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# The Constitutional Right to Life and the Death Penalty: A Comparative Analysis with a Focus on India

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NAVYA SUSAN KURIAN<sup>1</sup>, KATHRYN FAITH GRACIA PHILIP<sup>2</sup> AND SONALIYA K. SUNNY<sup>3</sup>

## ABSTRACT

*This paper provides a comprehensive exploration of capital punishment, tracing its historical roots, evolution, and current status in India and globally. The focus is on India's journey from ancient practices rooted in Hindu philosophy to the influences of Mughal and British rule, post-independence legal developments, and the jurisprudential aspects of capital punishment. The paper also examines the statistical representation of death penalty cases in India, including notable legal instruments and reforms. The international context is explored through the lens of human rights instruments, with a detailed analysis of countries such as the United States, China, and those in the Middle East. The shifting global perspective on capital punishment is highlighted, emphasizing the push for abolition and the role of international organizations. The abstract concludes with a reflection on the evolving dynamics of the death penalty and the call for consistency in advocating human rights both domestically and internationally.*

**Keywords:** *Capital Punishment, Death Penalty, India, Jurisprudence, Human Rights, Legal Codes, Judicial Pronouncements, International Instruments, Statistical Representation, Global Context, Middle East, United States, China, Abolition, Human Rights Violations.*

## I. INTRODUCTION

“Capital Punishment is as fundamentally wrong as a cure for crime as charity is wrong as a cure for poverty.”- Henry Ford

Capital punishment is derived from the Latin term “Capitalis” which means from head referring to execution by beheading. The name evolved over the years from execution to death penalty to judicial homicide. Indeed, the word judicial homicide means the punishment which is given by judicial pronouncement.

The origins of capital punishment can be traced back to 18th century BCE in Babylon, where

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King Hammurabi codified the death penalty for 25 different crimes. This practice later gained prominence in Rome around 63 BCE, where slow crucifixion was employed as a form of public humiliation and prolonged suffering for criminals. In 17th century Greece, capital punishment was also prevalent under various names, reflecting the changing times and cultural contexts. The renowned philosopher Plato viewed crime as a form of defilement, a transgression that required purification through capital punishment. He believed that there was no other means to restore order and balance to society.

The evolution of capital punishment in relation to human rights has been a gradual process that has unfolded over many years. As legal systems have matured, so has the recognition of the inherent human rights of individuals. International law, first codified in 1945, has played a crucial role in defining and protecting these rights, including the fundamental right to life. While international law applies to all individuals globally, its specific implementation varies depending on whether a country has ratified or acceded to relevant treaties. Capital punishment, by its very nature, constitutes a violation of the right to life, as it inflicts an irreversible and inhumane form of punishment that disregards the inherent dignity and worth of every human being.

## **II. THE HISTORY OF CAPITAL PUNISHMENT IN INDIA**

### **(A) Ancient Period:**

The society of ancient India was characterized by the principles of justice. In such a society, taking a life was considered a just punishment for certain wrongdoings. Thus, the roots of capital punishment can be traced back to Hindu philosophy, where sacred texts like the Mahabharata and writings of Kalidasa and Kautilya portrayed death penalty as a reasonable punishment for certain gross crimes such as murder, treason, and arson.

The history of India was thereafter strongly influenced by the Mughal rule, which also had a unique perspective on the validity of capital punishment. They influenced the legal system of the country in such a way that any murder could be awarded the punishment of death penalty. The main aim behind this approach was to create an atmosphere of deterrence and to maintain societal tranquillity. This ideology was maintained until the start of British rule in India.

### **(B) British Rule:**

The Islamic legal system was greatly condemned by the British. Thus, Lord Cornwallis began reforming it from the year 1790. One such significant reform was the elimination of a statute exempting criminals from the death penalty in cases where the victim was not bloodied. The British aimed at strengthening the existing legal framework as well as creating congruence

between Indian and British laws. The framework of capital punishment in India was greatly affected by English laws during the era of British subjugation. Laws that govern the criminal arena in India, such as the Indian Penal Code (IPC) of 1860 and the Code of Criminal Procedure (CrPC) of 1898, are perfect examples of a beautiful blend between English jurisprudence and Indian laws.

**(C) Post-Independence Period:**

Capital punishment was retained in Indian criminal law even after the end of British rule. The IPC, even till date, contains a list of offenses punishable by death. However, various changes were made in the mode of application of the death penalty through various amendments to the law and other judicial interpretations. One such watershed moment was marked in Indian legal history through the case of *Bachan Singh v. State of Punjab*, wherein the Supreme Court introduced the concept of the "rarest of the rare." According to this doctrine, the death penalty was strictly applicable only for exceptionally gruesome crimes, thus providing an additional layer of careful examination in capital punishment. Further evolutions were made to this concept by introducing the constitutional provisions granting clemency powers to the President and Governors.

### **III. JURISPRUDENCE OF CAPITAL PUNISHMENT IN INDIA**

**(A) Legal Codes:**

IPC and CrPC identify various offenses that are to be punished by the death penalty and provide procedural regulations relating to the punishment's implementation. Thus, these legal documents act as the rudimentary elements that determine the jurisprudence of capital punishment. Various reforms and amendments made over the years to these legal codes severely impact the application and implementation of capital punishment in the country. The mandate of CrPC, 1973, which requires that judgments must clearly provide reasons for such awards, ensures transparency and accountability in the system.

**(B) Judicial Pronouncements:**

Another important factor that determines the jurisprudence of capital punishment in India is the Supreme Court. Doctrines such as the "rarest of the rare" case and the unconstitutionality of declaring a mandatory death sentence were introduced through landmark cases like *Bachan Singh* and *Mithu v. State of Punjab*.

The Constitution's clemency powers highlight the significance of a thoughtful approach to the death penalty. The President and Governors may grant clemency under Articles 72 and 161,

which provide constitutional recognition of the necessity for mercy and humane considerations.

### **(C) Indian Context**

Death Penalty is a process wherein; the state condemns a deed by sentencing the convict to death for any heinous crime committed by them. Death sentencing is only used when the offence committed is so serious that it cannot be vitiated. When we look back at history it can be seen that death sentencing existed since time immemorial and the first ever known incident dated back to the 18<sup>th</sup> century B.C.<sup>4</sup>

Nevertheless, in recent times, in many western cultures this practice has been seen as a taboo and is also banned as it was incompatible with human rights compulsions. It can also be seen that the United Kingdom and France have both completely abolished this practice. Whereas, the United States makes use of this practice of death sentencing in rare circumstances.<sup>4</sup>

In India, in 1980, the Bachan Singh case established the "extraordinary circumstances" that determined whether or not the death penalty was required in the case. The heinousness of the murder's motive is insufficient to justify the death penalty. The author went above and beyond about the numerous procedures and safeguards that are used before passing a death sentence.<sup>4</sup>

### **(D) Legal Instruments:**

The Indian Criminal Law is based off of a mixture of reformatory and deterrent theories of punishment. These punishments should be applied to deter persons who commit crimes but these offenders must also be given an opportunity to reform themselves. It is upon the courts to provide meticulous justification upon the decision of death penalty when it is imposed on an offender.

The Indian Penal Code, 1860<sup>5</sup>, contains various provisions with regards to the crimes that may fall under this category of Death Sentencing such as:

Section 121 - Waging, or attempting to wage war, or abetting waging of war, against the Government of India. This Section pertains to anyone who attempts or succeeds in waging war against India may face the death penalty.

Section 132 - Abetment of mutiny, if mutiny is committed in consequence thereof. According to this Section abatement of armed rebellion by an officer or member of the army, navy, or air force or anyone who aids in the commission of a mutiny by an officer, soldier, sailor, or pilot

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<sup>4</sup> Aditi Agrawal, *Death Penalty: An Overview of Indian Cases*, Academike Articles on Legal Issues, (September 2, 2014, 11:18 AM), <https://www.lawctopus.com/academike/death-penalty-an-overview-of-indian-cases/>

<sup>5</sup> The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

in the army, navy, or air force of the Government of India can be punished by death.

Section 194 - Giving or fabricating false evidence with intent to procure conviction of capital offence.

Section 302 - Punishment for murder. According to this Section whoever commits murder will be punished by death or life imprisonment and is also penalized with a fine.

Section 305 - Abetment of suicide of child or insane person. According to this Section if any person under the age of eighteen, any insane person, any delirious person, or any person intoxicated commits suicide, whoever aids and abets such suicide shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to pay a fine.

Section 364A - Kidnapping for ransom, etc. This Section states that that any person who kidnaps someone and threatens to harm or kill an individual, or causes death or harm to the person, with an intention of forcing the government or foreign state or any other individual to do something or refrain from doing something is said to be committing a serious offence.

Criminal Law (Amendment) Act, 2013,<sup>6</sup> has added some offences to the Indian Penal Code, 1860 such as:

Section 376A - Punishment for causing death or resulting in persistent vegetative state of victim. This Section states that the death sentence is specified for rape that results in the victim's death or persistent vegetative state.

Section 376E - Punishment for repeat offenders. This Section states that any individual who is a repeat rape offender may face the death penalty.

Section 396 - Dacoity with murder. This Section states that if any one of five or more people who are concurrently committing dacoity commits murder while doing so, each of those people shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term that may extend to ten years, and shall also be fined.

And furthermore, there were certain Acts which had provisions that pertained to serious offences where an individual will be sentenced to death. Some of these acts were:

The Commission of Sati (Prevention) Act, 1987<sup>7</sup> – This Act imposes the death sentence on anyone who is directly or indirectly involved in the act of Sati.

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<sup>6</sup> Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India).

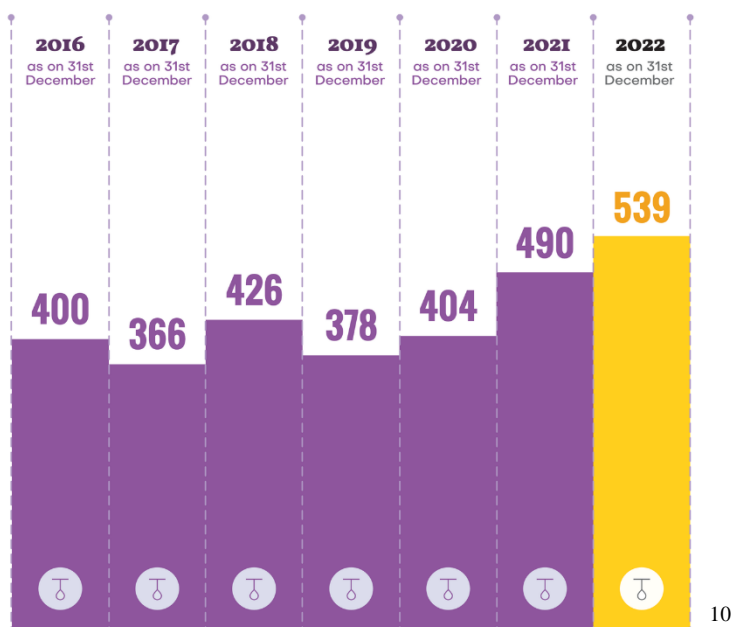
<sup>7</sup> The Commission of Sati (Prevention) Act, 1987, No.3, Acts of Parliament, 1988 (India).

Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985<sup>8</sup> - This Act Based on Section 31A of the NDPS Act imposes the death penalty for providing financial support or participating in the production or sale of a preset amount of narcotics or psychotropic substances.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989<sup>9</sup> - Under this Act, forging evidence that may lead to the conviction and execution of an innocent member of a scheduled caste or tribe is a capital offence.

#### IV. STATISTICAL REPRESENTATION OF DEATH PENALTY IN INDIA OVER THE YEARS

##### PRISONERS ON DEATH ROW



(Source: Project 39A)

From the statistics presented above we can infer that there has been an increase in the persons who received capital punishment over the years.

<sup>8</sup> Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, No. 61, Acts of Parliament, 1985 (India).

<sup>9</sup> The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 (India).

<sup>10</sup> Annual Statistics Report 2022, Project 39A, (2022), <https://www.rgnul.ac.in/PDF/f7ff0636-9075-47f2-8e17-a5ba7be7a3cf.pdf>

# STATISTICS

Sessions Courts	High Courts	Supreme Court
DEATH SENTENCES IN 2021	CONFIRMATIONS	CONFIRMATIONS
<b>146</b>	4 (4)	2 (2)
	COMMUTATIONS	COMMUTATIONS
	51 (39)	7 (5)
	ACQUITTALS	ACQUITTALS
	40 (19)	5 (3)
DEATH SENTENCES IN 2022	REMITTED	REMITTED
<b>165</b>	6 (6)	0

11

(Source: Project 39A)

### (A) First ever capital punishment:

The first ever case of capital punishment in India came during 1973 in the case of Jagmohan Singh v. State of U.P, October 1972 this case included an unsuccessful challenge to the death penalty's legality. Its significance stems from the fact that it emphasized the need of noting 'special reason' while imposing death penalties<sup>12</sup>. Here, the argument was that death sentences violates the right to life and equality which has already been guaranteed by the Indian Constitution.<sup>13</sup> Furthermore, the uncontrolled and unguided arbitrary discretion in the judges to impose capital punishment violates Article 14 of the Indian Constitution, and the petitioners contended that the procedure for considering circumstances in order to pronounce findings and reasoning to make judicial decision between capital punishment and life imprisonment is not available under CrPC, 1898, thus it violated Article 21 of the Indian Constitution.<sup>14</sup>

However, the Supreme Court of India rejected the argument, holding that the death sentence is

<sup>11</sup> Annual Statistics Report 2022, Project 39A, (2022), <https://www.rgnul.ac.in/PDF/f7ff0636-9075-47f2-8e17-a5ba7be7a3cf.pdf>

<sup>12</sup> Shivam Dubey and Pooja Agarwal, **CAPITAL PUNISHMENT IN INDIA: THE UNENDING CONUNDRUM**, IJLLIS, <http://ijllis.in/capital-punishment-in-india-the-unending-conundrum/>

<sup>13</sup> Jyoti Ranjan Samantray, Jugal Kishore Mishra, Suman Das, Judiciary chronology in capital punishment: A descriptive analysis in the context of Odisha, World Wide Journal of Multidisciplinary Research and Development (July-2022), (August, 07, 2022), [https://wwjmr.com/upload/judiciary-chronology-in-capital-punishment-a-descriptive-analysis-in-the-context-of-odisha\\_1659175754.pdf](https://wwjmr.com/upload/judiciary-chronology-in-capital-punishment-a-descriptive-analysis-in-the-context-of-odisha_1659175754.pdf)

<sup>14</sup> Jyoti Ranjan Samantray, Jugal Kishore Mishra, Suman Das, Judiciary chronology in capital punishment: A descriptive analysis in the context of Odisha, World Wide Journal of Multidisciplinary Research and Development (July-2022), (August, 07, 2022), [https://wwjmr.com/upload/judiciary-chronology-in-capital-punishment-a-descriptive-analysis-in-the-context-of-odisha\\_1659175754.pdf](https://wwjmr.com/upload/judiciary-chronology-in-capital-punishment-a-descriptive-analysis-in-the-context-of-odisha_1659175754.pdf)

pronounced after a detailed recording and evaluation of aggravating and mitigating circumstances, and thus such procedure justifies capital punishment and does not violate Article 21 of the Indian Constitution. However, in multiple incidents of rape and murder in the state of Odisha, judges from various districts have sentenced people to death throughout these years.<sup>15</sup>

However, such sanctions were yet to be carried out for a variety of reasons. Despite the fact that the POCSO Act and the IPC provide for capital penalty for sexual acts against minors, not a single person has been hung in Odisha in the previous 25 years.

### **(B) Most recent and rarest of rare**

India may soon reconsider whether 'hanging by death' is the proper method of execution for death row inmates. The move comes after the Supreme Court of India, while hearing a six-year-old Public Interest Litigation (PIL), stated that it is necessary to investigate if 'hanging by death' is a proportional and less painful means of executing death row offenders. It asked the Union government for "better data" on concerns concerning the manner of execution. At the end of 2022, 53 nations still practiced death punishment, including India, the United States, South Africa, all countries in West Asia, and several in South-East Asia and western Africa.<sup>16</sup>

In March 2020, India killed four people convicted of the savage sexual assault of a 22-year-old paramedic student in New Delhi in 2012, which became known as the 'Nirbhaya case' or the '16 December case,' after the date of the incident. The four Nirbhaya case convicts were the last people hanged in India.

On March 21, a bench of the Supreme Court headed by Chief Justice DY Chandrachud said, "We will look at two perspectives: first, is there any alternative method, far more consistent with human dignity, to render 'hanging by the neck' unconstitutional; and second, even if there is no alternative method, does 'hanging by the neck' method satisfy the test of proportionality so as to render it valid, an issue that was not addressed in the Deena judgement at all."<sup>17</sup>

The court also rejected the firing squad technique of capital punishment as an alternative to

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<sup>15</sup> Jyoti Ranjan Samantray, Jugal Kishore Mishra, Suman Das, Judiciary chronology in capital punishment: A descriptive analysis in the context of Odisha, *World Wide Journal of Multidisciplinary Research and Development* (July-2022), (August, 07, 2022), [https://www.jmr.com/upload/judiciary-chronology-in-capital-punishment-a-descriptive-analysis-in-the-context-of-odisha\\_1659175754.pdf](https://www.jmr.com/upload/judiciary-chronology-in-capital-punishment-a-descriptive-analysis-in-the-context-of-odisha_1659175754.pdf)

<sup>16</sup> GEETA PANDEY, DELHI NIRBHAYA RAPE DEATH PENALTY: WHAT DO HANGINGS MEAN FOR INDIA'S WOMEN? *BBC NEWS*, (20, MARCH, 2020), [HTTPS://WWW.BBC.COM/NEWS/WORLD-ASIA-INDIA-50812776](https://www.bbc.com/news/world-asia-india-50812776)

<sup>17</sup> MUKUL SHARMA, INDIA'S TOP COURT RULES OUT LETHAL INJECTION AS ALTERNATIVE TO HANGING METHOD OF CAPITAL PUNISHMENT, (MARCH, 22, 2023, 8:44 PM), [HTTPS://WWW.WIONEWS.COM/INDIA-NEWS/INDIAS-TOP-COURT-RULES-OUT-LETHAL-INJECTION-AS-ALTERNATIVE-TO-HANGING-METHOD-OF-CAPITAL-PUNISHMENT-574724](https://www.wionews.com/india-news/indias-top-court-rules-out-lethal-injection-as-alternative-to-hanging-method-of-capital-punishment-574724)

hanging till death. It also ruled out the electric chair and lethal injection as alternatives for execution, citing accounts of inmates suffering tremendous agony and numerous errors.

## V. GLOBAL CONTEXT

### (A) International Instruments:

<sup>18</sup>UDHR – Universal Declaration of Human Rights which came into picture in the 1947 after the World War. This was introduced with an object to safe and provide basic human rights of the individual living in nook and corner of this world. It was brought with a thought to bring some change in the humanity of the world. This declaration had vocalized about the violation of right to life and to right live cruel or torture free with respect to capital punishment as one of the aspects.

Article 5 the heading of it conveys a clear meaning which is Freedom from Torture.

*“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

Article 10 Right to fair trial – fair which means just which is something essential in the life of human being. John Rawls the famous American philosopher himself have talked about Justice as Fairness 1985 – three main principles which are difference, liberty and fair equality of opportunity.

*“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”*

<sup>19</sup>ICCPR -International Covenant on Civil and Political Right was established in the 1976. The convention is that it is a multilateral treaty which makes the nation to respect the individuals civil and political rights like right to life and right to fair trial by due process of law.

Article 6

*“1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

*2. 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*

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<sup>18</sup> Universal Declaration Human Rights 1948 – General Assembly resolution 217 A

<sup>19</sup> The International Covenant on Civil and Political Rights 1966 – General Assembly Resolution 2200A (XXI)

*be carried out pursuant to a final judgement rendered by a competent court.*

*3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*

*4. 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.*

*5. 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.*

*6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.”*

#### Article 7

*“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”*

<sup>20</sup>Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms [European Convention on Human Rights] which is about the abolition of the death penalty in all circumstances which was adopted by the Council of Europe in 2002. It provides for the abolition of the death penalty in all situations which includes time of war or of imminent threat of war.

The above article itself states clearly about inhuman and degrading punishment is against the basic aspect of an individual’s Human Right.

## VI. COUNTRIES WHERE CAPITAL PUNISHMENT STILL PREVAILS

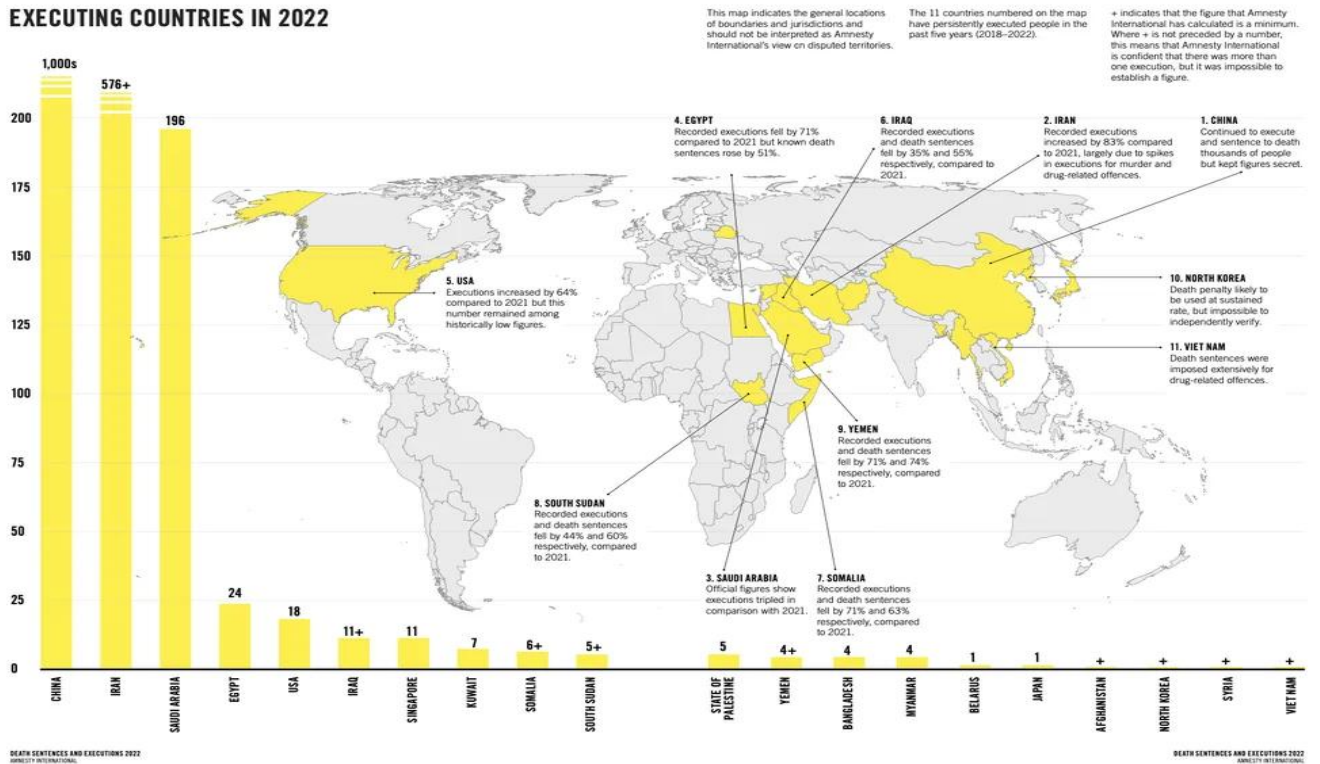
<sup>21</sup>Executions carried out in response to other crimes do not provide justice to the victims of those crimes or their families. Instead, they create the impression that the justice system is biased and unfair, especially when other serious human rights violations, such as torture and disappearances, are not being addressed.

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<sup>20</sup> Amnesty International, International Standards on the death penalty, AI ACT 50/001/2006 Amnesty International January 2006.

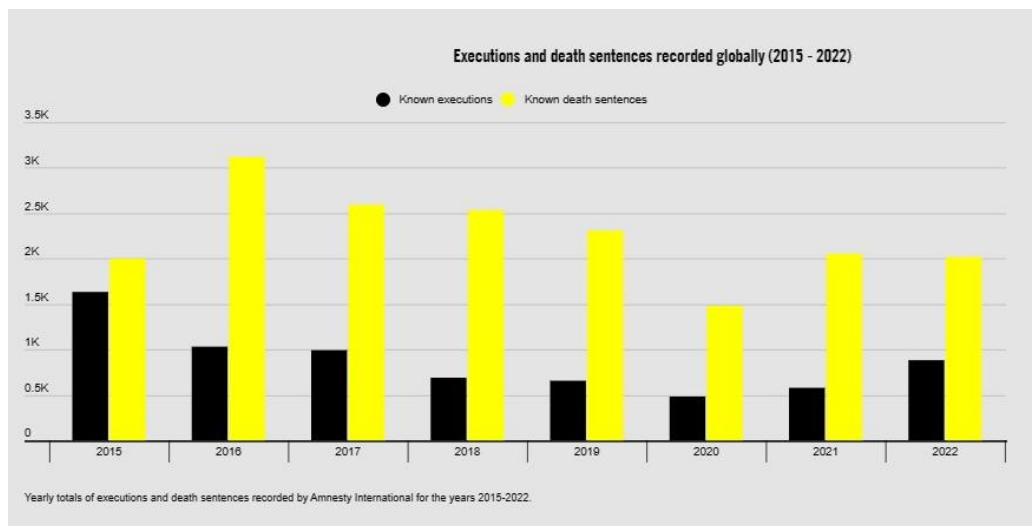
<sup>21</sup> Death Penalty Information Center, Worldwide Wednesday International Roundup: China, Iran, North Korea, Pakistan, Saudi Arabia, South Korea, and Vietnam, DPIC, 20 Nov, 2023, 9:15 AM, <https://deathpenaltyinfo.org/news/worldwide-wednesday-international-roundup-china-iran-north-korea-pakistan-saudi-arabia-south-korea-and-vietnam>

**EXECUTING COUNTRIES IN 2022**



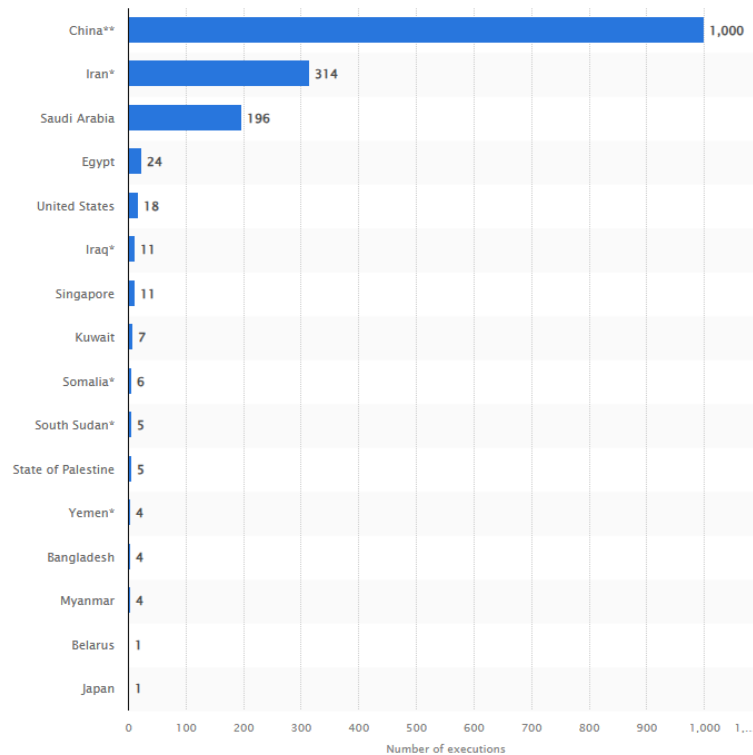
(Statistics of all the countries who have executed in the year 2022)

(Source – Death Penalty Information Center)



(Statistics of Goble execution over the years)

(Source- Amnesty International)



**(Number of executions worldwide in 2022, by country)**

**(Source – Statista Research Department)**

### **(A) Middle Eastern Countries**

The execution system in the middle east have been there since a long time. Some of the middle east countries are Kuwait, Saudi, UAE, Iraq and many more. Death penalty is legal in Gulf Nations for offences like murder, non-violation of drugs, human trafficking. These countries till continuous the spree of execution over the years.

#### **Kuwait**

The <sup>22</sup>Constitution Article 31(2) of the Kuwaiti constitution provides that “No person shall be subjected to torture or to ignominious treatment.”

Kuwait Military Code have stated about capital punishment.

<sup>23</sup>Before 2016 there used be execution of children below the age of 18 years and they were tried under the laws which were applicable to adults. There was no system of juvenile system were followed. In 2017 laws changed and execution of the children below 16 and 17 years of age were prohibited. Currently the death penalty is prominent in Kuwait for the offences

<sup>22</sup> Constitution Kuwait 1962 (reinstated 1992)

<sup>23</sup> Child Rights International Network, Inhuman Sentencing of Children in Kuwait, 2017 (Campaign Report)

committed by an individual. But according to the Statistics given above 2022 Kuwait is on the countries who have execution of individual up to 7 individuals.

### Saudi

This country is worldwide known are the most heinous executers. <sup>24</sup>Some Crimes where death penalty is given for - murder, drug trafficking (including smuggling), sexual offenses, the formation of or membership with an organized criminal group or proscribed group, kidnapping or false imprisonment accompanied by assault, burglary, or robbery, sedition, treason, and other state security offenses. Additionally, even witchcraft and sorcery. It also has a history for sentencing minor and even they have claimed that they have abolished it not fully true. Even a number of women have received death penalty.

In 2023 it is a raising concern for this country with respect to death penalty as it has increased approx. by 50% over the years. Also, <sup>25</sup>UN have been urging to revoke death penalty with respect to social media activity. Where an individual Mohammed Al Ghamdi who was sentenced to death for his social media posts – this shows how one’s freedom of expression is taken away by the authorities.

Even in the past year 2022 a mass execution approx. 80 men in specific were seen in this country. Where the <sup>26</sup>Human Rights Watch have pointed out how fair trial system in the arena of criminal justice is becoming impossible. These men mentioned in above were mainly Shia Muslims who are minorities and individuals who are suffering discrimination over the past years. In 2020 Sudi authority have stated it push to embrace death penalty for most offence.

“In August alone, Saudi Arabia executed an average of 4 people per week, including one Pakistani man who was executed for drug smuggling. The death penalty is prohibited under international law for drug-related offences, which do not fall under the category of ‘most serious crimes.’”- Heba Morayef, Amnesty International’s Middle East and North Africa Director (2023)

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<sup>24</sup> Reprieve, Saudi Arabia and the death penalty: Everything you need to know about the rise in executions under Mohammed bin Salman, 20 Nov, 2023, 8:25 AM, <https://reprieve.org/uk/2023/01/31/saudi-arabia-and-the-death-penalty-everything-you-need-to-know-about-the-rise-in-executions-under-mohammed-bin-salman/>

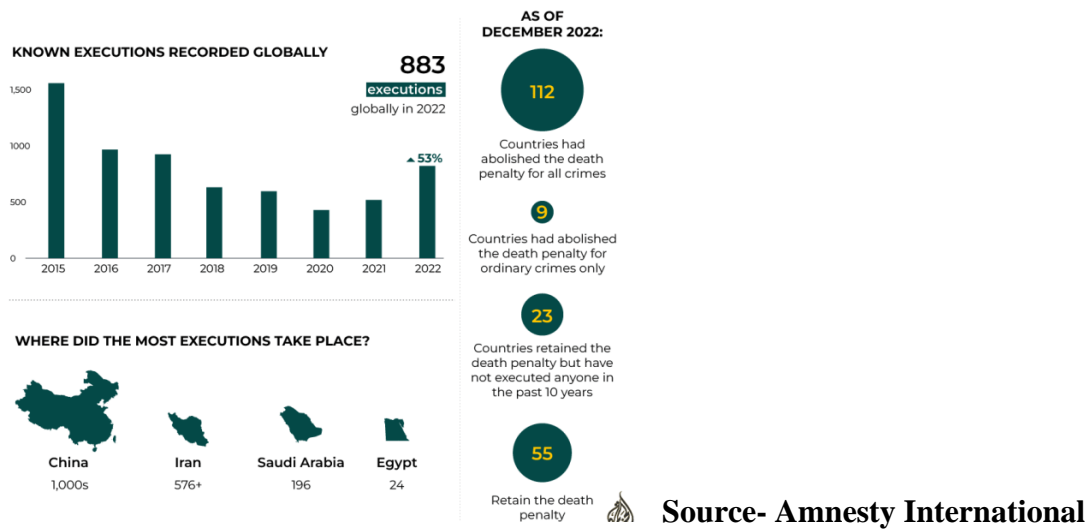
<sup>25</sup> UN, Saudi Arabia: Revoke death penalty for social media activity, UN experts urge, United Nations Human Rights, 19 Nov, 2023, 10:20 PM, <https://www.ohchr.org/en/press-releases/2023/09/saudi-arabia-revoke-death-penalty-social-media-activity-un-experts-urge>.

<sup>26</sup> Human Rights Watch, Saudi Arabia : Mass Execution of 81 Men, Human Rights Watch Organization, 19 Nov, 10:30PM, <https://www.hrw.org/news/2022/03/15/saudi-arabia-mass-execution-81-men>

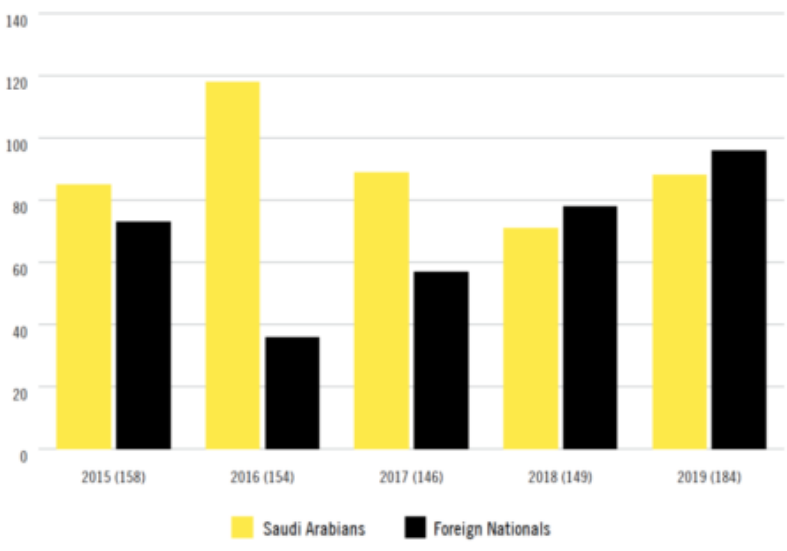
DEATH PENALTY

Executions in 2022

According to Amnesty International, executions increased by 53% globally in 2022.



EXECUTIONS RECORDED IN SAUDI ARABIA 2015-2019



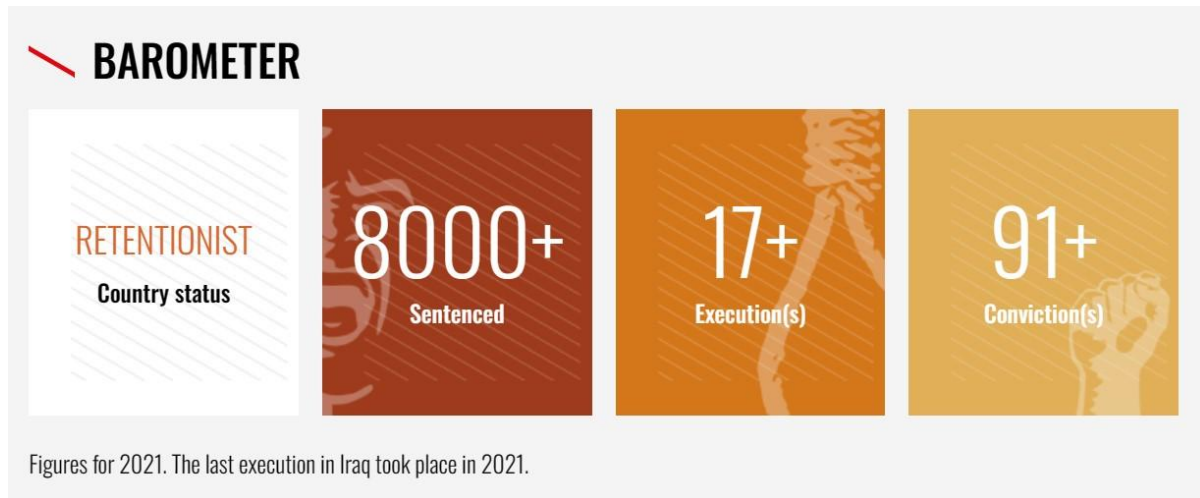
Source- European Centre for Democracy and Human Rights (ECDHR)

Iraq

It is also one of the countries where death penalty has been taking place a lot. Also, it was on the country where death penalty was abolished but go reinstated in mid-2004. Recently 21 mass execution of men had took place. Even after <sup>27</sup>end of the military operation which was three years ago to retake the areas under IS control the Iraq Courts have sentenced and have tries a

<sup>27</sup> AMNESTY INTERNATIONAL, IRAQ: MASS EXECUTION OF 21 INDIVIDUALS IS AN OUTRAGE, AMNESTY INTERNATIONAL ORGANIZATION, 19 NOV, 2023, 10:40PM, [TTPS://WWW.AMNESTY.ORG/EN/LATEST/PRESS-RELEASE/2020/11/IRAQ-MASS-EXECUTION-OF-21-INDIVIDUALS-IS-AN-OUTRAGE/](https://www.amnesty.org/en/latest/press-release/2020/11/iraq-mass-execution-of-21-individuals-is-an-outrage/)

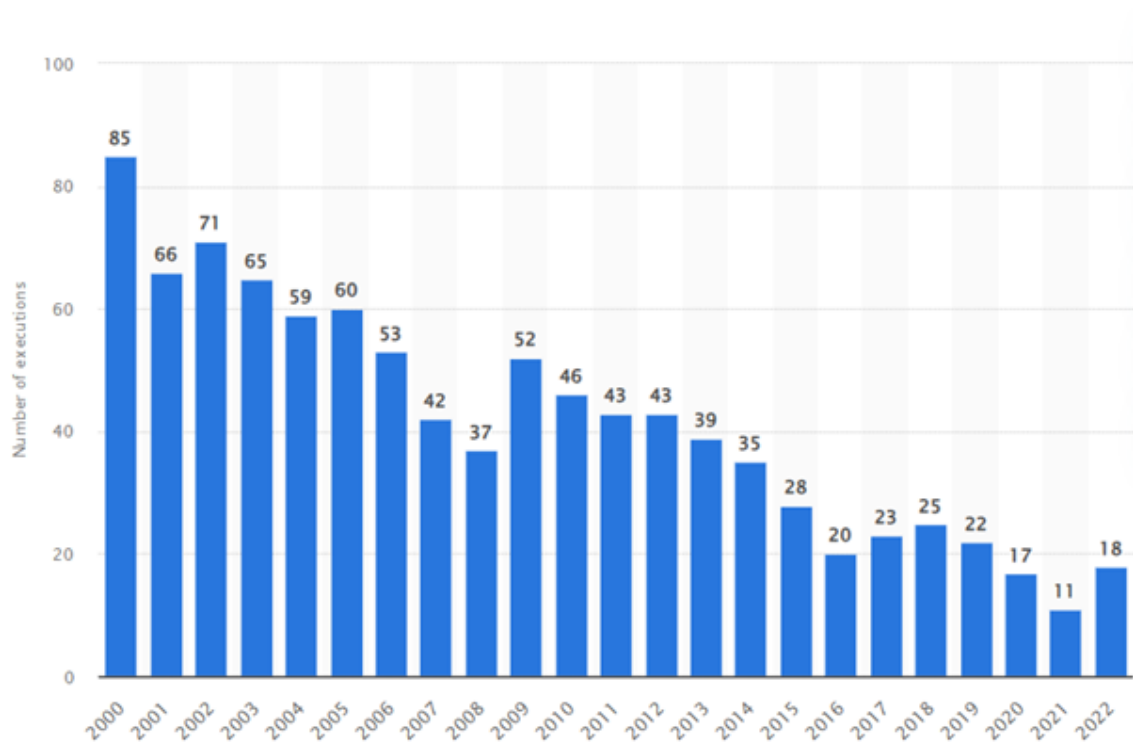
number of individuals with respect to suspicion affiliated with IS in unfair trials which often result in death penalty and many of them were based on the confessions which ere extracted with torture.



Source – ECPM (Together against the death penalty)

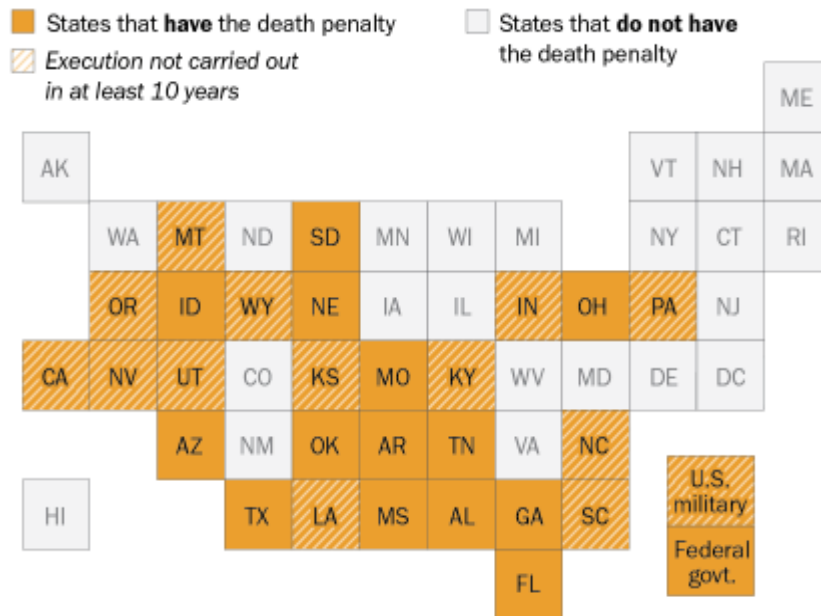
**(B) United States of America**

USA is on the countries where each state has different laws and rules. So, in the aspect of legal death penalty each state has different stand in this matter. The aspect of capital punishment has changed over the years. Compared to early 2000’s the numbers are very down in these years.



Source – Statista Research Department

### Most states have the death penalty, but significantly fewer use it regularly



( Source Death Penalty Information Center - 2021)

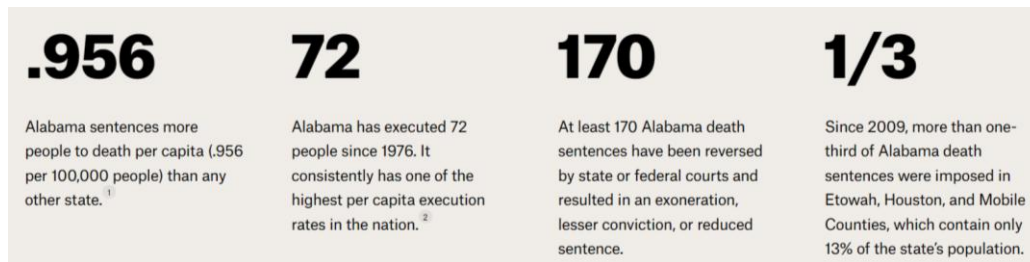
It is one of the countries also where death penalty was abolished between 1960's to 1970's but got reinstated over the years. As previously mentioned,<sup>28</sup> some states in the United States, such as New Hampshire, have laws regarding the death penalty but do not actually implement it. Similarly, states like New Jersey have the legal framework for capital punishment but haven't executed anyone since the 1960s. In contrast, states like California hand down many death sentences, yet the actual executions are infrequent. On the other hand, states like Texas, Oklahoma, or Virginia not only have laws and impose death sentences but also regularly carry out executions.<sup>29</sup> It's worth noting that there are 12 states where capital punishment is not part of the legal system at all. This variation in the application of the death penalty within the United States is unique, as few other countries exhibit such diversity in allowing or prohibiting capital punishment across different jurisdictions.

<sup>30</sup>Alabama is on the states where numerous death penalty has been taking place since a long time especially the black people have faced many of them due to discrimination.

<sup>28</sup> Social Research, SUMMER 2007, Vol. 74, No. 2, Punishment: The US Record (SUMMER 2007), pp. 435-464

<sup>29</sup> JOHN GRAMLICH, 10 FACTS ABOUT THE DEATH PENALTY IN THE U.S., PEW RESEARCH CENTER, 20 NOV, 2023, 8:17 AM, [HTTPS://WWW.PEWRESEARCH.ORG/SHORT-READS/2021/07/19/10-FACTS-ABOUT-THE-DEATH-PENALTY-IN-THE-U-S/](https://www.pewresearch.org/short-reads/2021/07/19/10-facts-about-the-death-penalty-in-the-u-s/)

<sup>30</sup> Equal Justice Initiative, Alabama's Death Penalty, Equal Justice Initiative, 19<sup>th</sup> Nov, 2023, 11:11PM, Alabama's Death Penalty (eji.org)

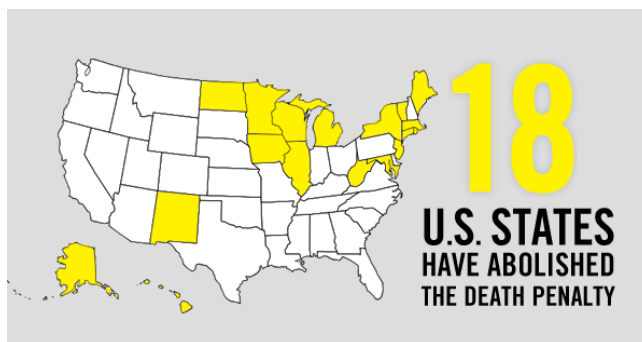


### Source – Equal Justice Initiative

<sup>31</sup>It is also one of the states who have joined with two other states in 2018 death sentence using nitrogen gas which called nitrogen hypoxia. <sup>32</sup>Also, one of the two states where **only the death penalty can be without a unanimous jury verdict.**

It lacks with respect to defender system available to the accused and compensation enough to appoint a lawyer to fight for the accused especially for the poor families who cannot afford one.

Currently 18 states in USA have abolished capital punishment. But still more than half of the state have not abolished it.



( Source – Amnesty International)

### (C) China

<sup>33</sup>It is one of the number one country leading with respect to death penalty. They are called as worse executioners due to their inhuman way of death penalty. “China is one of ‘the most understudied’ retentionist countries despite imposing more capital sentences and carrying out more executions than any other country.” Also, <sup>34</sup>the death penalty is covered in secrecy.

<sup>31</sup> *Death penalty in US: Alabama Governor announces America's first nitrogen hypoxia execution.*, The Economic Times, 10 Nov, 2023

<sup>32</sup> Dev Wakeley, Alabama's death penalty practices remain unjust and unusually cruel, Alabama Rise, Jan 2022.

<sup>33</sup> China Against the Death Penalty, The Status Quo of China's Death Penalty and the Civil Society Abolitionist Movement, World Coalition against Death Penalty, 20 Nov, 2023, 8:58 AM, <https://worldcoalition.org/2022/02/15/china-death-penalty-2022/>

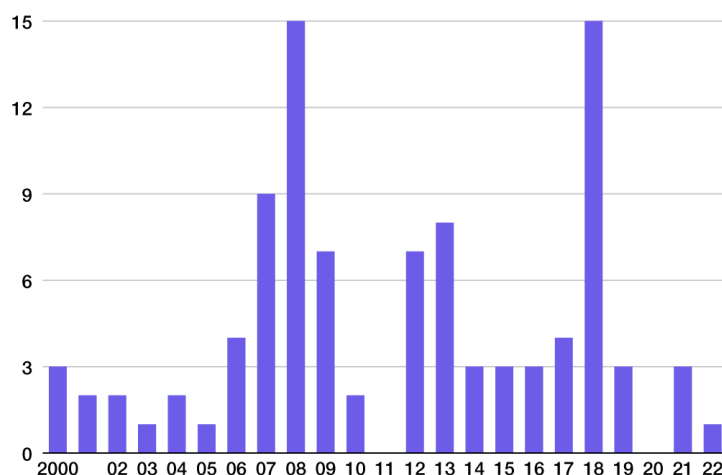
<sup>34</sup> Amnesty International Organization, Death Penalty: World's biggest executioner China must come clean about 'grotesque' level of capital punishment, Amnesty International, Nov 20, 2023, 9:02 AM, <https://www.amnesty.org/en/latest/news/2017/04/China-must-come-clean-about-capital-punishment/>

<sup>35</sup>Even the statistics are a secret of the state and lacks a transparency around the circumstances with respect to detention for the individuals sentenced to death. <sup>36</sup>Public opinion related to death penalty is not even considered and heard in this country. This itself shows how they treat one's human rights. <sup>37</sup>It had abolished death penalty in 2011 and started reformation but then there has been an increase in it. UN had applauded the step taken by China to reform its death penalty system in 2013. But then death penalty resurfaced.

#### (D) Japan

It is one of the countries which have been retaining to death penalty over the years. <sup>38</sup>Even after the UN resolution came in 1991 still Japan opposed it due to two main factors : they considered this move was immature and public opinion did not support this.

#### Number of Annual Executions in Japan since 2000



<sup>39</sup>Capital punishment was abolished for few centuries towards the end of the first millennium but current stand is that it has been firmly established. <sup>40</sup>In Japan a third type of punishment is imposed with every death penalty which is the life of the convict on death row is totally dominated by the ambiguity whether and when the execution will take place. The very importance of the life of the convict is reduced by waiting to be killed. The very fact that there is fear which permanently buildup of being forced to dies in the hands of another is a fragile

<sup>35</sup> The Rights Practice. "Lack of Transparency on the Death Penalty Impacts Human Rights". March 2021. <https://www.rightspractice.org/news/lack-of-transparency-on-the-death-penalty-in-china-impacts-human-rights>

<sup>36</sup> Michelle Miao, Why Public Opinion on the Death Penalty Doesn't Matter in China, Australian Journal of Asian Law, 2023, Vol 24 No 1, Article 10: 127-139

<sup>37</sup> United Nation Organization, UN rights experts applaud steps by China and India to reduce, abolish death penalty, United Nation Organization. Nov 20, 2023, 9:05 AM, <https://news.un.org/en/story/2015/09/508572>

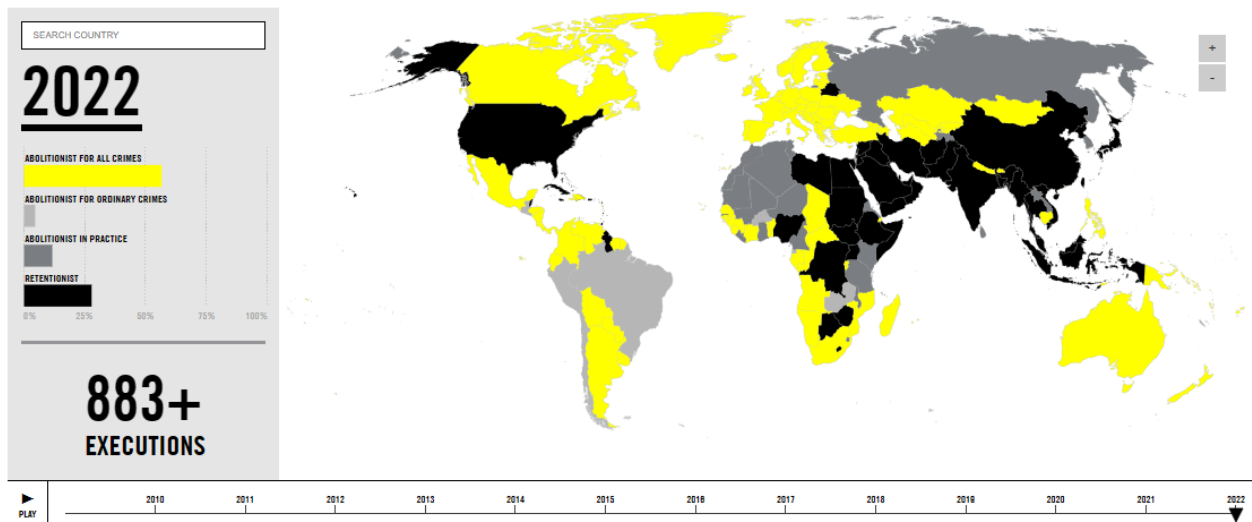
<sup>38</sup> K Kikuta, Death Penalty in Japan Why Hasn't it Been Abolished? International Journal of Comparative and Applied Criminal Justice Volume 17, 1993, Pg 57-75

<sup>39</sup> Vol 17, Petra Schmidt, Capital Punishment in Japan, Brill's Japanese Studies Library, 2022

<sup>40</sup> Joachim Herrmann, ESSAY: The Death Penalty in Japan: An "Absurd" Punishment, 67 Brook. L. Rev. 827 (2002).

psychology torture that creates a severe set of emotional, mental and also physical suffering.

**VII. COUNTRIES – BANNED CAPITAL PUNISHMENT**



Source – Amnesty International



Source – Amnesty International, Death Penalty Information Center and Statista research

Since 1988 there has been a drastic increase in the abolishment of capital punishment.<sup>41</sup> “A “new dynamic” has emerged that recognize capital punishment as a denial of the universal human rights to life and to freedom from tortuous, cruel, and inhuman punishment, and international human rights treaties and institutions that embody the abolition of capital punishment as a universal goal have developed.”<sup>42</sup> The UN General Assembly had reached a majority in opposition to the death penalty. On 18 Dec 2007, the UN General Assembly had adopted a resolution which were supporting a ‘moratorium’ on capital punishment. When the

<sup>41</sup> Roger Hood and Carolyn Hoyle, *Abolishing the Death Penalty Worldwide: The Impact of a “New Dynamic”*, The University of Chicago Press, Crime and Justice, Vol. 38, No. 1 (2009), pp. 1-63

<sup>42</sup> UN Document A/C.3/62/L.29 (1 November 2007)

voting was taken- 104 countries voted: favour of the resolution, 54: against and 29: abstaining. It was marked as the first resolution of its kind and even attempts to pass similar versions were rejected twice in 1994 and 1999. The resolution had called upon all the states to establish a moratorium on executions with a view to establishing the death penalty to progressively restrict the use, reduce the number of offences for which it may be imposed, and even to refrain from reintroducing the death penalty where it has been abolished once.

The High Commissioner of the Human Rights have stated in the 52<sup>nd</sup> session of the Human Rights Council in Geneva, Switzerland that<sup>43</sup> “*In short, the death penalty is, in our common experience, an atavistic relic from the past that should be shed in the 21st century.*”. Currently in the present year 2023 there is still 73 countries to abolish capital punishment (stated by the UN).

<sup>44</sup>The first country to abolish death penalty in 1863 is Venezuela a country in South America. But it has been reported that other extra judicial execution and human rights violation has been taking place in the past few years. There was also another country way before which had laws related to it in the book but never used it which was a small country in the Europe San Marino 1865. And also, Costa Rica. In the <sup>45</sup>20<sup>th</sup> Century countries like Hungary, <sup>46</sup>South Africa, Republic of Lithuanian, <sup>47</sup>Ukraine and Albania. In the recent year and the last countries to abolish capital punishment for all the crimes were Papua New Guinea, Central African Republic, Equatorial Guinea and Zambia.

The international stand with respect to death penalty is that it should only be given to heinous crimes where the gravity of crime is extreme.

<sup>48</sup>The question of the abolishing death penalty stands out as one of the sharpest set of examples of both the evolution of human rights laws and the current ongoing relevance of the Universal Declaration, In 1948 Eleanor Rosevelt had rejected the suggestions about the Universal Declaration which was stating about the capital punishment as an exception to right to life. They took this step due to because they saw a trend emerging and wanted the

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<sup>43</sup> United Nations, HC: Death penalty should be abolished in the 21st century, UDHR Organization, 20 Nov,2023, 10:03 AM, <https://www.ohchr.org/en/stories/2023/04/hc-death-penalty-should-be-abolished-21st-century>

<sup>44</sup> Hood, R. (2023, November 16), capital punishment, Encyclopaedia Britannica, <https://www.britannica.com/topic/capital-punishment>

<sup>45</sup> Amnesty International, Constitutional prohibitions of the death penalty, AI Index: ACT 50/009/2005, April 2005.

<sup>46</sup> In 1998 the South African parliament removed the death penalty from the country's laws under the Criminal Law Amendment Act.

<sup>47</sup> In February 2000 the Ukrainian parliament removed the death penalty from the criminal code, Amnesty International, 2006

<sup>48</sup> William A. Schabas, International Law and Abolition of the Death Penalty, 55 Wash. & Lee L. Rev. 797 (1998).

UDHR to retain its relevance for many years to come or even centuries. Half a century later we must be able to acknowledge their second sight.

<sup>49</sup>What primarily scared many people from the thought abolishing capital punishment is a natural apprehension that the country would immediately begin to fill with murders and life of the individuals would not be safe in no time. Death is the only effective deterrent which is applicable for certain class of people and that the state cannot relax it hold on such type of weapon.

Last but not the least it has been stated that - *“Consistency between what a nation advocates internationally and what it practices domestically is important when that nation acts extensively in the international spotlight. When a culture is increasingly dynamic, domestically and internationally, consistency assumes two main features: One concerns the scope of activities to which consistency relates; the other concerns effort to maintain or improve consistency in the face of many rather independent variables. International responsibility for leadership through uncoerced persuasion makes consistency between what Americans advocate and what they practice more important than it used to be.”*<sup>50</sup> Which is actually true because there are countries which say something internationally and perform that that in secrecy.

## VIII. CONCLUSION

In conclusion, this paper has provided an in-depth examination of capital punishment, traversing its historical origins to contemporary global perspectives. The historical trajectory of capital punishment in India, influenced by Hindu philosophy, Mughal rule, and British colonialism, reflects a complex evolution. Post-independence legal reforms, such as the introduction of the "rarest of the rare" doctrine, showcase India's ongoing efforts to balance justice and human rights.

The jurisprudential aspects of capital punishment in India, governed by legal codes and judicial pronouncements, reveal a nuanced framework that seeks transparency and accountability. The statistical representation of death penalty cases underscores the evolving dynamics of this practice in the country.

Globally, the paper has shed light on the contrasting approaches to capital punishment, from the varying stances in the United States to the controversial practices in countries like China

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<sup>49</sup> W. J. Roberts, *The Abolition of Capital Punishment*, The University of Chicago Press, International Journal of Ethics, Apr., 1905, Vol. 15, No. 3 (Apr., 1905), pp. 263-286

<sup>50</sup> Harold H. Punke, *Capital Punishment: Pro and Con*, Taylor & Francis, Ltd., The Clearing House, Oct., 1960, Vol. 35, No. 2 (Oct., 1960), pp. 103-107

and the Middle East. The international context, marked by human rights instruments and a growing trend towards abolition, emphasizes the need for a consistent commitment to fundamental rights.

As nations grapple with the ethical and legal dimensions of capital punishment, the paper underscores the importance of aligning domestic practices with international advocacy for human rights. The global push towards abolition signals a transformative shift in attitudes, challenging the notion that death penalty is an indispensable tool for justice. The ongoing dialogue and evolving dynamics surrounding capital punishment emphasize the need for a holistic re-evaluation of its place in the legal systems worldwide.

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