

COMPARATIVE ANALYSIS OF CAPITAL PUNISHMENT

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Abstract- The Supreme Court in the judgments of Alok Nath Dutta, Bariyar, Gafur, Sangeet and Khade. The inconsistent and arbitrary application of the Bachan Singh framework has been at the forefront of problems in the prison system. Similar cases in similar circumstances led to different results. These failures are more likely to affect the weaker sections of society, as 74.1 percent of prisoners are in a weaker socio-economic position .

The quality of representation in capital matters greatly affects the outcome. Individuals unable to afford such quality legal representation, coupled with evidentiary deficiencies in presenting mitigating factors, would further increase the number of vulnerable individuals imprisoned and sentenced to death. In his dissent, judge Bhagwati commented in Bachan Singh that the death penalty has a certain class bias and the victims of that extreme punishment are usually poor and oppressed. The system preys on the most vulnerable societies. If the judicial mechanism has failed, even the exercise of executive power can be discriminated against because there is no consistent basis for granting amnesty . Moreover, the leader's delay leaves the death row in a state of uncertainty, never knowing his fate.

1. INTRODUCTION

In the context of comparative study, it usually refers to constitutional interpretation and legal structures. One important aspect of governance that is usually integrated into legal activism is the "separation of powers".

The word "Judicial Activism" was first used by Arthur Schlesinger Jr. in January 1947 in an article titled "Supreme Court 1947" in Fortune¹ magazine. The concept of similar point of view has always been used by well-known scientists in the past. 1947.

Thomas Jefferson already used similar views, affirming the "despotic behavior of federal judges" and using those words about Chief Justice John Marshall². According to Black's Law Dictionary, legal activism means "a philosophy of legal decision-making in which judges allow their personal views on public policy, along with other factors, to influence their decisions".

2. Legal activism in the United States

Many scholars have argued that legal activism usurps the power of selected branches of government and ultimately undermines the rule of law and the institution of democracy³. While on the other hand proponents of legalism argue that sometimes it is a form of legal protection and legalistic defenders say that it is important to change laws with the changing times. There are many examples in the American justice system, where a revolutionary decision resulted from legal activism, e.g. in the historic case of Brawn vs. Board of Education⁴, where the decision of the Supreme Court was a perfect example of legal activism that demanded the abolition of segregation in public schools in 1954⁵.

In 1973, the Supreme Court decided to decriminalize abortion in Roe vs. Wade⁶ two important cases in the United States that controlled the same - same-sex marriage was worth Hollings vs. Perry 2013⁷ Federal Judge Vaughn. R. Walker overturned an amendment to the California Constitution that prohibited same-sex marriage, and most recently, in 2015, Oberge vs. Hodges⁸ was overruled, in which a Supreme Court justice declared same-sex marriage a right guaranteed under the Due Process Clause of the Act the 14th amendment.

3. Legal activity in India

Judiciary is India's most respected public institution since independence, be it elite or illiterate, and its decisions are effectively implemented as the final arbiter of justice, because it has the faith to support the common people.

¹ Kmiec, Keenan D. (2004). "The Origin and Current Meanings of 'Judicial Activism'". Cal. L. Rev. **92**: 1441, 1447

² Haines & Sherwood, The Role of the Supreme Court in American Government and Politics: 1789– 1835, 1944, p.209

³ Justice Antonin Scalia's dissent in Romer v. Evans; Romer, Governor of Colorado, et al. v. Evans et al. (94-1039), 517 U.S. 620 (1996).

⁴ 347 U.S. 483(1954)

⁵ Vincent Martin Bonventre, "Judicial activism, judges' speech, and merit selection: conventional wisdom and nonsense," Albany Law Review, Summer 200

⁶ Roe v. Wade a classic example of judicial activism at the Wayback Machine. The Daily Campus, September 12, 2008

⁷ "California Officials React To Proposition 8 Ruling" August 4, 2010

⁸ "Symposium: Judicial activism on marriage causes harm: What does the future hold? – SCOTUS blog"

Legal activism in India owes its popularity to the legendary Justice KrishnaIyer, who in his landmark judgment in *Rajendra Prasad v State of UP*⁹ explained that "a 19th century text, when applied to 20th century conditions, cannot be interpreted on the basis of signals". The Supreme Court of India (Supreme Court of India) observed in the *Charles Sobhraj* case¹⁰ that the constitution should not be interpreted according to the wishes or opinions of its cadres, but according to the evolving standards of decency that marks the development of a mature society. It has been observed that extending judicial review to constitutional amendments is legal activism of the Supreme Court of India as held by the Hon'ble Supreme Court in the leading case of *Keshwananda Bharti Vs. State of Kerala*¹¹ that although Article 368 of the Constitution of India by the Supreme Court of India, they has no express words but it is interpreted that the power to amend the constitution is not unlimited and unlimited but still the parliament has no right to amend or to change the basic structure of the Constitution.

This can be cited as the most important example. legal activism is Article 21 of the Constitution of India, which has become India's most important example of legal interpretation, although the article states: "No one shall be deprived of his life or personal liberty except in accordance with law".

But with the last extension of the substantive laws, when it encompassed all branches of life, it is clear that the executive and the legislature began to respond to the needs of the citizens and fulfill their duties. Legal activism played a key role in the definition of Article 21.

4. Empirical data on capital punishment

According to the Report of the Law Commission 262 on the Death Penalty. The data analyzed in the national consultation was in response to a public consultation and presented a true picture of the inconsistent, judge-centered and arbitrary application of the death penalty that was presented to the Law. Law Commission to find an appropriate picture of the impact of the death penalty and judges, the appropriateness of the death penalty. Death penalty in India After an in-depth study of the National Crime Records Bureau's report on death sentences between 2000 and 2012, it found that Indian courts handed down 1,677 death sentences.

As a result, averages of 129 people are sentenced to death every year, and more calculated, one person is sentenced to death every three days in India. In the *Khade* case, the Hon'ble Supreme Court observed that the record was very alarming and the death penalty was used more than the principles of *Bachan Singh*. Another proof of the arbitrary use of the death penalty by the courts is the data given by the Supreme Court to the Death Penalty Clinic of the Delhi National Law University in a national consultation, which clearly showed that trial courts imposed sentences. death sentence for 1,790 people²²⁸ in the years 2000-2015, of which about 1,512 cases were resolved in the courts and the rest are either pending or their verdict has not been found. Of those 1,512 cases, the appellate court overturned 62.8 cases, thus explaining that while the appellate courts agree with the trial court's decision about the guilt of the convicted, there was disagreement about the sentence.

Second, the appeals court acquitted the remaining 28.2 episodes in which the district court sentenced death, raising doubts about the quality of lower court decisions, so that the death sentence is ultimately upheld in only 4.3 percent of cases. And the Supreme Court report explains that for about 95 seconds, the district court incorrectly imposed the death penalty. It has been analyzed that the decision to award death penalty or life imprisonment is very judge-centric and it has been confirmed by the judges, Justice Bhagwati expressed this research very nicely saying that "the decision of death penalty in a particular case does not depend on the circumstances of the case but of the composition bench¹²" it reflects the trend of judge-centered decisions.

According to the latest death penalty report by the Center of Death Penalty National Law University, Delhi, there are currently 250 death penalty cases pending in the Supreme Courts of various states, and the majority of pending cases originates from Uttar Pradesh (68 and 52 cases) is in progress. Before the Supreme Court, about 30 prisoners had their pardons pending before either the governor or their state president, as shown in the table below:

Table 1 : Disposal of Total Cognizable Case under IPC

Year	Total cases for trial during the year including the cases carried over from previous year	No. of cases compounded or withdrawn	Trial were Completed			Cases pending trial at the end of the year
			Total	Case Convicted	Case acquitted or discharged	
2016	7833842	155463	1052623	448475	604148	6625756
2017	8130053	146300	1025781	427655	598126	6957972
2018	8549655	150322	1141031	464128	676903	7258302
2019	8939161	164920	1211225	497996	713229	7563016
2020	9328085	187539	1252138	482260	769878	7888408
2021	9781426	194994	1290148	518126	772022	8296284
2022	9930625	131355	1341386	605144	737242	8457884

⁹ [2009] INSC 258

¹⁰ *Charles Sobhraj v. State*, 1996 IIAD Delhi 550

¹¹ AIR 1973 SC 1461

¹² *Anil @ Anthony Arikswamy Joseph v. State Of Maharashtra*, (2014) 4 SCC 69, at para 33

The Courts are performing their duties with full dedication and are increasingly trying to complete trials at a very increasing rate, out of which the number of convictions has been lower. Create faith in the minds of criminals that the current justice system is slow and they no longer have fear of punishment in their minds which ultimately creates insecurity in the common man that life is not very safe. a theory of deterrence that prevents a criminal from committing a crime. This is clearly supported by the facts of the National Crime Record Bureau, as shown in the table: 2, 3 and 4-respectively..

Table 2 : Pending trial, Compounded / Acquitted from total cases for trial

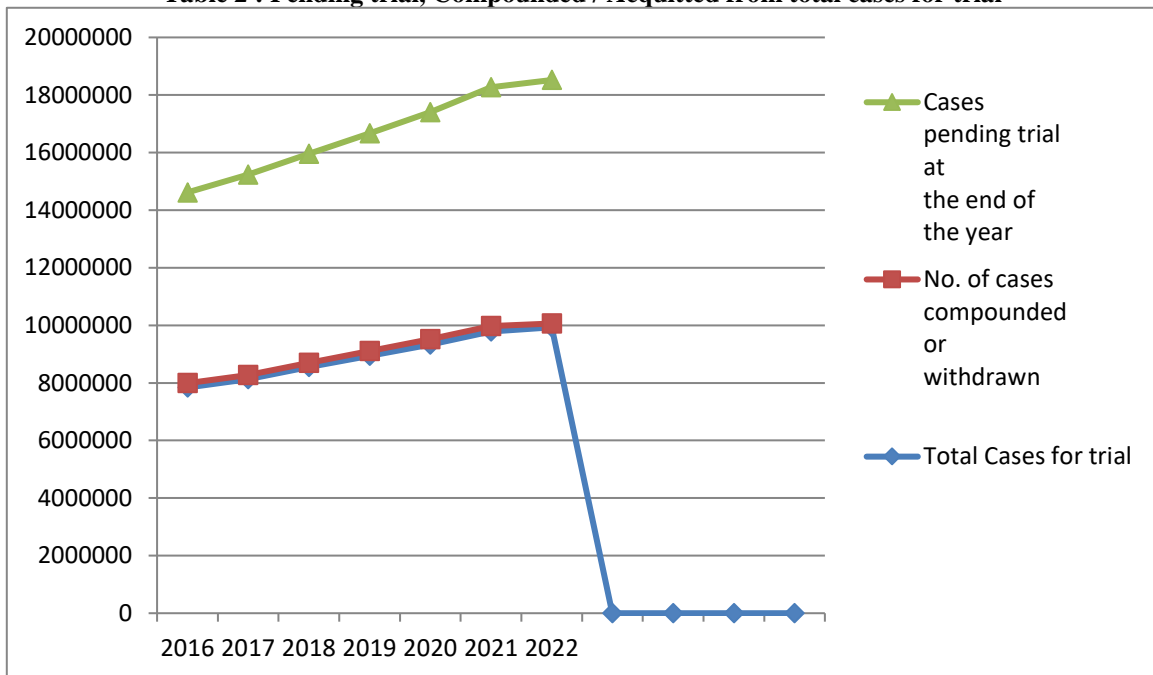


Table 3 : Convicted and Acquitted / Discharged from the total trial completed

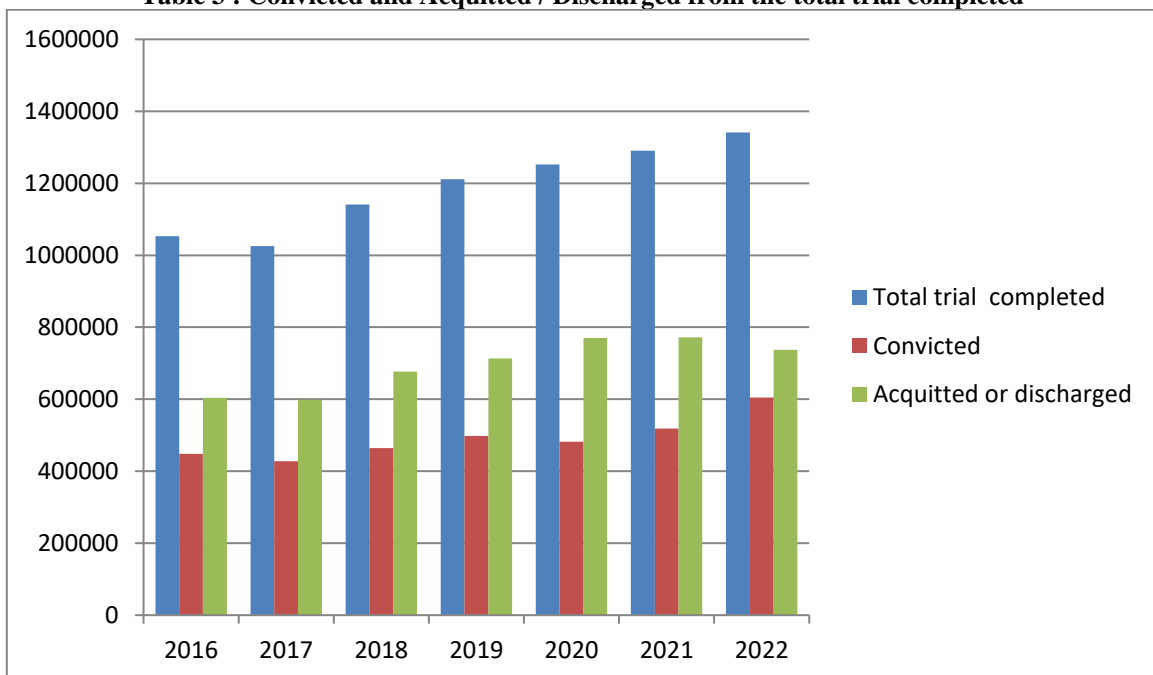
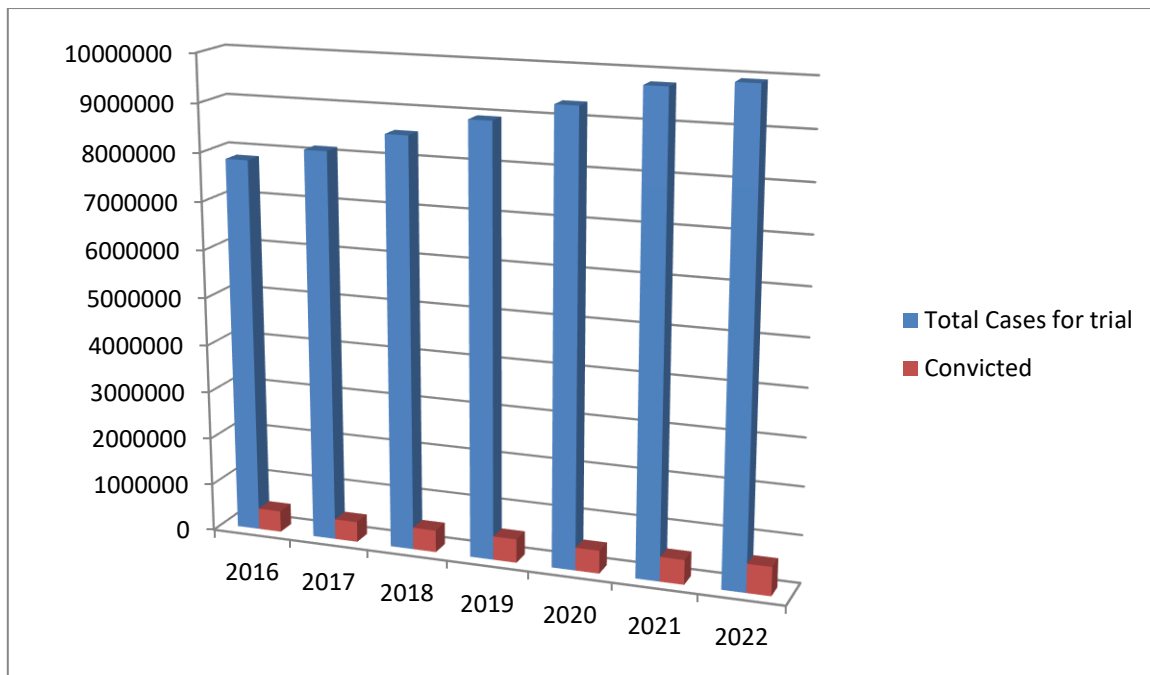


Table 4: Convicted in the total trial cases



5. Legal Effect of the Death Penalty

Life is a gift from God given to people to live a free and fruitful life, the state acts as a protector of all its citizens and anyone who does not follow the rules set in the law of the land is severely punished, death penalty even for a criminal. If the legal death penalty is imposed for an illegal act that harms someone to a great extent, they can be punished by death, the death penalty is also known as the death penalty, which is imposed on the most terrible, severe and terrible.

Capital punishment is a legal process in which a state sentences a person to death for a crime they have committed. The court where someone is sentenced to death is called capital punishment and the actual method of killing legally is called execution. There are evidences to show that the death penalty has existed on this earth since ancient times and originally they may have been sacrificed for the benefit of humanity, but slowly and gradually these rules were followed by the state to control humanity in the society. The direct impact of the death penalty on society today can still be as a deterrent to the people living in society or as revenge against crime victims, as already explored in earlier sections. In this section, we explore the importance of capital punishment in the legal fraternity of the world.

6. Legal Effect in the United States

Courts determine the legal consequences of society, except in India. Even in the United States, this legal effect has been confirmed. Some of the leading cases in American legal history are examined to examine the legal impact of the death penalty. Let's start with the first and most important is the famous case *Furman vs. Georgia*¹³ where William Harry Furman was found burglarizing and trying to escape, he killed someone with a gun. He was commuted and sentenced to death along with two other cases, *Jackson vs. Georgia*¹⁴ and *Branch v. Texas*¹⁵. There, the question was raised about the constitutionality of the death penalty in the context of rape and murder, and the second question was whether the use of the death penalty is cruel and unusual punishment that violates the 8th and 14th Amendments to the Constitution the debate found that the death penalty in those cases was a cruel and unusual punishment and violated constitutional rights. The court overturned the decision based on the act and upheld the imposed sentence and recognized the death penalty as unconstitutional.

Basically *vs. Rees*¹⁶ questioned the use of lethal injection here, saying that the lethal injection protocol violates the Eighth Amendment. Finally, the Supreme Court confirmed his punishment and the least torturous methods and saved him from death and constitutionality in a revolutionary case that ruled in *Balson vs. Kentucky* that a potential jury could be excluded on the basis of unconstitutional racial discrimination¹⁷.

In *Kennedy v. Louisiana*¹⁸ Defendant Fabrics Kennedy was sentenced to death for the aggravated rape of an 8-year-old girl under a state law that provides the death penalty for the rape of a child under the age of one.

The Supreme Court upheld the statute and rejected the appellant's argument in *Coker vs. Georgia*¹⁹ which prohibited the death penalty for the rape of an adult woman. The Honorable Supreme Court said that the Eighth Amendment made the death penalty for the rape of a child absent the crime, and the consequence, and thus the Louisiana law, unconstitutional.

¹³ US Supreme Court 408 U.S. 238 June 29,1972

¹⁴ S11A1266

¹⁵ 447 S.W.2d 932 (1969)

¹⁶ US Supreme Court 543 US 551 March 1, 2005

¹⁷ US Supreme Court 476 US 79 (1986)

¹⁸ US Supreme Court 554 US June 25, 2008

¹⁹ US Supreme Court 433 US 584 June 29, 1977

All of the cases discussed above pave the way to the current legal guidelines that allow and limit the death penalty in the United States. Jurisprudence formed legal norms in the form of amendments

7. Legal Consequences in India

Every case where the honorable courts of the land finally decide to award the death penalty to an accused whose guilt has been proven in the legal manner required by the laws of the land instills respect for the law and the legal system the minds of the individuals of a nation, and those decisions bring a legal effect into history, preferring similar future cases.

The Constitution of India enshrines the fundamental right to life under Article 21, which is entitled "Protection of Personal Liberty" and provides that no person shall be deprived of his life and personal liberty except by and through some person in accordance with law. The right to life is guaranteed, which has become a big question mark, there is a court that questions the constitutional validity of the death penalty, arguing that the death penalty violates the fundamental rights guaranteed to individuals in the form of Articles 21, 14, 19 of the Constitution from India.

Although we discussed the most important cases of the constitutionality of the death penalty in the previous chapter, here we again discuss some important jurisprudence of the history of the Indian legal system to understand the legal implications of the death penalty law and society. The impact of the death penalty at the beginning of the debate was the first case to raise the question of the constitutional validity of the death penalty, *Jagmohan Singh Vs. State of U.P.*²⁰.

Another recent leading case that momentarily changed the penal code is the brutal 2012 gang-rape and murder case in Delhi, known as the Nirbhaya case, where four men raped a medical student in the presence of a girl. One of which was a 17-year-old minor, and this girl was brutally raped and left in a vegetative state, and a few days later on 29.12.2012, he died, causing a social and legal revolution. Due to outcry, a commission was formed, which gave its report as the Justice Verma Commission and reformed laws related to rape.

The Crimes (Amendment) Act 2013 expanded the meaning of rape and reformed the law. Three of those convicted of that crime were sentenced to death and one young man was sent to a juvenile home for 3 years.

In *Sangeet and Ans vs. State of Haryana* (2013, 2 SCC 452) the Hon'ble Supreme Court stated that in any discussion regarding capital punishment, the decision in *Bachan Singh's* case must be referred, viz. rarer and rarer principle should be kept in mind. The effect of mitigating and aggravating factors on the death penalty debate was again decided in *Mohinder Singh Vs. State of Punjab*²¹. In the case of *Gurvail Singh vs. State of Punjab*²² the appellant and two others were charged with the offense under Section 34 IPC under Section 302 and the trial court again awarded him death sentence on the principle of rarest and rarest attempt. To decide whether they should receive the death penalty or not. *Mahendra Nath Das Vs. UOI*²³ appeals were heard on the ground that the Court of Appeal should have appealed, but the Court of Appeal had different views on the procedure to be followed, and the appeal was therefore dismissed.

In *Sivaji Jai Singh Babar vs. Maharashtra State*²⁴ the changes were completed and after a trial, one of the accused was sentenced to death and the other to life imprisonment based on their role and the seriousness of the crime. There have been cases like *Triveni Ben vs. State of Gujarat*²⁵, where the court held that extraordinary delay in deciding mercy petitions was often blamed and thus commuted the death penalty to life imprisonment because mental torture violates the right to life.

8. Conclusion

Today, since the sole purpose of the death penalty has been abolished, it is once again time to decide whether the death penalty should be abolished or retained. The detentionists and abolitionists alike have their share. The arguments presented by the conservationists can be summarized as follows:

- a) Death penalty acts as a deterrent, which is not so applicable in moderate countries because crime seems to increase, but in countries with high execution rates it acts as a real deterrent the level of crime there is quite low compared to other countries.
- b) In countries that abolished the death penalty, crime increased and therefore it had to be reintroduced to keep the fear of the law in the minds of ordinary people. The best example is the United States.
- c) The current international scenario, especially the conditions in the study countries, does not support abolition.
- d) The result that even serious criminals are kept in prison makes it a very serious problem for the administration to deal with the situation.
- e) The death penalty also helps to limit possible epidemic outbreaks in society between the victims and their families, if there was no justice between them through the death penalty.
- f) The death penalty is a just punishment for the most terrible and serious crimes, but the methods used are harmless, humane and less cruel than the crime committed.
- g) Imprisonment has become an easy way of life for the poor and backward class of the society, which forms the largest part of the criminal class, may be because of their socio-economic conditions and here in the prison they live a decently comfortable life.

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