

DEATH PENALTY: ISSUES AND CHALLENGES IN THE INDIAN JUDICIARY PRACTICES

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ABSTRACT

The government and judiciary apply the death sentence as a deterrent to crime, to provide justice to the victims, and to eliminate criminals from society so they won't commit the same crime again. It dates back to the early Paleolithic, when the monarchy and law and order were synonymous. If the death penalty is applied, the consequences are permanent. China is the country with the most executions each year. For the most serious crimes committed, the death penalty is applied in India. The researcher has used a variety of trustworthy and impartial sources, statistics, and assessments to either refute or support a theory. To support the position, the researcher has used a number of examples and quotations. This research is based on a doctrinal type pattern and uses both primary and secondary data from publications, legislation, parliament bills, and reports. It is also based on information that has already been available and has been examined to make an evolution of this research. The major goal of this research is to understand the death penalty in India, assess India's position on the death penalty globally, and determine whether a viable alternative to the death penalty exists.

Keywords: Death Penalty, Capital Punishment, Criminology, Criminal Law.

Introduction

The death sentence, sometimes known as the capital punishment, is the harshest punishment a criminal can get. The state's legal process for using its authority to end the life of the criminal is this one. A few serious crimes, including as murder, terrorism, rape that results in the death of the victim, the repeated offence of drug trafficking, etc., are punishable by the death penalty under various provisions of the Indian Penal Code and other laws. The Indian judicial system upholds the tenet of "Innocent till proven Guilty," and the process calls for numerous hearings with the victim and the accused as well as strong proof. But the question is, "Is the death penalty a deterrent to crime? Does it actually assist a nation in lowering its overall crime rate? Is it capable of making people afraid to commit crimes?"

Historical Background of Death Penalty in India

Prior to its liberation from British domination, India had little recourse to the legal system. The use of the death penalty was determined by the whims and ideals of British emperors. The Central Legislative Assembly member from Bihar named Babu Gaya Prasad Singh demanded a measure to do away with the death punishment for crimes under the Indian Penal Code in 1932. (official criminal code of India that covers all the aspects of criminal law). The circulation motion was rejected. Three freedom fighters, Bhagat Singh, Rajguru, and Sukhdev, were given death sentences for the Lahore Conspiracy case a few days later, on March 24, 1931. (for boycotting the British Simon Commission and bombing the

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Delhi Assembly). Later that year, Congress asked that the death penalty be abolished. It didn't alter, though. The existence of the death penalty was a topic of discussion in the Constituent Assembly between 1947 and 1949, and Baba Sahib Ambedkar—the man credited with creating the Indian Constitution—left it up to parliament to decide. However, he opposed keeping the punishment in place. He thought that adopting such a punishment goes against India's commitment to the nonviolent principles. The death penalty punishment was often proposed and rejected in the parliament between 1952 and 1962. In 1958, Prithvi Raj Kapoor, a member who had been nominated, moved the first resolution. The debate had 14 MPs (Members of Parliament). Only six participants supported abolishing the death penalty, compared to nine who supported the practise in India.

Savitri Devi Nigam introduced the following resolution in the Rajya Sabha in 1961. Six out of the 19 MPs who participated in the discussion in favour of abolishing the death penalty. The death penalty has been discussed in parliament on various occasions. A medical student was gang-raped in a bus in Delhi, the nation's capital, in 2012. Following the outrage, the government declared that individuals found guilty of rape resulting in death would face the death penalty. The offenders were Ram Singh, Mukesh Singh, Vinay Gupta, Pawan Gupta, Akshay Thakur, and one child. With the exception of the juvenile defendant, they were all given the death penalty in 2013. The Juvenile Justice (Amendment) Bill, enacted by the Rajya Sabha in 2015, reduced the lawful juvenile age for severe offences from eighteen to sixteen. The young defendant in the case was subsequently released.

Global Scenario of Death Penalty

The death penalty was proposed to be abolished for all crimes in 2007 by the United Nations to its member nations. India as well as a number of other nations including the US rejected this plan. 2003 saw the establishment of October 10 as World Day Against the Death Penalty by the World Coalition Against the Death Penalty. Numerous non-governmental groups and international organisations, including as the European Union, the United Nations, and Amnesty International, support it. It emphasises concerns surrounding the death penalty, including living conditions, mental health, poverty, and narcotics, and each year it focuses on a different theme. Between 1991 and 2017, there was an increase in the number of nations that have abolished the death penalty. 142 countries, including Canada, Mexico, Australia, Russia, South American countries, and the majority of European countries, have abolished the death sentence in law or practise as of 2017, according to Amnesty International. For the abolition of the death penalty, they announced a moratorium (an agreement to put on hold a course of action). Seven nations allow the death penalty for major crimes like those committed during times of war. At least 29 nations, including Congo and Qatar, have the death sentence, although no one has been put to death in the last ten years. However, 59 nations, including Saudi Arabia, the US, China, India, Pakistan, Iran, and others, still adhere to the policy. 84 percent of 2017's executions took place in Saudi Arabia, Iraq, Iran, and Pakistan. Amnesty estimates that thousands of executions take place in China each year despite the fact that the country's data are still classified. Last year, 23 people were put to death in the US. In 2018, Washington abolished the death penalty. The punishment was handed down unfairly, according to the Supreme Court.

Alternatives to the Death Penalty

When a crime is particularly terrible, the death penalty is applied. These crimes have a social impact and could consequently cause public outcry, much like when terrorists receive the death penalty. Nobody would want a terrorist, rapist, or serial killer to be free to wander the streets. The general public would attempt to exact retribution for the deaths of innocent people. They would want life in jail if not the death penalty. The alternative to the death penalty might be life in prison without the possibility of parole because the prisoner would not be released despite their improved behaviour. Even if release is granted, it typically comes after 25 to 30 years in prison. The prisoner grows elderly and frail after such a lengthy time behind bars. The police must keep an eye on the released prisoner's behaviour. Additionally, the criminal should be examined to determine whether or not he or she is truly capable of reform before parole is granted. The criminal must get community-based mental health education before being granted parole. Family involvement, drug abuse prevention initiatives, and counselling sessions must be made available. Before release, there must also be access to cultural and recreational programmes, organisation, training, life skills classes, and anger management programmes.

Literature Review

Toward the end of 1957, when the Third Committee of the Twelfth U.N. General Assembly began debating Article 6 of the draught Covenant on Civil and Political Rights and accepted the same with changes, the United Nations began to pay attention to the issue of capital punishment. The

International Covenant on Civil and Political Rights was ratified by India in 1979. (ICCPR). According to Article 6(2) of the ICCPR, the death penalty "may be applied only for the most heinous crimes" in nations that have not abolished it. International laws and norms on the death sentence are unambiguous on this point and stipulate that it can only be applied once strict legal requirements have been met. In India, the Law Commission of India first thoroughly investigated the issue of the death penalty before coming to the conclusion that "the suggestion that the death penalty may be abolished as an experiment (so that it can be reinstated after abolition) is an argument to which we have given our thoughtful attention; however, we have to take note of certain possibilities. We believe that, given the current status of the nation, the death penalty should be maintained after carefully considering all the relevant factors." In its 187th Report on the "mode of Execution of Death Sentence and Incidental Matters" in 2003, the Law Commission of India addressed the topic of the death penalty once more. However, it was only concerned with a narrow question regarding the mode of execution and did not address the important issues of the constitutionality and desirability of the death penalty as a punishment. The Law Commission once more released its 262 Report on the Death Penalty in August 2015. In this Report, the Commission urges the abolition of the death sentence for all offences save those related to terrorism and acts of armed conflict. The Commission genuinely wishes for a rapid and unstoppable transition to complete abolition. Numerous authors have addressed the question of the abolition of the death sentence in their publications, in addition to the 35th, 187th, and 262 Reports of the Law Commission of India. The death penalty is undoubtedly unconstitutional if it is applied arbitrarily, capriciously, unreasonably, discriminatorily, freakishly, or wantonly, according to N.V. Paranjape in his 2010 book "Criminology & Penology," but if it is applied rationally, objectively, and judiciously, it will increase public confidence in the criminal justice system. According to K.I. Vibhute's statement in "P S A Pillai's Criminal Law" (2015), it is evident that only two types of crimes—treason and murder—carry the death penalty. The Judges must, however, choose carefully between the two acceptable punitive choices, namely the death sentence and life in prison, in cases where the crime is punishable with either a death sentence or a life term. The fifth chapter, "Capital Punishment," of Dr. Krishna Pal Malik's book "Penology, Victimology and Correctional Administration in India" (2012) discusses the death penalty in general terms. He discussed the constitutionality of the death penalty, the doctrine of the rarest of the rare cases, and other topics. He also brought forth information on mercy applications received under Article 72 via RTI. J.P.S. Sirohi examined the complexity of the death penalty in his 2013 book "Criminology and Penology." According to him, the death penalty may be abolished in our nation for a little period of time while a careful and useful analysis is conducted to determine if it should be abolished or not. The author of the 2014 book "Criminal Law (Cases & materials)" noted how the desire for vengeance is not a recent development. The death sentence is the strongest defence against horrific crimes. This explains why the death sentence for rape has become a popular demand in the wake of the country's high rate of rapes, as in the case of Section 364A, which established the death penalty for kidnapping for ransom in 1993. In his 2013 book "Constitutional Law - New Challenges," G.P. Tripathi argued that the judicial strategy used before Jagmohan and Bachan Singh was flawed. In these instances, it was changed. The previous perspective was that life in jail was an exception rather than the rule of "death." The court was required to explain why the death penalty was not appropriate. The current perspective is "death" in the "rarest of the rare circumstances" and "life-incarceration in all cases." The court must explain why the "lifer" would not receive justice in that specific situation. This strategy is appropriate and accurately conveys *Sententia Legis*. The authors of "Constitutional Law - Analysis and Cases" (2002) claimed that neither the Universal Declaration nor the Civil Covenant forbade the death penalty. The majority of States at the time the Universal Declaration was adopted approved of the death penalty. Conditions for the application of the death penalty are outlined in Article 6 of the Civil Covenant. The American Convention places restrictions on the death penalty and forbids its reinstatement in states where it has been abolished. According to international accords, more and more States have shifted toward abolishing the death sentence during the past three decades. The author of the 2005 book "The Indian Penal Code (with a Commentary, Critical and Explanatory and Latest Case - Law)" asserts that the State's first priority should be to abolish the death penalty. A person who committed the crime only because of circumstances that were imposed upon him by society is not worth hanging. He reiterated that the United Nations Committee that looked into capital punishment had discovered that there was no connection between the existence of capital punishment and decreased rates of capital crime in the data that were available at the time. The death penalty is the most severe punishment offered under the Indian Penal Code, according to K.D. Gaur, who emphasised this in his 2005 book "A Textbook on The Indian Penal Code." He reiterated that the realisation that a criminal is a member of society and requires leniency has led to a new perspective on punishment and a shift in how society views offenders. The humanitarian attitude and the establishment

of human rights and dignity on a national as well as an international level are significantly responsible for this change. As a result, there is growing support for the idea that when determining punishment, the law should consider both the offender and the offence. In the 2007 book "Ahmad Siddique's Criminology: Problems & Perspectives," S.M. Afzal Qadri commented on the death penalty, stating that the trend is clearly towards its abolition and that it appears that at the moment the death penalty is only being permitted in cases where there is not even the slightest hint of any mitigating circumstances. According to S.N. Mishra's 2011 book, "Criminal Law of India (IPC)," the death sentence can only be applied in cases that fall into the category of "Rarest of the Rare."

Objective of the Study

People who are poor and marginalised are wrongly given death sentences. Those who do not will be subject to the death sentence. Legal assistance does not aid wealthy convicts as much as it does impoverished ones. It is difficult to apply the death punishment equally or rationally. The Supreme Court has repeatedly affirmed that this harsh judgement was unjustly handed down. 5.2 persons died for every homicide that cost 10,000 rupees. The two presidents who supported abolition, S. Radha Krishnan and A.P. J. Abdul Kalam, did not oppose the call for amnesty, but other figures with other ideologies were more hostile. As a result, the primary focus of this study will be the legal background of the death penalty in Orissa.

Research Methodology

The theological type of pattern serves as the study's basis. Traditional research is another name for the study of education. Analytical and descriptive techniques are two separate categories that apply to both research and education. This study is based on previously published material that has undergone revisions as a consequence of the analysis of the data. The use of secondary data is made in this inquiry. For this study, researchers mostly consulted books, articles, magazines, and other sources.

Problems with Death Penalty

The death penalty has some drawbacks. Between January 1, 2000 and June 30, 2015, the Supreme Court imposed 60 death sentences. Then he said he was mistaken about those 15 things (25 percent). Do you honestly think that this system will cause your death? Even then, was it based on information that dishonest or ineffective law enforcement developed or collected? People who are poor and marginalised are wrongly given death sentences. Those who do not will be subject to the death sentence. The benefits of legal aid for prisoners are not as great for wealthy convicts as they are for poor prisoners. It is difficult to apply the death punishment equally or rationally. The Supreme Court has found time and time again that this harsh judgement was wrongly carried out. Such a choice seems forced and strange. The referee's personal philosophy is the important component. The judge who stood up for him was given the death penalty. The judge who opposed never did. The presidents who supported abolition (p. Rada Krishnan and A.P. J. Abdul Kalam) did not oppose the request for amnesty, despite other opponents being more combative. Should one's philosophy determine whether they are allowed to kill others? If the death penalty is eliminated, the tax burden will decrease rather than increase. The average annual cost of housing prisoners is \$30,000. Executors make more money and put money aside for the lengthy grieving period. The victim's desire for constitutionally, legally, or politically legitimate retaliation is communicated without arousing a hysteria when the death penalty is requested, as is frequently the case in completely irrational situations (accidental death, fraud, etc.). It cannot alter the situation. Why is the death penalty still required if life in prison can meet the needs of the victim's family, who make up 99.99% of victims? Punishment is necessary, but why should it be executed with the same savagery and ferocity as how the prisoner murdered his victims? Crime should not be the basis for punishment. We don't harm those who commit rape, we don't make people look bad, and we don't rape anyone. Why is the killer required to die?

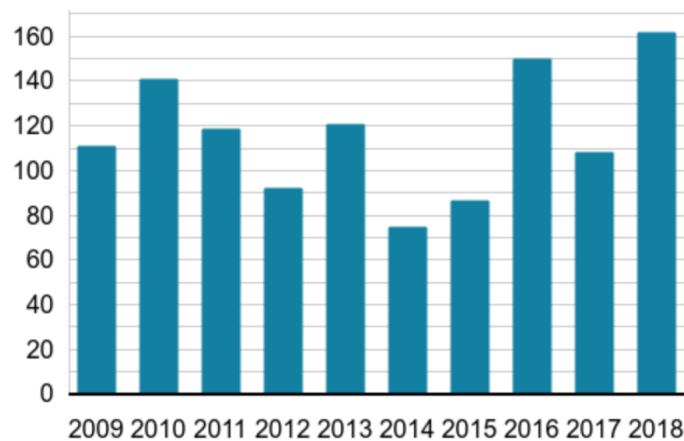
Significance of the Study

The death penalty is still controversial in India. Due to the moral and social considerations surrounding this hotly debated subject as well as the legal and constitutional concerns surrounding the death sentence, there must be a lot of confusion in this area. The debate over the death sentence must address moral dilemmas like "eye for an eye" ethics on the one hand and the general public's perspective on the other without discussing legal issues. As a result, this study will have an effect on the current judicial system in both legal and social contexts.

Capital Offences in IPC

Sl. No.	Section Number	Description
1.	Section 121	Treason, for waging war against the Government of India
2.	Section 132	Abetment of mutiny actually committed
3.	Section 194	Perjury resulting in the conviction and death of an innocent person
4.	Section 195A	Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person
5.	Section 302	Murder
6.	Section 305	Abetment of a suicide by a minor, insane person or intoxicated person
7.	Section 307 (2)	Attempted murder by a serving life convict
8.	Section 364A	Kidnapping for ransom
9.	Section 376A	Rape and injury which causes death or leaves the woman in a persistent vegetative state
10.	Section 376E	Certain repeat offenders in the context of rape
11.	Section 396	Dacoity with murder

Death sentences since 2009

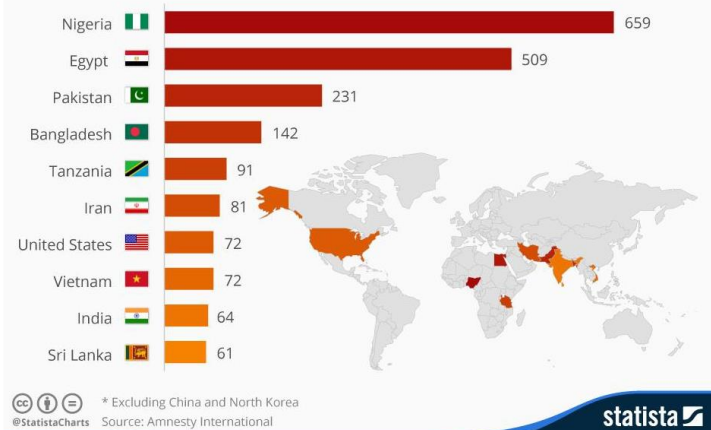


Source: National Law University in Delhi

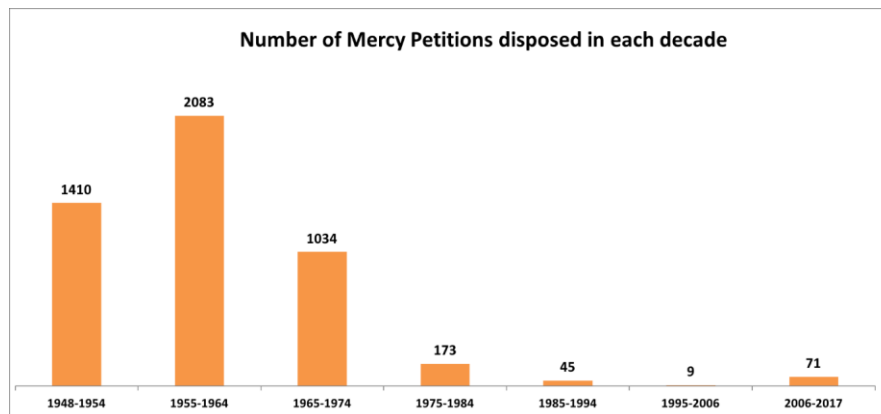
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The Countries Sentencing The Most People To Death

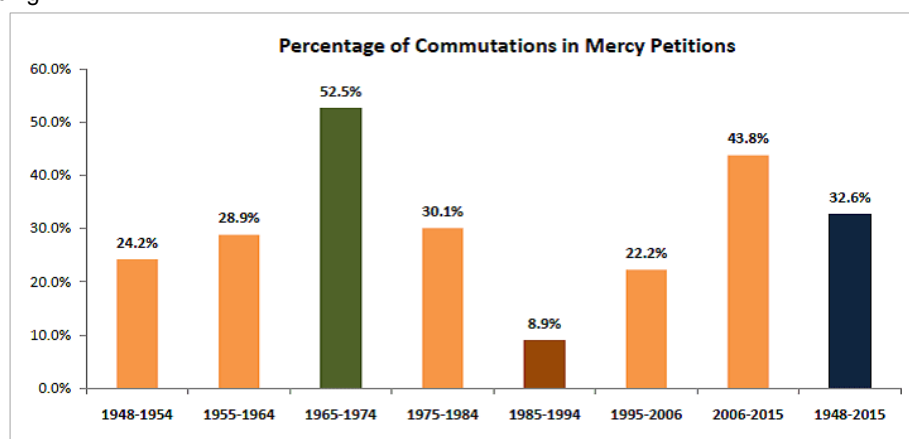
The 10 countries that gave out the most death sentences in 2014



From the above figure it is significant that most of the death penalty are given in the African and Islamic countries and its very less in developed countries like European nations.



From the above graph it is understood that the mercy petitions disposed in the latest decades are reducing.



The above figure indicated a significant percentage of commutations in mercy petitions is happening.

Discussion & Findings

India is a nation with significant social inequality. Those with little influence, resources, or connections are unfairly targeted. Trials in court are a common trap for the impoverished, underprivileged, and those whose views are more likely to go unnoticed. Rarely do those who can afford private counsel receive the death penalty. The Right to Life is guaranteed as a basic right under Article 21 of the Indian Constitution. The death penalty violates this right. According to the National Law University, New Delhi's recent Death Sentence India Report, cases involving the death penalty have the most fundamental problems in the criminal justice system. It cannot be used in a sensible manner. The ultimate decision is based on a person's philosophy and values. Judges who support it have executed prisoners, whereas judges who oppose it have never done so. Additionally, Presidents who support abolition like S. Radhakrishnan and A.P.J. Abdul Kalam refused to reject mercy requests, while others who support the death penalty reject clemency. A person is eligible to file a mercy petition before the President of India or the Governor of the State in which they reside when they have exhausted all legal options available to them (disposition to be merciful and especially to moderate the severity of punishment due). Only 73 of the 1,486 offenders who received death sentences from trial courts were confirmed, according to data from the Centre on the Death Penalty's Death Penalty India Report for the years 2000–2015. A third of individuals who received sentences were later found not guilty. Prisoners who may not have committed a crime are impacted by delayed justice in the criminal justice system. India is renowned for having highly corrupt government employees. The ineffectiveness of the police is another problem. No research has been done to date that can demonstrate that giving inmates a death sentence rather than a life sentence lowers the rate of crime in a society. It does not lessen stealing, terrorism, rape, or even murder.

Conclusion

According to statistics, India's crime rate has been steadily dropping since 1991. Human rights and the constitutionally guaranteed right to live and die with dignity are still being fought for by activists. The act of raping someone does not prove that rape is wrong, just as murdering someone does not prove that killing is right or wrong. The death penalty is essentially an imitation of the crime itself. According to a research by Amnesty International, most nations have done away with it. The impact of the penalty, not that of the convicts, must be considered while evaluating it. India is a corrupt nation, so there is no system in place to make sure that justice is administered fairly. Politicians and those in positions of authority might abuse it. Therefore, I vehemently recommend that the death penalty be abolished. The primary reason for the rise in abolition over the past 25 years has been the recognition of the death penalty as a human rights issue, as well as the development of international human rights law and the political support given to the campaign led by European institutions to abolish the death penalty entirely. Of course, this does not imply that all nations have followed the same path (as demonstrated by the previously mentioned examples), and there are certainly no instances in which it was initially accomplished by popular consensus or the demand of the masses, though a consensus might emerge post abolition, as was the case in Ireland (Schabas 2004b, p. 444). After the late 1980s, political and/or judicial leaders who embraced the tenets of the global human rights movement brought about abolition everywhere. Local pressure groups occasionally provided assistance in this effort. This essay has demonstrated that, with very few exceptions, those nations that still practise the death penalty have come to accept a significant portion of the human rights argument against it, specifically that it should only be applied in the worst possible circumstances and even then only after the strictest safeguards to prevent wrongful conviction. From there, it is not difficult to acknowledge that, in reality, no system can guarantee this, that applying the death penalty necessarily puts human rights at risk, and that states are better off protecting the right to life if they declare capital punishment to be no longer acceptable. The movement for the complete abolition of the death penalty has not yet become a global phenomenon, despite the concern about the protection of the unalienable "right to life" and the legality of the death penalty as a form of punishment being unquestionably problems of global relevance. There are still some parts of the world where the death penalty is still used as a form of punishment. Generally speaking, regions that support abolition include Western Europe, Latin America, and the southern portion of Africa, whereas regions that support retention include Asia, the Middle East, Eastern Europe, and the former Soviet Union. The fact that the United States is under so much pressure to discontinue its practice of executing criminally convicted individuals is noteworthy; it seems as though the movement's supporters consider the "capture" of the United States as a vital step in achieving their objective. They were unsuccessful in their endeavour. Despite this pressure, the United States is not required to entirely abolish the death penalty and is not transgressing international law by imposing and then executing death sentences. First off, no permission has been granted by the United States. Second, the United States cannot be forced to utilise the death sentence against its will because it is not yet completely prohibited by customary international law. The United States will be shielded from having to abolish the death penalty as a possible punishment for its convicted criminals even if the phenomena results in customary international law. Third, because complete abolition of the death penalty is not the norm under *ajus cogens*, the United States is not obligated to do so either. At least three laws prohibiting the death sentence may be considered customary international law. The first is the grouping of offences that could potentially result in the death penalty. The exemption to the law that forbids the death penalty for crimes committed during a war is an illustration of this State practise. This exception is a part of the regional and global human rights laws that gave rise to the abolitionist movement. It would appear to be sufficiently comprehensive and consistent to qualify as customary international law for States to continue using the death sentence for war crimes. The usage of protections for offenders who have been found guilty and are facing the death penalty falls under the second group of regulations. The two most important procedural safeguards appear to be ensuring that defendants receive a fair trial and later have access to an appeals process. Those who are subject to the death penalty fall under the third group. For instance, these laws forbid the execution of minors, expectant mothers, new moms, old people, demented people, and mentally challenged people. By emphasising the rules governing its application rather than putting pressure on these countries to completely abolish the use of the death penalty as a form of punishment, supporters of this global trend will ultimately have more success convincing the United States and other retentionist States to engage in a discussion about the death penalty. The movement's supporters will continue to believe that "abolition" means something different from what the United States and other retentionist States believe it means until they understand the distinction between the regulation of capital punishment and its elimination and change their goals accordingly.

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49. Triveni Bai v. the State of Gujarat (1983)2 SCC 68
50. U.K. Jadhav, *Is Capital Punishment Necessary*, 1973.

