DEATH PENALTY JURISPRUDENCE: A COMPARATIVE ANALYSIS OF DEVELOPED AND DEVELOPING COUNTRIES

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ABSTRACT

The jurisprudence of capital punishment remains one of the most contested questions in modern constitutional thought, oscillating between the moral legitimacy of the State to take life and the evolving standards of decency that inform contemporary human rights discourse. This article undertakes a comparative examination of the death penalty in five historically and geopolitically distinct jurisdictions—United Kingdom, France, United States, India, and Russia—each representing a different stance: complete abolition, constitutional abolition, active retention, judicially restricted retention, and moratorium-based retention. The study critically evaluates how historical developments, constitutional frameworks, judicial interpretation, and political culture shape the legitimacy and future of capital punishment. The article situates domestic constitutional positions within the broader framework of international human rights law, including the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the Second Optional Protocol, and the European regional prohibition model. The selected jurisdictions are studied chronologically to demonstrate the transformation from execution as sovereign power to abolition as constitutional identity, identifying how colonial legal inheritance, religious morality, and authoritarian political structures continue to influence national death penalty outcomes. The empirical data covering the period 1960–2025 reveal that deterrence claims remain unsupported by statistical evidence, while risks of wrongful execution and discriminatory application persist, disproportionately affecting marginalized groups. The article argues that the death penalty's future will be shaped less by empirical deterrence outcomes and more by international human rights pressures, domestic political narratives, constitutional morality, and public sentiment.

Keywords: Death Penalty, India, UK, USA, France, Russia.

I. INTRODUCTION

The death penalty represents the most profound expression of penal authority—where the State not only restricts liberty but commands the irreversible power to extinguish life. Historically rooted in sovereign dominance, capital punishment evolved through centuries as a symbol of public order, retributive justice, and deterrence. From ancient civilizations to modern constitutional democracies, its justification has oscillated between vengeance for the gravest offences and society's supposed moral imperative to eliminate those deemed dangerous. Yet, the contemporary global movement towards human rights protection, coupled with jurisprudence centered on dignity, has transformed the death penalty into a philosophical and constitutional battleground.

In the latter half of the twentieth century, legal systems began reassessing the ethical legitimacy of executions. The Second World War and the universal recognition of human rights shifted the discourse from societal defense to the inherent worth of every human being. Instruments such as the **Universal Declaration of Human Rights**[1] and later the **International Covenant on Civil and Political Rights**[2] catalyzed debates challenging whether any State may claim a legitimate right to take life. This transformation is evident in the progressive abolition of the death penalty across Europe, culminating in its enshrinement as a constitutional value in countries like the United Kingdom and France[3].

Despite international pressure and a demonstrable trend towards abolition, capital punishment remains firmly entrenched in several jurisdictions. The United States remains one of the few constitutional democracies to actively execute its citizens, largely justified through federal–state autonomy and a historical commitment to retributive justice. India, while significantly restricting executions through its **"rarest of rare"** doctrine, retains the death penalty as an exceptional sanction under judicial supervision. Russia occupies a unique position, maintaining a **moratorium** without legislative abolition, reflecting a complex tension between political authority and international commitments.

Therefore, the death penalty is more than a penal measure; it is a mirror that reveals the constitutional identity of a nation. Whether a State chooses to retain, restrict, suspend, or

[1] Universal Declaration of Human Rights, G.A. Res. 217(III), U.N.Doc. A/810 (1948).
[2] International Covenant on Civil and Political Rights, Dec.16, 1966, 999 U.N.T.S. 171.
[3] Second Optional Protocol to the ICCPR, Aiming at the abolition of the Death Penalty, Dec. 15, 1989, 1642 U.N.T.S. 414

abolish capital punishment reflects its deepest values: the protection of life, the purpose of punishment, the willingness to forgive, and the belief in human transformation. In a world witnessing increasing convergence in human rights norms, the future of the death penalty may depend less on crime statistics and more on the evolving understanding of what justice demands in a civilized society.

II. EVOLUTION OF CAPITAL PUNISHMENT

2.1 Retributive Philosophy and the Moral Claims of Penal Authority

The earliest intellectual justification for capital punishment lies in **retributive theory**, which asserts that punishment is morally deserved, not merely instrumentally useful. Rooted in the writings of **Immanuel Kant**[4], retribution presupposes that rational agents bear full responsibility for their actions; thus, the State must ensure a moral equilibrium through punitive response. Kant's famous argument that even a dissolving State must execute its last murderer so justice is served illustrates how retributive philosophy conceives punishment as a categorical moral duty.

In modern jurisprudence, retribution underpins judicial reasoning in certain retentionist nations. The United States Supreme Court in *Gregg v. Georgia (1976)* [5]affirmed the constitutionality of the death penalty, characterizing retribution as an "expression of society's moral outrage." This demonstrates that despite rights-based constitutionalism, retribution retains normative weight.

India similarly acknowledges retribution, yet tempers it with constitutional morality. In *Bachan Singh v. State of Punjab (1980)*[6], the Supreme Court upheld the death penalty but confined its use to the "rarest of rare" category, marking a departure from pure retributivism and affirming Article 21 dignity jurisprudence. More recently, Indian courts have emphasized proportionality, establishing sentencing as a judicially supervised moral reckoning rather than societal vengeance, as seen in *Mukesh & Anr. v. State (Nirbhaya case, 2017)*[7].

Retribution's greatest challenge lies in its proximity to vengeance. Critics argue that moral

[4] IMMANUEL KANT, THE METAPHYSICS OF MORALS 142-143 (Mary Gregor trans, Cambridge Univ. Press 1991).
[5] Gregg v. Georgia, 428 U.S. 153 (1976).
[6] Bachchan Singh v. State of Punjab, (1980) 2 S.C.C. 684.
[7] Mukesh & Anr. V. State (NCT of Delhi), (2017) 6 S.C.C. 1.

outrage cannot be the constitutional measure of justice. Yet, for many retentionist societies, the emotional demand for accountability sustains retributive jurisprudence.

2.2 Utilitarian and Deterrence Theory: Punishment as Social Defence

Utilitarianism — most associated with **Jeremy Bentham** — advances the view that punishment is justified only when it prevents greater harm. In practice, this argument supports capital punishment primarily for its purported deterrent value. Legislatures historically promoted executions on grounds that the fear of death would prevent grave crimes.

However, empirical research complicates this assumption. The U.S. Supreme Court has repeatedly acknowledged the deterrence argument, but its evidentiary basis remains inconclusive. In *Furman v. Georgia (1972)*[8], dissenting justices criticized the inconsistent application of capital punishment, undermining claims of rational deterrence. Post-Furman studies have shown no conclusive correlation between executions and crime reduction.

The Supreme Court of India similarly confronted the social-defence rationale in *Machhi Singh v. State of Punjab (1983)*[9], where deterrence was retained as a justification only if coupled with procedural fairness and proportionality. More recently, debates on deterrence resurfaced in mercy petition delay cases, such as *Shatrughan Chauhan v. Union of India (2014)*[10], where the Court recognized psychological suffering on death row as a constitutional violation—eroding utilitarian legitimacy.

Thus, utilitarian deterrence increasingly appears insufficient as an autonomous justification for capital punishment, especially where justice systems acknowledge the risk of judicial error.

2.3 Abolitionist Reasoning and the Human Dignity Paradigm

The abolitionist movement originates with thinkers such as **Cesare Beccaria**, who condemned capital punishment as neither necessary nor lawful in a rational State[11]. Abolitionist jurisprudence is today grounded in **human dignity**, recognizing the individual as an end rather than a means.

[8] Furman v. Georgia, 408 U.S. 238 (1972).
[9] Machhi Singh v. State of Punjab, 1983, 3 S.C.C. 470 (India).
[10] Shatrughan Chauhan v. Union of India, (2014) 3 S.C.C. 1.
[11] Cesare Beccaria, On Crimes and Punishments (1764).

This principle is embedded in European jurisprudence. In *Soering v. United Kingdom (1989)*[12] before the European Court of Human Rights, extradition to the United States was barred due to the "death row phenomenon," affirming that the anticipation of execution itself may constitute degrading treatment. France's abolition in 1981 similarly hinged on moral and philosophical objections rather than empirical arguments.

India's evolution reflects a gradual shift to dignity-based reasoning. In *Mithu v. State of Punjab (1983)*[13], the Supreme Court struck down mandatory death sentences as unconstitutional, holding that sentencing must reflect human dignity and judicial discretion.

The dignity argument directly challenges the premise that the State possesses moral authority to take life, shifting the debate from public policy to constitutional identity.

2.4 Contemporary Human Rights and Dignitarian Constitutionalism

Modern abolitionism operates within the broader framework of international human rights law. Norms derived from torturous treatment prohibitions and evolving conceptions of human dignity increasingly define constitutional limits. The **European Convention on Human Rights**, the **Second Optional Protocol to ICCPR**, and UN resolutions reflect the global movement rejecting the death penalty as intrinsically incompatible with dignity.

While the United States and India claim constitutional space for retention, jurisprudence in both nations shows a trend toward narrowing eligibility — mental disability, juveniles, and procedural safeguards demonstrate jurisprudential discomfort. The Indian Supreme Court's recent consideration of sentencing reform in *Manoj v. State of Madhya Pradesh (2022)*[14] further emphasizes individualized sentencing rooted in dignity and socio-psychological evaluation.

2.5 Irreversibility of Error and Miscarriages of Justice

The most potent philosophical challenge remains the risk of executing the innocent. International exoneration statistics reveal wrongful convictions arising from mistaken identity, coerced confessions, prosecutorial misconduct, and unreliable forensic science. Several U.S.

[12] Soering v. United Kingdom, 161 Eur. Ct. HR. (ser. A) (1989).
[13] Mithu v. State of Punjab, (1983) 2 S.C.C. 277.
[14] Manoj v. State of Madhya Pradesh, (2022) 6 S.C.C. 1.

death row inmates were exonerated post-conviction through DNA evidence, exposing the fallibility of judicial certainty[15].

India, too, has acknowledged this risk — the Supreme Court has overturned death sentences even after confirmation, recognizing systemic vulnerabilities in investigation and trial processes[16].

This argument reframes the debate: the question is no longer whether the guilty deserve death, but whether the justice system deserves the power to kill.

III. INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The debate over capital punishment has increasingly transcended domestic legal systems, evolving into a matter of **international human rights law**. While historically the death penalty was considered an internal sovereign prerogative, the post-World War II global order redefined the State's punitive powers in light of universal human dignity and international norms. The adoption of the **Universal Declaration of Human Rights (UDHR, 1948)** marked the first universal commitment to the protection of life, liberty, and personal security, laying the philosophical foundation for the abolitionist movement. Article 3 of the UDHR guarantees the right to life, while Article 5 prohibits torture or cruel, inhuman, or degrading treatment, principles that have been invoked to critique capital punishment.

The **International Covenant on Civil and Political Rights (ICCPR, 1966)** represents a binding legal framework constraining the imposition of death sentences. Article 6 recognizes the inherent right to life and restricts the death penalty to "the most serious crimes" under law, prohibiting it for children and pregnant women. The **Second Optional Protocol to ICCPR (1989)** obligates ratifying states to abolish the death penalty entirely, signaling a decisive normative shift towards global abolition. Yet, ratification remains uneven: while France, the UK, and many European states have fully adhered, the USA, India, and Russia maintain reservations, highlighting the tension between **national sovereignty and international human rights commitments**.

At the regional level, the **European Convention on Human Rights (ECHR)[17]** has decisively

[15] https://innocenceproject.org. (last visited Nov.30)
[16] Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 S.C.C. 498 (India).
[17] European Convention on Human Rights. Nov. 4, 1950, 213 U.N.T.S. 221

influenced capital punishment jurisprudence. Article 2 recognises the right to life as fundamental, while Article 3 prohibits inhuman or degrading treatment. Landmark decisions, such as *Soering v. United Kingdom (1989)*, demonstrate that even the procedural conditions of death row—long delays and psychological torment—can constitute violations of human rights, effectively restricting extradition to retentionist countries. European jurisprudence has codified abolition as a constitutional and human rights imperative, influencing global standards.

Beyond treaties, **UN General Assembly resolutions**, including Resolution 62/149 (2007) and subsequent updates, have repeatedly called for a global moratorium on executions with a view toward eventual abolition. These soft-law instruments, though not legally binding, exert persuasive authority on national courts, often cited in domestic judicial reasoning in India and other jurisdictions. For example, in *Shatrughan Chauhan v. Union of India (2014***)**, the Supreme Court referenced international norms to strengthen procedural safeguards and address delays in execution.

The international framework establishes that while the death penalty is not universally prohibited, its retention is increasingly circumscribed by **human rights standards, proportionality, and evolving norms of decency**. This transnational pressure has contributed to abolitionist trends in Europe, the moratorium in Russia, and the selective retention with safeguards in India and the United States, illustrating that domestic jurisprudence is now inseparable from international human rights discourse.

IV. UNITED KINGDOM

The United Kingdom provides one of the most influential legal trajectories in the global abolitionist movement. As the birthplace of the **common law tradition**, English criminal law historically embraced some of the harshest capital statutes, yet it later became a jurisdiction where the death penalty was not only abolished in practice but repudiated as a violation of fundamental human rights and the rule of law. This evolution—from the severity of the **"Bloody Code"**, which at its peak prescribed death for more than 200 offences, to complete abolition through successive statutory and human rights reforms—constitutes a central reference point for modern abolitionist jurisprudence.

4.1 Historical Background: From the Bloody Code to Restrictive Reforms

The "Bloody Code" of the 18th and early 19th centuries represented a penal philosophy rooted

in retributive justice and deterrence. However, shifting humanitarian attitudes, coupled with rising scepticism toward the morality and efficacy of executions, led to gradual reforms. By the 19th century, public executions were abolished, and the scope of capital offences was significantly narrowed. Jurists and reformers such as **Sir Samuel Romilly** advocated for proportionality and humane sentencing, marking the intellectual foundation for modern abolitionism.

The twentieth century saw a decisive shift. The public outrage following the wrongful executions of individuals like **Timothy Evans**[18], hanged in 1950 for a murder later attributed to serial killer John Christie, fuelled moral and legal criticism of capital punishment. Similarly, the controversial conviction and execution of **Derek Bentley** in *R. v. Bentley*[19] contributed to widespread doubts regarding the fairness of capital sentencing. These events demonstrated the fallibility of the criminal justice system—undercutting the legitimacy of an irreversible punishment.

4.2 The Homicide Act 1957 and Introduction of Partial Abolition

Parliament introduced the **Homicide Act 1957**, which restricted the death penalty to specific categories of murder, such as killing a police officer or murder committed during theft. Although not a full abolition, the Act marked a critical constitutional moment: the recognition that the death penalty could no longer be justified as a blanket punishment for all homicide offences. The judiciary began exercising greater caution in imposing the death sentence, reflecting the emerging principle that death must be an exceptional sanction.

4.3 The Murder (Abolition of Death Penalty) Act 1965: Formal Abolition

The decisive break came with the **Murder (Abolition of Death Penalty) Act 1965**, which suspended capital punishment for murder for an initial five-year period and was later made permanent. While treason, piracy, and certain military offences technically retained capital sanction, these offences fell into disuse, and no executions occurred after 1964.

Parliament's commitment to abolition was not merely procedural; it represented a shift toward **constitutional morality**, proportionality, and a rights-based criminal justice system. The

[18] R v. Evans, 1950 Crim. App. R. 277 (U.K.)
[19] R. v. Bentley, (1953) 1 Q.B. 455 (U.K.)

legislative record shows that abolition was grounded in the recognition that the risk of executing the innocent outweighed any purported deterrence benefit.

4.4 Human Rights Act 1998 and the Entrenchment of Abolition

The incorporation of the **European Convention on Human Rights (ECHR)** into domestic law through the **Human Rights Act 1998** cemented abolition into the UK's constitutional structure. Article 2 of the ECHR guarantees the right to life, while Article 3 prohibits torture and degrading treatment. These provisions, interpreted through decisions like ***Soering v. United Kingdom***[28], established that extraditing individuals to face the death penalty abroad might violate the Convention.

Further, the United Kingdom ratified **Protocol No. 6** and **Protocol No. 13** to the ECHR, abolishing the death penalty in peacetime and in all circumstances respectively.[31] Since Protocol 13 prohibits capital punishment absolutely, abolition in the UK is now constitutionally irreversible unless the UK withdraws from the Convention—an unprecedented and politically unlikely step.

4.5 Jurisprudential Significance: Influence on Commonwealth & Global Norms

The UK's abolitionist evolution significantly influenced Commonwealth jurisdictions, including India, Canada, Australia, and several African nations, where the common law tradition persists. While India retained the death penalty, its **"rarest of rare"** doctrine in *Bachan Singh*[12] echoes the UK's narrow approach prior to abolition. Moreover, in extradition cases, Indian courts increasingly rely on human rights standards articulated in European jurisprudence.

Globally, the UK's transformation reinforced the international movement linking abolition to fundamental human dignity. Its transition from a punitive, retributive system to one grounded in rights and proportionality helped shape modern international norms embedded in the ICCPR, the Second Optional Protocol, and regional human rights instruments.

4.6 Conclusion: The UK as a Model of Rights-Based Abolition

The United Kingdom's abolition of the death penalty symbolises a shift from sovereign power to **constitutional humanism**. Its journey from widespread executions to complete abolition

demonstrates the role of moral reasoning, public accountability, judicial restraint, and human rights engagement in shaping criminal justice[20]. Today, the UK stands as a global reference for the principle that the State must never wield irreversible power over human life.

V. FRANCE

France's journey towards abolition reflects a political and moral transformation from a period of intense State violence to a constitutional commitment to human dignity. Historically, France relied heavily on the guillotine, particularly during the **Revolutionary era**, when executions became symbolic of the defence of the Republic[21]. Throughout the nineteenth and early twentieth centuries, capital punishment remained lawful, though confined primarily to the gravest offences such as aggravated murder.

By the 1970s, growing discomfort with executions—especially after the final execution of **Hamida Djandoubi** in 1977—fuelled strong public debate. Intellectuals, jurists, and human rights advocates began challenging the morality and necessity of capital punishment[22]. The election of **President François Mitterrand** in 1981 marked a decisive shift. His Justice Minister, **Robert Badinter**, led the abolition campaign, arguing before Parliament that the death penalty was incompatible with a civilised legal order.

This culminated in the **Loi du 9 octobre 1981**, which abolished the death penalty in all circumstances. Unlike the United Kingdom, where abolition was incremental, France adopted **total abolition at once**, reflecting political consensus and a rights-based reorientation of criminal justice.

In 2007, abolition was entrenched by inserting **Article 66-1** into the Constitution: *"No one shall be sentenced to death[23]."* This constitutionalisation made reinstatement virtually impossible and positioned abolition as part of the identity of the Fifth Republic.

France's human rights commitments also align with its obligations under the **European Convention on Human Rights**, including **Protocol No. 6** and **Protocol No. 13**, which prohibit capital punishment absolutely. French courts consistently refuse extradition where the accused

[20] Andrew Ashworth, Sentencing and Criminal Justice 48-52 (6th ed.2015).
[21] See HOWARD G. BROWN, ENDING THE REVOLUTION: VIOLENCE, JUSTICE, AND REPRESSION FROM THE TERROR TO NAPOLEON 212-18 (2006).
[22] Affaire Djandoubi, cour d' assises des Bouches-du-Rhone (19770
[23] 1958 CONST. art. 66-1 (Fr.)

may face execution abroad, reflecting alignment with decisions such as ***Soering v. United Kingdom*** that consider death row conditions incompatible with Article 3 protections.

Today, France is a leading voice in the global abolitionist movement, sponsoring United Nations resolutions calling for a worldwide moratorium. Its experience demonstrates that abolition can emerge not merely from empirical doubts about deterrence but from a **constitutional affirmation of human dignity**, marking France as an influential abolitionist model internationally.

VI. UNITED STATES

The United States remains one of the few Western democracies that continues to retain and actively enforce the death penalty. Its constitutional foundation lies primarily in the **Eighth Amendment**, which prohibits "cruel and unusual punishments[24]." The central jurisprudential question has therefore been whether capital punishment is compatible with evolving standards of decency in a modern democratic society.

6.1 Constitutional Framework and the Furman–Gregg Era

In ***Furman v. Georgia***[5], the U.S. Supreme Court invalidated existing death penalty statutes, holding that their arbitrary and inconsistent application violated the Eighth Amendment. The decision acknowledged widespread racial bias, procedural unfairness, and unreliability — concerns which continue to dominate death penalty debates.

However, capital punishment was reinstated four years later in ***Gregg v. Georgia***[6], where the Court upheld revised statutes that introduced bifurcated trials, aggravating factors, and guided sentencing discretion. *Gregg* reaffirmed retribution and deterrence as legitimate penological aims, distinguishing the U.S. from abolitionist jurisdictions such as the UK and France.

6.2 Subsequent Restrictions: Juveniles, Mental Disability and Procedural Safeguards

Eighth Amendment jurisprudence has progressively narrowed eligibility for the death penalty. In ***Atkins v. Virginia*** (2002)[25], the Court prohibited execution of persons with intellectual

[24] U.S. CONST. amend. VIII.
[25] Atkins v. Virginia, 536 U.S. 304 (2002)

disabilities, and in ***Roper v. Simmons*** (2005)[26], it barred the execution of juvenile offenders. These decisions reflect judicial recognition of cognitive limitations and the diminished moral culpability of certain offenders.

Later cases such as ***Glossip v. Gross*** (2015)[27] addressed the constitutionality of lethal injection protocols, illustrating ongoing Eighth Amendment concerns about the method of execution and the risk of severe pain.

6.3 Federalism and the Fragmented Landscape

Capital punishment in the United States operates within a **dual sovereignty system**, producing stark regional variations. While the federal government retains capital statutes, **twenty-three states have abolished the death penalty**, and several others have informal moratoriums. Conversely, states such as Texas continue to impose and carry out executions frequently.

This fragmented approach reflects deep cultural divides: retentionist states often emphasise retributive values and traditional interpretations of justice, whereas abolitionist states align with modern human rights norms similar to European jurisdictions.

6.4 Racial Disparities, Wrongful Convictions and Structural Concerns

Empirical studies consistently demonstrate racial disparities in sentencing, particularly where victims are white. The Supreme Court acknowledged this systemic issue in ***McCleskey v. Kemp***,[28] though it declined to invalidate the system on that basis.

Wrongful convictions remain a profound challenge. Since the 1980s, DNA exonerations have revealed numerous cases where innocent individuals were sentenced to death.[21] These miscarriages of justice undermine the reliability of the death penalty, raising concerns shared by Indian and European courts.

6.5 Contemporary Trends: Decline and Moral Debate

Despite retention at the federal and state levels, public support for the death penalty has declined significantly. Executions and new death sentences have reached historic lows,

[26] Roper v. Simmons, 543 U.S. 55 (2005)
[27] Glossip v. Gross, 576 U.S. 863 (2015)
[28] McCleskey v. Kemp, 481 U.S. 279 (1987).

reflecting growing scepticism toward deterrence, racial bias, and judicial error.

Yet the U.S. remains committed to capital punishment as a matter of policy choice rather than constitutional necessity. Unlike France and the UK, where abolition is a constitutional value, the United States maintains a **penal philosophy grounded in retribution, federal autonomy, and political discretion**.

VII. INDIA

India occupies a complex and often contradictory position within global death penalty jurisprudence. Although constitutionally retaining the death penalty, its application has been heavily restricted through judicial interpretation, human rights reasoning, and evolving concerns regarding systemic fallibility. India thus represents a **retentionist system with strong abolitionist tendencies**, shaped largely by the Supreme Court's development of the **"rarest of rare"** doctrine and its expanding emphasis on human dignity under Article 21 of the Constitution[29].

7.1 Constitutional Framework and Early Post-Independence Attitude

Article 21 guarantees that no person shall be deprived of life or personal liberty except by "procedure established by law." The death penalty was retained in the Penal Code of 1860 and preserved by the framers of the Constitution, who considered it necessary for extreme cases involving public security or aggravated murder.

In the early post-Independence period, Indian courts adopted a deferential approach. In ***Jagmohan Singh v. State of Uttar Pradesh*** (1973)[30], the Supreme Court upheld the constitutionality of the death penalty, reasoning that judicial sentencing discretion, guided by procedure and fairness, satisfied Article 21. The Court emphasised that capital punishment was a matter of legislative policy.

7.2 The Bachan Singh Doctrine: Foundation of Modern Indian Jurisprudence

The constitutional turning point came in ***Bachan Singh v. State of Punjab***[4] (1980), where the Supreme Court upheld the death penalty but narrowed its imposition drastically. The Court held

[29] INDIA CONST. art.21.
[30] Jagmohan Singh v. State of Uttar Pradesh, (1973) 1 S.C.C. 20 (India)

that capital punishment must be awarded only in the **"rarest of rare cases when the alternative option is unquestionably foreclosed."**

This doctrine fundamentally altered Indian sentencing by:

- Requiring a **balance between aggravating and mitigating factors**,
- Mandating **judicial discretion**,
- Affirming **individualized sentencing**, and
- Recognizing human dignity as a limiting principle.

Machhi Singh v. State of Punjab[15] (1983) subsequently elaborated categories of cases where death may be considered proportionate, such as extraordinary brutality or crimes impacting collective conscience. These decisions placed India among jurisdictions that retain the death penalty but subject it to stringent constitutional scrutiny.

7.3 Human Dignity, Due Process, and the Decline of Mandatory Death Sentences

The Supreme Court's emphasis on dignity deepened in ***Mithu v. State of Punjab***[19] (1983), striking down mandatory death sentences under Section 303 of the Penal Code. The Court held that mandatory capital punishment eliminates judicial discretion and violates Article 21, reinforcing the central role of **individual circumstances**.

Subsequent decisions, such as ***Santosh Kumar Bariyar v. State of Maharashtra***[22] (2009), criticised inconsistencies in sentencing and acknowledged the fallibility of the criminal justice system. Such judgments highlighted concerns about wrongful convictions, unreliable evidence, and procedural irregularities.

7.4 Delay, Mental Health, and Procedural Safeguards: Expansion of Article 21

A significant development in Indian jurisprudence concerns death row delays, mental health conditions, and the treatment of prisoners awaiting execution. In ***Shatrughan Chauhan v. Union of India***[30] (2014), the Court held that **inordinate delay** in deciding mercy petitions constitutes grounds for commutation. The decision linked psychological suffering on death row to violations of Article 21.

Further, in ***Manoj v. State of Madhya Pradesh***[20] (2022), the Supreme Court institutionalised a comprehensive **sentencing framework**, requiring social-background reports, psychological assessment, and mitigating evidence before imposing death. This aligns Indian jurisprudence with global dignity-based standards and significantly restricts arbitrary sentencing.

Indian courts have also commuted death sentences due to mental illness, socio-economic vulnerability, and procedural unfairness—reflecting a shift towards **rehabilitation** and **compassionate constitutionalism**.

7.5 Parliamentary Policy and Retentionist Pressures

Despite judicial humanisation, Parliament has occasionally introduced **new offences attracting death**, such as terrorism-related crimes, certain categories of rape, and repeat offenders under the 2013 and 2018 Criminal Law Amendments. These legislative trends reflect public opinion pressures and political responses to high-profile crimes.

Yet empirical evidence shows that India executes extremely rarely. Most death sentences imposed by trial courts are commuted or overturned on appeal, illustrating an inherent tension between legislative retention and judicial reluctance.

7.6 Execution Trends and Supreme Court Interventions (2000–2025)

India has executed only a small number of individuals since 2000, including **Dhananjoy Chatterjee [31](2004)** and the four convicts in the **Nirbhaya case (2020)**. The rarity of executions, coupled with frequent commutations, supports the argument that India is effectively an **abolitionist State in practice**, though not in law.

The Supreme Court has also clarified procedural requirements for mercy petitions, solitary confinement, and familial rights of death row prisoners, reinforcing the humane treatment of condemned individuals.

7.7 India's Distinctive Position in Global Jurisprudence

India's model differs significantly from the absolute abolition of France and the UK, and from the retentionist assertiveness of the United States and Russia. The Indian approach is

[31] Dhananjoy Chatterjee v. State of West Bengal, (1994) 2 S.C.C. 220

distinguished by:

- A **judicial abolitionist tendency** within a formal retentionist structure
- A robust dignity-centred interpretation of Article 21
- Recognition of **systemic error and socio-economic vulnerability**
- Extremely infrequent executions
- Expanding procedural safeguards

India therefore represents a hybrid model where constitutional morality progressively narrows the death penalty, suggesting a long-term trajectory toward eventual abolition.

VIII. RUSSIA

Russia presents one of the most complex positions in global capital punishment jurisprudence. Although the death penalty remains legally permissible under the Russian Criminal Code, a **de facto moratorium** has existed since 1996, creating a system where capital punishment is retained in law but not in practice[32].

8.1 Council of Europe Influence and Constitutional Court Decisions

Russia agreed to the moratorium as a condition for joining the **Council of Europe** in 1996, committing to move towards abolition. The Russian Constitutional Court reinforced this commitment in its 1999 and 2009 decisions, holding that the absence of jury courts across all regions made executions unconstitutional. These rulings effectively prevented courts from imposing death sentences.

8.2 Retention in Statute but Prohibition in Practice

While the moratorium halts executions, Russian law technically preserves capital punishment for offences including aggravated murder and terrorism. However, no executions have been carried out since 1996. This unique stance—**legally retentionist, practically abolitionist**—

[32] Russian Federation Criminal Code arts- 59-60

reflects tensions between political symbolism and international human rights obligations.

8.3 Political Dynamics and Human Rights Concerns

Unlike France or the UK, Russia has not ratified **Protocol No. 6** or **Protocol No. 13** to the European Convention on Human Rights. Moreover, since its 2022 withdrawal from the Council of Europe, concerns have grown that Russia may reconsider formal abolition. Nevertheless, public statements from the Constitutional Court indicate that the moratorium reflects a national commitment to humanism and judicial restraint.

8.4 Russia in Comparative Perspective

Russia's approach contrasts sharply with the United States' active executions and India's narrow constitutional retention. Instead, it resembles a **politically cautious equilibrium**, where abolition is avoided for strategic reasons, yet executions are suspended to maintain international legitimacy and domestic stability.

IX. COMPARATIVE ANALYSIS

A comparative examination of the death penalty across the United Kingdom, France, the United States, India, and Russia reveals a spectrum of constitutional values, judicial philosophies, and political orientations that collectively shape the global landscape of capital punishment. Each jurisdiction has travelled a distinct historical and jurisprudential path, yet common themes emerge, particularly regarding human dignity, the risk of wrongful conviction, and the shifting purpose of punishment in modern societies. The United Kingdom and France present the clearest abolitionist models, where capital punishment has been constitutionally and politically rejected as incompatible with democratic ideals. By contrast, the United States and India maintain the death penalty but apply it under increasingly restrictive frameworks, while Russia retains the punishment in law but observes a longstanding moratorium, revealing a tension between political rhetoric and human-rights-driven judicial restraint.

Judicial control over sentencing plays an equally decisive role in differentiating the jurisdictions. In abolitionist systems such as France and the UK, courts no longer engage with capital sentencing but influence global norms through extradition jurisprudence, notably the European Court's decision in *Soering v. United Kingdom*, which prohibits exposure to death row conditions. India and the United States, by contrast, rely heavily on judicial discretion to

regulate capital punishment. India's Supreme Court has progressively expanded its scrutiny, requiring detailed mitigation, psychological assessments, and proportionality analyses prior to imposing a death sentence. The United States, while pioneering bifurcated trials and guided discretion in *Gregg*, continues to exhibit inconsistencies between States, illustrating the challenges of a fragmented federal system. Russia falls between these models: while the judiciary has effectively halted the imposition of death sentences, it lacks the constitutional mandate to abolish the penalty outright.

The federal or unitary structure of each jurisdiction further explains variations in practice. In the United States, federalism allows States such as Texas or Alabama to continue executing prisoners even as many others have abolished capital punishment. India, although quasi-federal, legislates capital sentences uniformly through central law, resulting in consistent constitutional standards despite regional variations in trial court sentencing. The United Kingdom and France, operating under unitary systems, implemented abolition uniformly and quickly once political and social consensus was achieved. Russia, though centrally governed, maintains a moratorium through judicial intervention rather than legislative reform, revealing the influence of political considerations rather than a rights-driven policy shift.

A further comparative theme concerns the significance of international human rights obligations. The UK and France are deeply integrated into European human rights structures that mandate abolition. Their compliance with Protocols No. 6 and 13 ensures that capital punishment cannot legally re-emerge. India's position is more nuanced: although it has not ratified the Second Optional Protocol to the ICCPR, its courts regularly invoke international standards to reinforce procedural safeguards, as seen in *Shatrughan Chauhan*. The United States, by contrast, resists international influence, repeatedly rejecting UN recommendations for abolition. Russia previously conformed to Council of Europe expectations but its withdrawal in 2022 now raises uncertainty regarding its long-term trajectory.

In evaluating the purpose and legitimacy of capital punishment, deterrence and retribution remain central themes. The United States continues to justify executions largely on retributive grounds, supported in certain states by political culture and public opinion. India acknowledges deterrence symbolically, particularly in cases of sexual violence, yet the judiciary prioritises proportionality and individualised sentencing, revealing an evolving commitment to rehabilitative and dignity-based principles. Abolitionist jurisdictions, meanwhile, reject

deterrence and retribution as insufficient to justify State killing, instead embracing a philosophical commitment to the sanctity of life. Russia's approach is ambivalent; while political rhetoric occasionally references deterrence, judicial practice consistently avoids executions.

Finally, concerns about wrongful convictions underscore the global decline of the death penalty. In the United States, DNA exonerations have exposed systemic failures in policing, prosecution, and forensic science. India acknowledges similar risks, emphasising sentencing caution and post-appeal review. The UK and France, where infamous miscarriages of justice contributed to abolition, treat the risk of irreversible error as constitutionally unacceptable. Russia, through its moratorium, implicitly recognises similar concerns even though the issue is not publicly debated.

Taken collectively, the comparative analysis demonstrates that the death penalty is increasingly shaped by constitutional values, judicial philosophy, and human rights norms rather than by traditional deterrent or retributive justifications. While each jurisdiction follows a distinct path, the broader trend points toward restricted use, moratoriums, or abolition, driven by shared concerns about dignity, fairness, and the fallibility of criminal justice systems. The differences in pace and form across these jurisdictions reveal not divergence of principle but diversity in the constitutional mechanisms through which similar values are progressively realised.

X. EXECUTION TRENDS AND STATISTICAL ANALYSIS (1960–2025)

The trajectory of capital punishment across India, the United States, the United Kingdom, France, and Russia can be clearly understood through long-term execution data and statistical patterns that reveal how each jurisdiction has responded to evolving social values, judicial standards, and human rights pressures. From 1960 to 2025, the global trend reflects a gradual but decisive movement toward abolition or severe restriction. Among the jurisdictions under study, the United Kingdom and France transitioned from active execution regimes to complete abolition; the United States witnessed fluctuating but steadily declining execution rates; India retained capital punishment but rarely carried out executions; and Russia shifted from a period of frequent executions in the Soviet era to a complete moratorium after 1996.

In the United Kingdom, execution statistics show a dramatic decline from the mid-twentieth century onward. The last executions in 1964 symbolised a turning point, after which death

sentences virtually disappeared due to growing scepticism about deterrence and concerns about wrongful convictions. This consistent downward trend preceded legislative abolition in 1965 and permanent constitutional entrenchment through the Human Rights Act and ECHR protocols, making the UK one of the earliest abolitionist states in Europe.

France presents a similar but culturally distinctive pattern. From the 1960s through the 1970s, the guillotine remained a legal instrument, yet by the late 1970s executions became rare. The final execution in 1977, followed by abolition in 1981, marked a transformation rooted not in statistics alone but in broader philosophical objections and constitutional reform. France's statistical decline reflected a deeper societal shift: even when crimes provoked public outrage, the justice system increasingly rejected execution as a morally acceptable response.

The United States differs markedly, with execution data revealing a complex pattern shaped by federalism and political ideology. Executions ceased temporarily after *Furman v. Georgia*[5] in 1972, resumed following *Gregg v. Georgia*[6] in 1976, and peaked in the late 1990s when over ninety executions occurred annually. Since then, executions have steadily declined, with fewer than twenty per year in recent times. This downward trend corresponds with increasing exonerations through DNA evidence, growing judicial scrutiny, and declining public support. Nevertheless, the persistence of active execution states—primarily in the southern region—demonstrates the strong influence of local political culture on national trends.

India's statistical profile sharply contrasts with its retentionist legal framework. Despite retaining capital punishment, India has conducted extraordinarily few executions since Independence. The period from 1960 to 2025 shows sporadic executions, with only a handful occurring in the last two decades. The Supreme Court's "rarest of rare" doctrine in *Bachan Singh*[4] radically reduced the number of death sentences upheld on appeal. Most death sentences imposed by trial courts are converted to life imprisonment either by High Courts or by the Supreme Court. Recent executions, including the 2020 implementation of the Nirbhaya sentence, are exceptions that underscore the exceptional nature of the penalty in practice. Thus, while the death penalty remains constitutionally valid, India operates as a near-abolitionist jurisdiction statistically.

Russia's data further illustrates the distinction between legal retention and practical abolition. During the Soviet era, executions were frequent and served political as well as criminal objectives. However, the moratorium introduced in 1996 resulted in complete cessation of

executions. No official executions have occurred since the adoption of the moratorium, although death sentences remained on the books until the Constitutional Court clarified in subsequent rulings that the death penalty could not be imposed without violating procedural fairness and constitutional humanism. Russia's statistical halt is thus politically motivated and maintained for over two decades, though recent geopolitical developments raise questions about its permanence.

Taken together, the statistical landscapes of these five jurisdictions demonstrate a clear trend: the death penalty is increasingly viewed as unnecessary, irreversible, and inconsistent with modern justice systems. Even where law permits its use, actual executions have decreased or disappeared entirely. This transformation reflects the combined influence of judicial intervention, human rights standards, public scepticism, and concerns about wrongful convictions. The comparative data reveals that numerical decline often precedes legal abolition, suggesting that the long-term future of capital punishment will be shaped more by shifting values and systemic caution than by legislative proclamations alone.

XI. CONCLUSION

The comparative study of capital punishment across the United Kingdom, France, the United States, India, and Russia reveals that the death penalty is less a question of penal necessity and more a reflection of constitutional identity, legal philosophy, and political will. Though these jurisdictions share historical roots in retributive punishment, their contemporary positions diverge dramatically, illustrating the complex interplay between human dignity, judicial reasoning, public sentiment, and the evolving global standard of decency. What emerges from this analysis is not merely a comparison of legal frameworks, but a deeper understanding of how nations conceptualise justice, moral responsibility, and the limits of State power.

Across all five jurisdictions, one conclusion emerges clearly: the death penalty is losing legitimacy. The empirical evidence fails to support its effectiveness as a deterrent, while the irreversible possibility of executing the innocent remains a universal concern. Judicial systems worldwide have become increasingly aware of structural biases, wrongful convictions, and the disproportionate impact of capital punishment on vulnerable groups. These concerns, combined with the global expansion of human rights norms, have shaped an environment where capital punishment appears increasingly incompatible with modern constitutional democracies.

Ultimately, the future of the death penalty will not be determined by crime rates or public emotion but by constitutional values, judicial philosophy, and the continued evolution of human rights. Abolitionist nations show that justice can be served without recourse to irreversible punishment. Retentionist nations demonstrate that rigorous safeguards and judicial oversight can significantly restrict its use, paving the way for eventual abolition. Moratorium-based systems illustrate that political restraint, even without legal abolition, can prevent executions while broader reforms evolve. The global trajectory suggests a slow but steady movement toward eliminating capital punishment as a tool of State power.

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