 In 2007, the Philippines ratified the Second Optional Protocol to the ICCPR.”

Saudi Arabia also retains the death penalty, using it against foreign nationals and persons convicted for offences that do not meet the international law threshold of most serious crimes. Recently there has been an increase in the rate and number of executions, with over 102 persons being executed in 2015 alone.421

Since its formation in 1948, Israel has been abolitionist for ordinary crimes. The death penalty has only been imposed and implemented once, in 1962, when Adolph Eichmann was executed.

Currently, the following crimes can carry a death sentence:

a) genocide;

b) murder of persecuted persons committed during the Nazi regime;

c) Acts of treason under the military law and under the penal law committed in time of hostilities and the illegal use and carrying of arms.

Further, Israeli law requires that the death penalty can only be imposed with judicial consensus, not judicial majority. In 2015, there were attempts to introduce a

420 Sarah Toms, Philippines stops death penalty, Available at www.news.bbc.co.uk (visited on 20/08/2015) at 06:20PM
Bill that would make it easier to impose the death penalty on terrorists, by requiring only a majority and not consensus amongst judges in such cases. The Bill was rejected in its first reading.422

4.6.5 South Asia

In South Asia, India, Pakistan, and Bangladesh do not abolish the death penalty. In December 2014, Pakistan lifted its suspension on executions, in response to a terrorist attack on a school in Peshawar. Since then, around 200 people have been executed, and around 8000 people on death row remain at risk of execution.423

Maldives and Sri Lanka maintain the penalty in law, but is abolitionist in practice. The last Sri Lankan execution was in 1976; and in the Maldives in the 1950s. Death penalty was introduced in Sri Lanka during colonial times. Sri Lanka still not abolishes this punishment in law, and sentences people to death. Death row is a controversial phenomenon in Sri Lanka. In 2014 alone, Sri Lankan courts sentenced over 61 people to death, including juveniles.424 Sri Lanka also retains the death penalty for drug-related crimes, which do not meet the threshold of most serious crimes in international law.

But Sri Lanka has not carried out an execution since 1976, and is considered abolitionist in practice. Death sentences are converted to terms of imprisonment. It is noteworthy that Sri Lanka’s moratorium has remained in place despite insurgency and civil war between the 1980s and late 2000s.

Bhutan and Nepal have not retained the death penalty. Bhutan abolished it in 2004, and it is also prohibited in its 2008 Constitution. The last execution in Nepal was in 1979. Nepal officially abolished the death penalty in 1990, with its government saying the punishment was considered inconsistent with its new multi-party political system.425 Since then, Nepal has seen a 10 year-long civil war, lasting

422 The Times of Israel, “Knesset rejects bill on death penalty for terrorists”, Available at: www.timesofisrael.com (visited on 20/08/2015) at 06:36PM
423 Asia, Pakistan executes Shafqat Hussain despite appeals, Available at www.bbc.com (visited on 20/08/2015) at 06:38PM
424 Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015
from 1996 to 2006. Both sides of the civil war committing a range of human rights abuses, and accountability remain a central concern in Nepal today.

This violence and conflict ended with the signing of the 2006 Comprehensive Peace Accord between the Government of Nepal and the Communist Party of Nepal (Maoist). Despite the scale of the violence and atrocities, clause 7.2.1 of the Accord clearly said that, Both sides respect and protect the fundamental right to life of any individual. No individual shall be deprived of this fundamental right and no law that provides capital punishment shall be enacted.\textsuperscript{426} Article 12 of Nepal’s Interim Constitution, which came into force after the Comprehensive Peace Accord was signed, states:\textsuperscript{427}

\textit{"Every person shall have the right to live with dignity, and no law shall be made which provides for capital punishment."}

The prohibition against the penalty of death has also been retained in Nepal’s current draft constitution, which is being debated in the Constituent Assembly.

4.7 Arguments for and against Capital Punishment

Death penalty has long considerable debate about both its morality and its effect on criminal behaviour. Existing arguments for and against capital punishment fall under three general headings: Moral, Utilitarian, and Practical.

4.7.1 Moral arguments

Those supports the death penalty believe that those who commit murder, because they have taken the life of another, have forfeited their own right to life. Besides, they believe, death penalty is just a form of retribution, expressing and reinforcing the moral resentment not only of the victim’s relatives but of law-abiding citizens in general. By distinction, opponents of penalty of death argue that by

\textsuperscript{426}\textsuperscript{426}Unofficial Translation of the Comprehensive Peace Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist), 21 November 2006, \textit{Available at: www.usip.org} (visited on 20/08/2015) at 2:20PM

\textsuperscript{427}\textsuperscript{427}Interim constitution of Nepal 2007, \textit{Available at www.worldstatesmen.org} (visited on 20/08/15) at 2:18PM
legitimizing the very behaviour that the law seeks to repress killing capital punishment is counter-productive in the moral message it conveys.

Moreover, they wish, when it is used for lesser crimes, death penalty is immoral because it is wholly unequal to the harm done. Abolitionists also claim that death penalty violates the condemned person's right to life and is fundamentally inhuman and degrading.

Although death was suggested for crimes in many holy religious documents and historically was adept widely with the provision of religious hierarchies, today there is no agreement among religious faiths, or among denominations or sects within them, on the morality of capital punishment. In the last half of the 20th century, increasing numbers of religious leaders particularly within Judaism and campaigned against it. The penalty of death was abolished by the state for all offenses except treason and crimes against humanity, and Pope John Paul II condemned it as cruel and unnecessary.

4.7.2 Utilitarian arguments

Supporters of capital punishment also claim that it has an exclusively strong deterrent effect on potentially violent offenders for whom the threat of imprisonment is not a sufficient restraint. Opponents, however, point to research that generally has demonstrated that the death penalty is not a more effective deterrent than the alternative sanction of life or long-term imprisonment.

4.7.3 Practical arguments

There also are disputes about whether capital punishment can be administered in a manner consistent with justice. Those who support capital punishment believe that it is possible to fashion laws and procedures that ensure that only those who are really deserving of death are executed. By contrast, opponents maintain that the historical application of capital punishment shows that any attempt to single out certain kinds of crime as deserving of death will inevitably be arbitrary and discriminatory.

They also point to other factors that they think preclude the possibility that capital punishment can be fairly applied, arguing that the poor and ethnic and religious
minorities often do not have access to good legal assistance, that racial prejudice motivates predominantly white juries in capital cases to convict black and other nonwhite defendants in disproportionate numbers, and that, because errors are inevitable even in a well-run criminal justice system, some people will be executed for crimes they did not commit. Finally, they argue that, because the appeals process for death sentences is protracted, those condemned to death are often cruelly forced to endure long periods of uncertainty about their fate.

4.8 Argument against the capital punishment

The state clearly has no absolute right to put its subjects to death almost all countries do so in some form or other but not necessarily by some conventional form of death penalty. In most countries, it is by arming their police forces and accepting the fact that people will from time to time be shot as a result and therefore at the state's order.

A bulk of a state's subjects may wish to discuss the right to put certain classes of criminal to death through analysis or voting in state elections for candidates favouring the penalty of death. Majority opinion in some democratic countries, including the U.K., is still in favour of the death penalty.

It is reasonable to undertake that if a majority is in favour of a particular thing in a democracy, their wishes should be seriously measured with equal deliberation given to the downside of their views.

A fact that is suitably overlooked by anti-death penalty activists is that we are all ultimately going to die. In many cases, we will know of this in advance and suffer great pain and emotional torture in the process. This is particularly true of those diagnosed as having terminal cancer. It is apparently acceptable to be "sentenced to death" by one's family doctor without having committed any crime at all but totally unacceptable to be sentenced to death by a judge having been convicted of murder or drug-trafficking the crimes for which the majority of executions worldwide are carried out after a fair and careful trial. There are a number of unquestionable arguments against the death penalty.
The most important one is the simulated certainty that honestly innocent people will be executed and that there is no possible way of compensating them for this miscarriage of justice. There is also another significant but much less realized danger here. The person convicted of the murder may have actually killed the victim and may even admit having done so but does not agree that the killing was murder.

Often the only people who know what really happened are the accused and the deceased. It then comes down to the skill of the prosecution and defence lawyers as to whether there will be a conviction for murder or for manslaughter. It is thus highly probable that people are convicted of murder when they should really have only been convicted of manslaughter.

A second reason, that is often overlooked, is the hell the innocent family and friends of criminals must also go through in the time leading up to and during the execution. It is often very difficult for people to come to terms with the fact that their loved one could be guilty of a serious crime and no doubt even more difficult to come to terms with their death in this form. One cannot and should not deny the suffering of the victim's family in a murder case but the suffering of the murderer's family is surely valid too.

There must always be the concern that the state can administer the death penalty justly, most countries have a very poor record on this. In America, a prisoner can be on death row for many years awaiting the outcome of numerous appeals, some of which are fatuous and filed at the last minute in order to obtain a stay of execution. Although racism is claimed in the administration of the death penalty in America, statistics show that white prisoners are more liable to be sentenced to death on conviction for first degree murder and are also less likely to have their sentences commuted than black defendants.

It must be remembered that criminals are real people too who have life and with it the capacity to feel pain, fear and the loss of their loved ones, and all the other emotions that the rest of us are capable of feeling. It is easier to put this thought on one side when discussing the most awful multiple murderers but less so when discussing, say, an 18 year old girl convicted of drug trafficking. (Singapore hanged
two girls for this crime in 1995 who were both only 18 at the time of their offence and China shot an 18 year old girl for the same offence in 1998.)

There is no such thing as a humane method of putting a person to death irrespective of what the state may claim. Every form of execution causes the prisoner suffering, some methods perhaps cause less than others, but be in no doubt that being executed is a terrifying ordeal for the criminal. What is also often overlooked is the mental suffering that the criminal suffers in the time leading up to the execution. How would you feel knowing that you were going to die tomorrow morning at 8.00 a.m.?

There may be a brutalising effect upon society by carrying out executions - this was apparent in this country during the 17th and 18th centuries when people turned out to enjoy the spectacle of public hanging. They still do today in those countries where executions are carried out in public. It is hard to prove this one way or the other - people stop and look at car crashes but it doesn't make them go and have an accident to see what it is like. It would seem that there is a natural voyeurism in most people.

The death penalty is the bluntest of "blunt instruments," it removes the individual's humanity and with it any chance of rehabilitation and their giving something back to society. In the case of the worst criminals, this may be acceptable but is more questionable in the case of less lawful crimes.

Garrotti Opponents say that there might be a possibility of innocent people getting executed because of unfair and discriminatory application of the death penalty. Studies across the world have shown that in most cases, persons on death row are from economically and socially backward section of the society, indicating the inability to hire good lawyers to contest their cases. In the US, where 15 of the 50 states and the District of Columbia do not have the death penalty, most studies have failed to establish any link between crime rates and death sentences, that is, a death penalty is no deterrent against serious crime.

"Some of the major arguments used by those opposed to the death penalty include:
i. The death penalty is killing. All killing is wrong therefore the death penalty is wrong.

ii. The death penalty is violation of Human Rights.

iii. Torture and cruelty are wrong- Some executions are botched and the executed suffer extended pain. Even those who die instantly suffer mental anguish leading up to the execution.

iv. Criminal proceedings are fallible - Many people facing the death penalty have been exonerated, sometimes only minutes before their scheduled execution. Others, however, have been executed before evidence clearing them is discovered. Whilst criminal trials not involving the death penalty can involve mistakes, there is at least the opportunity for mistakes to be corrected.

v. Since in many cases at least the defendants are financially indigent - therefore end up being represented by court-appointed attorneys whose credentials are often highly questionable, opponents argue that the prosecution has an unfair advantage.

vi. The race of the person to be executed can also affect the likelihood of the sentence they receive. Death penalty advocates counter this by pointing out that most murders where the killer and victim are of the same race tend to be crimes of passion while inter-racial murders are usually felony murders; that is to say, murders which were perpetrated during the commission of some other felony (most commonly either armed robbery or forcible rape), the point being that juries are more likely to impose the death penalty in cases where the offender has killed a total stranger than in those where some deep-seated, personal revenge motive may be present.

vii. It can encourage police misconduct

viii. It is not a deterrent - anyone that would be deterred by the death penalty would already have been deterred by life in prison, and people that are not deterred by that wouldn't be stopped by any punishment. This argument is typically supported by claims that those states which have implemented the death penalty recently have not had a reduction of violent crime. A stronger variant
of this argument suggests that criminals who believe they will face the death penalty are more likely to use violence or murder to avoid capture, and therefore the death penalty might theoretically even increase the rate of violent crime.

It has also been argued that the death penalty does not deter murder because most murders are either crimes of passion or are planned by people who don't think they'll get caught (however this argument could be used for any penalty).

Some people argue that the death penalty brutalizes society, by sending out the message that killing people is the right thing to do in some circumstances.

It is claimed that the death penalty psychologically harms the executioners, in some cases contributing to Perpetration-Induced Traumatic Stress, and that even when this does not occur, killing a helpless person in a situation in which the executioner is not in danger may harm the executioner in other ways, such as decreasing his or her sense of the value of life. The suggested conclusion is that when capital punishment is not absolutely necessary to defend society, society has no right to ask executioners to risk their own mental health in such a way.

variously argue that statistics show the death penalty either makes no difference to the number of murders, or actually causes them to increase.

Some other arguments are as follows:

1. Man is supposed to be a rational animal. But can a rational being kill a man for a man? No, because it would be savage & barbarous. Besides, by killing a murderer the dead cannot be brought back to life, nor would he or his family be compensated. So instead we should reform a killer, make him realize his sin & follow a virtuous life.

2. If we kill the murderer his troubles are over. But his family is made suffer for no fault of theirs. We should instead give him other punishment, say, for example, life imprisonment so that he has to face his own conscience & repent for what he has done. Alongside, he should be given psychological treatment & an opportunity to lead a normal citizen's life.
3. Instances are many where instead of being given capital punishment to even hardened criminals, they were just imprisoned or put in a reformatory with result that they realized & regretted their wrong doings, their term of sentence were reduced as a reward. Such acts enabled them to serve their innocent families & they even turned towards social work. This shows their capital punishment is not only remedy to take care of criminals.

4. We observe today that in spite of capital punishment being very much there on the statue, heinous crimes are not decreasing. It goes to show that capital punishment is not deterrent of criminals. Therefore, we must think of changing the method of punishment. Over 30 countries in the world abolished capital punishment but none has reported any increase in crime. So death punishment is not justified in any sense.

5. The reason capital punishment should be abolished is based on the fact that sometimes judgments go wrong, and, consequently innocent people are hanged. This is because of legalistic juggling of clever lawyers. Even otherwise instances are into rare when current police officials are brought over through money and political power to file patently cooked up charge sheet in courts and magistrate in turns pass doubtful judgment. The only way to preclude the possibility of error is to abolish capital punishment itself. 'Benefit of doubt' is an important point of law & rightly so because law holds that 99 guilty can go unpunished but even one innocent should not be punished. In same spirit our supreme court has held death penalty should be awarded only in 'rarest or the rare case'.

6. We have no right to destroy what we cannot create. It is for god to give or take one's life. Mercy is higher in his life than punishment. It is barbarous to hold the doctrine of "tooth for tooth" and "limb for limb".

Various reasons against the use of death penalty:

There are plenty convincing reasons against the use of death penalty:

1. Denial of basic right - According to Humans Right Association death penalty overrules our most basic human right - the right to life. Human life has
fundamental value. The blessedness of human life is denied by the death penalty. Live is precious.

2. **The possibility of error** – Later investigations revealed many convicted individuals innocent which got death penalty in the past, and have been pardoned. Recent DNA investigation studies have shown the same thing.

3. **Unfair Judgment** - Generally, "it is observed that Capital punishment is inflicted unduly on the poor and minorities. If you follow the data of these victims, you will find that the mentally ill, poor and people belonging to minorities form a large chunk of the total number. You can also notice a kind of racial discrimination this happens due to varied reasons. Because the poor can offer very low compensation the defense lawyers are often incompetent, resulting in losing the case. Due to prejudice and bias, poor people, and people from minority sections become soft target for such capital punishments, as unrestricted discretion has offered to District attorney. If anyone wants to appeal then it becomes a burdensome process for him often resulting in denial of justice."

4. **Lack of Deterrence** - The purpose of any punishment should be deterrence from repeating the same act. But, according to the statistics available, the death penalty has not been effective in controlling the homicide rate. The studies have revealed the shocking truth that executions actually increase the murder rate. That means the capital punishment does not deter violent crime. According to a New York Times study, the last 20 years witnessed 48% homicide rate in states with the implementation of capital punishment compared to 23% in the states without capital punishment

5. **The prolonged uncertainty** – The validity to the deterrence argument is annulled by the delays, endless appeals, retrials, and technicalities that keep persons predestined to capital punishment waiting for execution for years. In fact, we are not competent enough to carry out execution. This uncertainty and incompetence offers another great injustice. It is itself cruel and a form of torture.

6. **Justifying circumstances** - Sometimes, persons suffering from emotional trauma, abandonment, violence, neglect or destructive social environment commit such
heinous crimes. These mitigating situations can have devastating effect on their humanity. So, it is unfair to hold them fully responsible for their crimes. It is our communal responsibility to show some sympathy to some extent.

7. By giving capital punishment, the family of the victim is permanently traumatized and victimized. They are often punished by their loved ones without their fault, even though they are innocent.

8. **Effects on society**— Capital Punishment is itself a premeditated murder. This is unacceptable even if it is inflicted by state authority as it lowers the value of life. In fact, such an act can only brutalize the society. Revenge is essential can become a society attitude. By witnessing such acts, our own mental makeup starts believing that violence is necessary to curb the wrongdoings.

   In conclusion, the penalty of death is a moral dishonour. The mockery is that the very civilizations that have no right to impose it, are in particular leading the traditions of death penalty. The economic malfunctions and cultural diseases in those very societies contribute to the violence. So, instead of inflicting death penalty, it’s our duty to provide opportunities for all people to accomplish a good life in a rational culture.

4.9 **Argument in favour of Death Penalty**

   Some of the philosophical principles used by societies and courts to carry out any punishment are: retribution (as revenge), deterrence (to prevent others), denunciation (disapproval), incapacitation (to prevent repetition) and rehabilitation (to give a chance for reform). The supporters of death sentence say that except the last all other legal philosophies approve of death sentence. They also cite studies stating that putting someone to death is less expensive than permanent incarceration.

   There also are disputes about whether capital punishment can be administered in a manner consistent with justice. Those who support capital punishment believe that it is possible to fashion laws and procedures that ensure that only those who are really deserving of death are executed. Supporters of Capital Punishment also claim that it has a uniquely potent deterrent effect on potentially violent offenders for whom the threat of imprisonment. Furthermore, they believe,
Capital Punishment is a just form of retribution, expressing and reinforcing the more indignation not only of the victim's relatives but of law-abiding citizens.

Currently, however, there has been a lot of controversy surrounding the death penalty. Imagine a man who commits murder once, is given a fifteen-year jail sentence and is returned to the streets where he kills again. He is imprisoned again only to be released. This could happen since almost one in ten death row inmates have been convicted of murder at least once.

That means that "some death row inmates have been given more than one chance to rehabilitate in prison and continue to commit violent crimes. Capital punishment is one of the oldest forms of punishment in the world. Most societies have thought it to be a fair punishment for severe crimes, and it is even mentioned as an appropriate punishment in the Bible. American colonists used capital punishment before the United States was a country, and most states use it today."

Opponents of capital punishment cite its arbitrariness and finality as reasons for their opposition against the death penalty. Because capital punishment can lead to an unequal application of justice, sometimes to the arguments for supporters of the death penalty include:

i. Death penalty prevents a repeat offender to ever return to society and continue to harm and murder innocent people.

ii. People committing the most heinous crimes (usually murder in countries that practice the death penalty) have forfeited the right to life.

iii. Government is not an individual and is given far more powers.

iv. The death penalty shows the greatest respect for the ordinary man's, and especially the victim's, inviolable value.

v. It strikes fewer innocent persons than alternative penalties, as among prisoners and ex-prisoners there are many who relapse into new crimes which strike innocent persons.

vi. It provides peace of mind for many victims of crime and their families.

viii. It is the most effective way to protect society (its structures and its individuals) from a felon.

ix. It is less cruel than prolonged sentences of imprisonment, especially under the conditions that would be popularly demanded for heinous criminals.

x. It is explicitly allowed in constitution and other documents of basic law.

xi. It provides extra leverage for the prosecutor to deal for important testimony and information.

xii. It shows how seriously society looks at the most heinous crimes.

xiii. It enjoys democratic support of the people.

xiv. It may deter violent crime and murder. Many advocates do not hold that this is a primary reason for supporting the death penalty.

xv. From an economical point of view, it is cheaper to put on an execution than to house a prisoner for life.

Just as the virtuous deserve reward proportionate to their good deeds, so too the vicious deserve punishment proportionate to their bad deeds. One might even hold, with Kant, that respect is shown to the criminal as someone who has chosen a particular path in life by visiting the appropriate punishment on the criminal. (Objection: Not all virtue needs to be rewarded. Likewise, there may be good reason-mercy, say to refrain from imposing the full weight of a deserved punishment.)

Criminals may be led to rethink their lives and set their souls in order by the pressing expectation of death.

It upholds the rule of Law, because it discourages vigilantism or self-help on the part of the victim's family or friends (in the form of lynching or the retaining of hit men). If not controlled, such self-help can lead to extremely destructive vendettas or blood feuds.

If capital punishment were used more, there would be fewer inmates on death role. Every time an inmate was executed it would show what happens to people that break the law. If capital punishment were not there in all states, criminals would run wild because they would know that they would not receive any type of capital punishment.
Some other arguments in favour of capital punishment:

1. The time is not yet ripe to abolish capital punishment. There is no letup in crimes. Capital punishment is an effective deterrent for would-be offenders or murderers. Those who argued that despite of capital punishment being theme on the statue book crime is on the increase fail to understand that it is because of our faulty justice delivery system where justice delayed is justice denied, and not the other way round.

2. There are certain kind of hardened criminals who are beyond reform. It is futile to teach them sanity. Killing other has become their second nature and they have dozens of murder cases pending on them. It would only be for good of society that they are sent to the gallows thus their career on crime is stopped.

3. If a murderer is not put to death but instead allowed to live on, he is tempted to repeat the crime in future. It is often happens that murderer set at large through police connivance or legal trickery of lawyer indulge in more heinous crime for fun or contract killing until they are caught or killed.

In some countries like Pakistan, Iran, Dubai where laws are rigid and even petty criminals are awarded harsh punishment, crime is rare. Similarly in fascist countries where death penalty is awarded for negligence of duty or other offences, efficiency & honesty is found in abundance. Jawahar Lal Nehru once favoured capital punishment for black marketers as well.

It is believed, primarily by those who swear by death penalty that justice is better served in the form of capital punishment. Moreover, it is a major crime deterrent.

Another argument for the death penalty is that by giving the death penalty, there will be no sympathy shown to criminals. By keeping them alive through prisoners' parole, criminals get a chance to escape and thus go scots free, committing more crimes.

Capital punishment will curb this. Further, if the person has been proved to be guilty of a heinous crime, with the help of forensic science and advanced investigation methods, there would not be any chance of an innocent person being killed. In addition to this, it is believed that killing a criminal is more humane than
incapacitating or keeping that person in jail for decades together. Retribution or capital 
punishment for making the criminal realize what the victim went through is another 
reason for supporting the death penalty. Thus the answer to should death penalty is 
allowed? Will undoubtedly be yes from this perspective?

4.10 Should death penalty be abolished?

The aim of the judicial system is to reform the individual found guilty of a 
particular crime, and the death penalty contradicts this very aim. The judicial process 
is undertaken to judge whether the person has committed the crime or not, and not to 
judge whether he will reform or not. This is one of the most prominent arguments of 
the people who believe that death penalty should be abolished. These people also 
argue that the judicial system can be well-versed with the investigation, but it can't 
really have an opinion on the whether the convict is ready to reform or not.

Secondly, no legal system in this world can boast of cent percent 
discipline when it comes to crime investigation. There are chances that lack of proper 
investigations may land a wrong person in the conviction box, and even send him to 
gallows. One also has to understand that execution of an individual cannot be rectified 
if the person was found to be innocent after the execution. On the other hand, a person 
serving a life term can at least be set free once his innocence has been proved.

4.11 Why shouldn't death penalty be abolished?

The number of people in favour of the death penalty is quite decent as well. 
These people argue that respecting the human rights of a person who himself doesn't 
have any respect for the rights of others is obviously out of question. Moral grounds 
are not at all substantial to challenge the fact that the person has committed a heinous 
crime.

Those in favour of capital punishment also tend to question the fact that why 
does a citizen of the nation, as a taxpayer, have to take the burden of housing a 
convict, and providing him with the basic necessities of life. Instead, executing him 
will save a decent amount of money, which can channelize towards the development 
of the nation.
More importantly, allowing this person to roam about freely in the society, even if it is after the completion of his term in prison, is indeed a risk. No one can give a guarantee that the person will repent after his prison term, and refrain from doing such things in the future. More importantly, sentencing a person for capital punishment for crimes like murder or rape will also work in dissuading others from committing such crimes.

**Realistic alternatives to the Death penalty**

Any punishment must be fair, just, adequate and most of all, enforceable. Society still views murder as a particularly heinous crime which should be met with the most severe punishment. Whole life imprisonment could fit the bill for the worst murders with suitable gradations for less awful murders. Some 44 people are currently serving whole life tariffs in the UK.

Imprisonment, whilst expensive and largely pointless, except as means of removing criminals from society for a given period, is at least enforceable upon anyone who commits murder (over the age of 10 years). However, it appears too many people to be a soft option and this perception needs to be corrected.

In modern times, we repeatedly see murderers being able to get off on the grounds of diminished responsibility and their alleged psychiatric disorders or by using devices such as plea bargaining. This tends to remove peoples' faith in justice which is very dangerous.

Are there any other real, socially acceptable, options for dealing with murderers? One possible solution (that would enrage the civil liberties groups) would be to have everyone's DNA profile data-based at birth (not beyond the wit of modern computer systems), thus making detection of many murders and sex crimes much easier.

If this was done and generally accepted as the main plank of evidence against an accused person and a suitable, determinate sentence of imprisonment passed, involving a sensible regime combining both punishment and treatment, it would considerably reduce the incidence of the most serious and most feared crimes.
The reason for this is that for most people, being caught is a far greater deterrent than some possible, probably misunderstood punishment, e.g. life imprisonment. Surely this has to be better than the arbitrary taking of the lives of a tiny minority of offenders (as happens in most countries that retain the death penalty) with all the unwanted side effects that this has on their families and on the rest of society.

It is clear that certainty of being caught is a very good deterrent - just look at how people observe speed limits when they see signs for speed cameras and yet break the speed limit as soon as the risk is passed.

**Evaluation**

Should the India justice system continue to let violent criminals back on the streets where they are likely to commit murder again? Should Capital Punishment stay in effect in this country? There is an ongoing debate as to whether capital punishment reduces crime rates; ideally, potential murderers (or other criminals) would be too scared of the punishment to commit crime.

The counter argument is that it doesn't affect crime rate, because potential criminals think that they won't be caught, so they do not care about punishment until it's too late. There are even studies that have concluded that the death penalty appears to encourage murder.

However, like many questions in the society, actual research data on this question can be interpreted very differently by people with differing predispositions towards the punishment of death. In any event, the actual effectiveness is largely irrelevant to many who feel strongly about the debate, as their views are based on other factors Is it appropriate for the guilty to impose the most extreme kind of punishment?

This question remains unanswered till now also as to whether society has any right to take life or no. If yes then criminal will never be given opportunity to become better person & if no then who will give justice to victim or innocent who are raped, etc.
The debate about sentence of death in India, the specifications for which are grey system in India is in direct need of some serious lubrication in order to find out such solution which will make accuse better person & at same time justice favour to victim also upon whom the atrocious crime is done.

4.12 Is Death Penalty cruel and unusual punishment - pro arguments?

Some people believe that purpose of the sentence of death is to send a right message to the society. Such punitive punishment implies that no serious crime will be tolerated and the guilty must be punished for his or her crime. In short, according to this pro death penalty argument, the penalty of death acts as a deterrent for society and prevents further crimes. According to some people murders committed in the rage of anger or in a drunken state can be still excluded from sentence of death.

But people who commit crime in the conscious state of mind have no right to live. If you analyse the last sentences of the criminals you would realize that they all were scared of dying. It proves that death is the terrifying punishment they could be allotted with. And this point makes clear that death is one of the most scary things people fear. So other punishments, be it life imprisonment, etc. are milder for criminal minded people and hence penalty of death is the only way to worsen their criminal motives.

One of the other death penalty pros comes from victims and families of victims who believe that sentence of death is the only justice they could get which is their right and not a privilege. If you think from their point of view, you would come across various emotional issues that would force you think that life for life is the ideal punishment.

4.13 Is Death Penalty cruel and unusual punishment - against arguments?

One of the biggest arguments that anti-death penalty people make is that death going to bring back the life of a victim, which is true. Whatever you do with the criminal, the victim has already suffered it all and gone probably. As someone rightly said that to take a life when a life has been lost is revenge, and not justice.

One of the other arguments against the death penalty is that there is no point in punishing a criminal with death penalty as most of the time they knew what they were
doing was wrong and they also knew the punishment for it. The very fact that the criminals are aware of the grave consequences of serious crimes, they are probably ready to face death, which is one of the notable death penalty facts.

According to anti-death penalty philosophy, criminals need to be given a second chance to understand their mistake. They should be kept under government surveillance if they are really sorry for what they did. This is one of the strong reasons against death penalty that could be considered in case of juvenile crimes or crimes committed under drug or alcohol influence. Iowa State Supreme Court Justice has put this thought in a simpler manner in 1840. It says, “Crime indicates a diseased mind in the same manner that sickness and pain do a diseased body. And as in one case we provide hospitals for the treatment of severe and contagious diseases, so in the other, prisons and asylums should be provided for similar reasons.”

One hundred and forty countries today have abolished the death penalty in law or practice. This trend towards abolition is evident in the developments in international law, which have limited the scope of the death penalty by restricting the nature of crimes for which it can be implemented, limiting the manner in which it can be carried out, and introducing procedural safeguards. Recent political commitments on the international stage, such as growing support for the UN General Assembly resolutions on a moratorium on executions, reaffirm this trend.

It demonstrates that “there is no evidence of a link between fighting insurgency, terror or violent crime, and the need for the death penalty. Several countries have abolished the death penalty, or maintained moratoriums on executions, despite facing civil wars, threats of insurgency or terrorist attacks. For example, Nepal officially abolished the death penalty in 1990 and did not re-introduce it even in the aftermath of the civil war; Sri Lanka, despite a long civil war, has maintained a moratorium on the penalty; and Israel has only executed once since its formation. Most European countries remain abolitionist despite facing terrorism within their national boundaries, e.g., the UK, France, and Spain. In fact, it is relevant to note that the UK abolished the death penalty at a time when the Irish Republican Army, a revolutionary military organisation, was particularly active in the country. The same
can be seen for fighting crime. The Philippines faces a severe problem of drug trafficking, but has abolished the death penalty. South Africa abolished the death penalty at a time when crime rates in the country were very high.”

A country’s decision to abolish or retain the death penalty is not necessarily linked to its socioeconomic or development profile; rather, political will and leadership are keys. Several developing countries do not use the death penalty. Nepal, Rwanda, Senegal, Solomon Islands, Djibouti, Togo, Haiti, and Guinea- Bissau are all examples of countries ranked under *Low Human Development* in the UNDP Human Development Index (that is, considered less developed than India), which have abolished the death penalty.428

State practice regarding the penalty of death also proves that the road to abolition is not always a function of public opinion. Political leadership has been keys to this process. Many states have not retains the penalty of death at a time when public opinion may not have necessarily supported this position. Indeed, public opinion in many countries has only gradually reversed over time, changing with subsequent generations, suggesting that it takes time for populations to stop thinking of the penalty as *useful*, or realise that it has no linkages with levels of homicide. For example, “in France, public opinion continued to support the death penalty for several years after it was abolished, and it was about two decades after the abolition of the law that opinion began to change.” Similarly, In South Africa, a Constitutional Court decision found the death penalty to be unconstitutional at a time when the public supported it, and the decision of the Court was supported by the legislature. The passage of time has proven these to be wise courses of action. These countries remain abolitionist even today, and have not felt the need to doubt or question their decisions. They have relied on different methods to control crime and sanction individuals. In the

428See *Human Development Index and its components*, Available at: www.hdr.undp.org/en/content/table-1-human-development-index-and_itscomponents (visited on 20/08/2015) at 2:09 PM
UK and France, the political parties who abolished the death penalty in the face of contrary public opinion were in fact re-elected.\textsuperscript{429}

The situation today can be contrasted with the global status of the death penalty in 1979 - 1980, at the time of the Supreme Court's decision in \textit{Bachan Singh}\textsuperscript{430}. The Court had noted that only 18 states had abolished the death penalty for all offences, and 8 more had only retained it for specific offences committed in time of war. The Court cited Saudi Arabia, the United States, Israel, China, Argentina, Belgium, France, Japan, Greece, Turkey, Malaysia, Singapore and the USSR (Russia) as examples. Several of these countries are abolitionist in law or practice today, including Belgium, France, Greece, and Turkey. Others only retain it for exceptional crimes, such as Argentina and Israel.\textsuperscript{430}

There is a clear trend towards abolition in international law and state practice across the globe. International legal norms have evolved to restrict the lawful use of capital punishment in a very narrow variety of cases, and a very limited manner. India continues to sentence individuals to death and execute them, and has also opposed all five General Assembly resolutions on a moratorium. In doing so, India keeps company with a minority of countries who retain the death penalty, and an even smaller number who actually carry out executions, a list that includes China, Iran, Iraq and Saudi Arabia.

\textsuperscript{429} In their article, Hood and Hoyle refer to a study on death penalty and public opinion, which found that each year of abolition “lowered the odds that an individual would support the death penalty by 46 per cent”, indicating that abolition led by strong political leadership could itself lead to a change in public opinion. Hoyle and Hood, Deterrence and Public Opinion, in Moving Away from the Death Penalty: Arguments, Trends and Perspectives (United Nations, 2014), \textit{Available at} www.ohchr.org/Lists/MeetingsNY/Attachments/52/Moving-Away-from-the-Death-Penalty.pdf (visited on 20/08/2015) at 2:19PM