

## **Comparative Analysis of Death Penalty Practices Socio-Political Influences in India and Indonesia**

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### **Abstract**

This paper compares the multi-dimensional issues regarding capital punishment in India and Indonesia from legal, socio-political, and human rights perspectives. It will further probe how, in these two countries, the death penalty evolved along the lines of ancient practices, colonial inheritance, and modern developments relating to its legal frameworks. It interprets constitutional provisions, landmark judicial decisions, and recent legal reforms, providing insight into the comparative legal interpretations and procedural methods of execution. The research examines in detail statistical analyses, demographic patterns, and regional trends that bring out these variations in the practice of the death penalty. It investigates what socio-political dynamics bring about capital punishment practices, such as public opinion, media, political parties, and NGOs. Wrongful convictions and human rights abuses are assessed against ethical debates and compliance with international human rights treaties. This research attempts to highlight some of the main similarities and differences in cultural, religious, and socio-political factors influencing the death penalty in India and Indonesia. The policy recommendations and future directions are addressed at the end, with the purpose of enlightening legal and policy reforms that uphold human rights and principles of justice, to add to global discourse on capital punishment.

**Keywords:** Capital Punishment; Death Penalty; Human Rights; India; Indonesia

### **Introduction**

Capital punishment is one of contemporary discourses' most controversial and polarizing issues.<sup>1</sup> Certainly, much of the debate has revolved around its ethical implications, efficacy as a deterrent, and its effects on human rights. The study will delve into the intricate dynamics of capital punishment in India and Indonesia because the two countries are hardly different in their historical, cultural, and socio-political background.<sup>2</sup> It is in these contexts that examination of the death penalty can provide critical insight into general practices and their interactions with the many factors at play.

The cases of India and Indonesia, remain unique and strong for the study of capital punishment because their backgrounds are diverse and complex. The Indian legal system is an

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<sup>1</sup> Francis Everett, "The Reality of Capital Punishment: Examining the Controversial Existence of State-Sanctioned Death," Medium, November 21, 2023, <https://medium.com/@francis.everett/the-reality-of-capital-punishment-examining-the-controversial-existence-of-state-sanctioned-eadfe62b807c>.

<sup>2</sup> Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, 4th ed. (Oxford: Oxford University Press, 2008), Online edition, Oxford Academic, March 22, 2012, <https://doi.org/10.1093/acprof:oso/9780199228478.001.0001>.

amalgamation of ancient customs, colonial legacy, and modern reforms; for Indonesia, traditional practices and the Dutch colonial rule left an imprint on the legal system. Both nations have undergone legal and social changes that make them rich contexts for comparative analysis in terms of capital punishment. Knowing what forms death penalty in these countries will not only deepen understanding of the individual contexts involved but also further the global understanding of capital punishment practices and their consequences.

Hence, the central research question for this work is: how have historical, cultural, legal, socio-political, and human rights factors combined as a mixed bag to influence the death penalty in India and Indonesia, and what do they portend for future reforms in law and policy?

To address this question, this research follows a comparative and interdisciplinary approach. The methodology combines tools from historical analysis, legal studies, socio-political research, and human rights evaluations to develop a broad understanding of the multifaceted nature of capital punishment. Historical analysis was done on this topic to trace the development of the death penalty in both countries, indicating the main milestones and cultural influences. Legal studies are centered basically on the constitutional provisions, statutes, and case laws relating to and regulating capital punishment. Socio-political studies focuses on inputs from public opinion, media, political parties, and advocacy groups in influencing attitudes and policy choices in cases of capital punishment. Human rights assessments look into compliance with international standards and ethical considerations, more precisely into issues of wrongful conviction and human rights abuse.

### **A. Historical and Cultural Context**

The history of the death penalty is such an eclectic process, from ancient times carrying through to contemporary legal practices. In ancient India, capital punishment, as per the Manusmriti,<sup>3</sup> an ancient legal textual prescription, was to be inflicted on offenders for various offenses,<sup>4</sup> embodying the strict measures of justice in the old society. Such practices were majorly influenced by religious doctrines that supplied a moral framework within which to exercise justice. Over the centuries, the application of the death penalty would change with the transition of dynasties and empires in India, reflecting the then-prevailing socio-political ethos.<sup>5</sup> The turning point was the advent of British colonialism in the 19th century. The Indian Penal Code, starting in 1860, was the first to codify the death penalty into a modern legal framework. Due process was modeled after the British standard of legality, but traditional practices still had a hold. By this time, the ground had been set for current capital punishment laws in India.<sup>6</sup>

The trajectory of the death penalty in India has been further molded by some important historical events and legal milestones. In that, the IPC in 1860 was a landmark moment for providing an entire legal framework, with the death penalty for certain offenses therein. Debates on the abolition of the death penalty resurged during the 20th century through global movements

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<sup>3</sup> F. M. Muller and G. Buhler, *The Laws of Manu*, 1st ed. (Routledge, 2001), <https://doi.org/10.4324/9781315029221>.

<sup>4</sup> Ibid.

<sup>5</sup> Apala Vatsa, "Death Penalty in India: An Examination of the Historical Discourse," *Proceedings of the Indian History Congress* 80 (2019): 1174–82, <https://www.jstor.org/stable/27192972>.

<sup>6</sup> Matthew H. Kramer, *The Ethics of Capital Punishment: A Philosophical Investigation of Evil and its Consequences* (Oxford, 2011), Online edition, Oxford Academic, January 19, 2012, <https://doi.org/10.1093/acprof:oso/9780199642182.001.0001>.

and internal changes in the socio-political landscape. A critical turn in the development came when the Supreme Court made its judgment in *Bachan Singh v. State of Punjab* in 1980,<sup>7</sup> upholding the constitutionality of the death penalty but introducing what became famous as the “rarest of rare” doctrine, under which capital punishment was provided only in the “rarest of rare” cases. The idea was clearly to limit the use of capital punishment in conformity with the changing human rights norms. Subsequent jurisprudence has further expounded on this principle and constitutes an exercise of great sophistication by the Bench in striking a balance between justice and mercy.

Cultural and religious influences showcase deep-rooted attitudes towards the death penalty in India. The different interpretations of Hinduism throughout history certainly do uphold capital punishment as a required measure under certain circumstances; this means that the death penalty acts as a deterrent against grave sins. In India's large Muslim population, Islamic law prescribes the death penalty for particular crimes but only after strict evidentiary and procedural safeguards against execution are met. Other religions in such contributions to the debate include Christianity and Sikhism, many of which are based on compassion and reform. These religious views are inextricably bound with cultural beliefs, forming a very complex tapestry of attitude—societal, toward the death penalty within India, shaped by its very pluralistic ethos.

Capital punishment in Indonesia dates as far back as traditional history, and its historical development has undergone immense changes, dating back to before colonization.<sup>8</sup> Traditional practices in these islands, particularly in the Javanese and Balinese cultures, provided for capital punishment as justice that was implemented by the local rulers.<sup>9</sup> In these societies, customary practices were usually anchored on the culture and religiosity of society and often regulated by customary laws guided by local beliefs. A few hundred years later, however, dramatic changes brought about by Dutch colonial rule in the early 17th century made a complete turnaround. The Dutch introduced formal legal systems, of which capital punishment formed a part, entirely in a Western-style and indicative of the effort by the ruling colonial authorities to stamp power and order upon society.<sup>10</sup> Capital punishment, hence, for the first time got legalistically codified as a part of colonial laws in this period and laid solid groundwork for contemporary practice in Indonesia.

Dutch colonial rule, therefore, had and continues to have a profound and lasting influence on Indonesia's death penalty laws. The legal structure of the nation after its independence was modeled on the colonial system of law, evidenced by its strict penal codes. Indonesia inherited it along with several other tenets of the Dutch legal system after the country gained independence in 1945. This simply puts forth the fact that the tropical quality inherently embedded by colonial rule runs deep into Indonesia's legal framework.<sup>11</sup> Over the decades, Indonesia has revised its laws,

<sup>7</sup> *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

<sup>8</sup> Institute for Criminal Justice Reform, *Death Penalty Policy in Indonesia*, December 2017, <https://icjr.or.id/wp-content/uploads/2018/08/DEATH-PENALTY-POLICY-final-1.pdf>.

<sup>9</sup> Bella Setia Ningrum Amin Hartanto, "The Effectiveness of the Death Penalty as a Preventive Action in Suppressing the Number of Narcotics Crime in Indonesia," *ScienceRise: Juridical Science* 1, no. 15 (2021): 29–37, <https://doi.org/10.15587/2523-4153.2021.225793>.

<sup>10</sup> George Masselman, "Dutch Colonial Policy in the Seventeenth Century," *The Journal of Economic History* 21, no. 4 (1961): 455–68, <https://www.jstor.org/stable/2114411>.

<sup>11</sup> Daniel S. Lev, "Colonial Law and the Genesis of the Indonesian State," *Indonesia*, no. 40 (1985): 57–74, <https://doi.org/10.2307/3350875>.

with influences from Islamic law and local customs,<sup>12</sup> but the colonial legacy still comes to the fore in the form and practice of capital punishment laws. This hybrid legal system underlines the complex interplay between the colonial influence and indigenous practice that went into the formation of contemporary Indonesian law.

These extend to the cultural and religious influences in Indonesia that help to a great extent in shaping the practice of capital punishment. In the country with the largest number of Muslims in the world,<sup>13</sup> Islamic laws play “the colonial influence deeply embedded” an important role, It stipulates that the death penalty itself shall be imposed for specific crimes, although its actual implementation is governed by strict evidentiary standards based on the proof needed as an antecedent to the imposition of the death penalty under Sharia law.<sup>14</sup> Traditional Javanese beliefs, which emphasize harmony and social order, have traditionally supported the use of capital punishment as a means of avoiding serious crimes.<sup>15</sup> It is these factors of culture and religion that give a multi-dimensional view to the perception of capital punishment, fusing traditional values with modern legal principles. This blend reflects broader societal values placed upon the maintenance of social order and justice.

Comparing the historical and cultural contexts of India and Indonesia, one comes up with a lot in common, yet there are many differences in the evolution of capital punishment. Ancient traditions that integrated death punishment, driven by religious and cultural beliefs, characterized both countries. However, their paths took different courses with the coming of colonialism. British colonialism in India and Dutch colonialism in Indonesia displaced indigenous practices with Western legal frameworks. These impacts did not replace the previous ones. Rather, it was followed by a massive conservation and adoption of aspects from the old traditional systems of both countries into unique hybrid legal structures. These structures are therefore typifying the fusions between the colonial and the indigenous practices; thus, evidencing the complex interplay of the external and the internal influences.

Cultural and religious beliefs in both countries have played a powerful part in influencing, in their own ways, the different acceptance and application of capital punishment. In India, owing to the diversity of religious doctrines, one sees a wide spectrum, from support based on special conditions for the death penalty to an entire abolitionist argument by invoking considerations of compassion and reform. All these discourses are interwoven into the conscience of public opinion and legal practice. In Indonesia, changing attitudes toward the death penalty<sup>16</sup> reflects a stronger

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<sup>12</sup> J. M. Otto, "Sharia and National Law in Indonesia," in *Sharia Incorporated. A Comparative Overview of the Legal Systems in Twelve Muslim Countries in Past and Present*, 433–90 (Leiden: Leiden University Press, 2010), <https://hdl.handle.net/1887/16318>.

<sup>13</sup> Pew Research Center, "World's Muslim Population More Widespread Than You Might Think," *Pew Research Center*, January 31, 2017, <https://www.pewresearch.org/short-reads/2017/01/31/worlds-muslim-population-more-widespread-than-you-might-think/>.

<sup>14</sup> Penal Reform International, *Sharia Law and the Death Penalty*, July 2015, <https://cdn.penalreform.org/wp-content/uploads/2015/07/Sharia-law-and-the-death-penalty.pdf>.

<sup>15</sup> Bella Setia Ningrum Amin Hartanto, "The Effectiveness of the Death Penalty as a Preventive Action in Suppressing the Number of Narcotics Crime in Indonesia," *ScienceRise: Juridical Science* 1, no. 15 (2021): 29–37, <https://doi.org/10.15587/2523-4153.2021.225793>.

<sup>16</sup> The Death Penalty Project, "New Research Revealing the Attitudes of Indonesians Towards the Death Penalty Provides New Data That Could Facilitate Fresh Discourse on the Future of Capital Punishment in the Country," accessed June 29, 2024, <https://deathpenaltyproject.org/new-research-revealing-the-attitudes-of-indonesians-towards-the-death-penalty-provides-new-data-that-could-facilitate-fresh-discourse-on-the-future-of-capital-punishment-in-the-country/>.

emphasis on justice and social order based on Islamic law and traditional beliefs. These beliefs are ingrained in the social fiber to such a degree that they affect not only legal frames but also the formation of popular perception. The interplay of these cultural-religious variables is what really makes for a complex landscape in terms of capital punishment practice.

The historical and cultural contexts in which the death penalty has evolved in both India and Indonesia are complex and evolving narratives of ancient tradition, colonial legacies, and contemporary legal developments. On one level, this suggests that cultural and religious beliefs are inextricably linked with the criminal justice policies of nations and therefore must be understood within the broader socio-cultural dynamics that frame attitudes toward the death penalty. It is fitting therefore at this juncture of the research to delve deeper into legal frameworks and judicial interpretations that further illuminate the complexities of capital punishment in these diverse contexts. This puts in place some of the ensuing legal dimensions of the death penalty analysis and gives an all-rounded insight into the multifaceted realities of this institution in India and Indonesia.

This broad-ranging research into the application and perception of the death penalty in India and Indonesia adopted a rigorous methodology, interdisciplinary in nature, and integrated both qualitative and quantitative approaches. It was done in different phases so that data could be gathered and analyzed from various sources to shed light on the basic theme of the research.

The first stage involved the gathering of available literature and its scrutiny to gain existing knowledge about the underlying history of capital punishment in India and Indonesia. Primary sources, such as ancient legal texts, records of the colonial period, and old legal documents, were followed to trace the evolution of execution methods and legal provisions over time. Secondary sources, such as scholarly articles, fact books, and historical accounts, were also traced to provide background and contextual information. It contributed to building a foundational understanding of the application and perception history of the death penalty in both countries.

The second stage of research work was dedicated to the prevailing legal regimes of India and Indonesia on capital punishment. This included an in-depth study of constitutional provisions, statutes, leading judicial verdicts, and legal documents like the Indian Penal Code and Indonesian Criminal Code with special emphasis on Supreme Court judgments and legal reforms enforced from time to time. Procedural safeguards are understood through reviews with the help of reports by law commissions and human rights organizations. Adjudication reasoning and the practical application of capital punishment explicit in specific cases—such as *Bachan Singh v. State of Punjab* in India and the *Bali Nine* case in Indonesia—further help to understand the contemporary legal debate.

The third stage of research assessed the socio-political dynamics influencing capital punishment practices. This encompasses content data analysis for political discourses, policy documents, and campaign materials to explain the role that political rhetoric plays in the course of shaping public opinion and legislative action.

## **B. Legal Framework and Judicial Interpretation**

The legal provisions regarding the death penalty in India are largely provided in the Constitution and numerous Acts; however, the IPC is the main legislation. Enacted in 1860, IPC provided for the death penalty for offenses such as murder, terrorism, and in specified cases of rape. The IPC is a codification blended from traditional practices and British legal principles introduced during the colonial period of rule. The Indian Constitution, adopted in 1950, does not provide for the

death sentence explicitly but gives the requisite basis through Articles 21 and 72. Article 21 guarantees the right to life and personal liberty, stating that no person shall be deprived of them except according to procedure established by law. It has lain at the center of judicial scrutiny over death penalty cases and often balanced the state's right to impose capital punishment against individual rights.

The judicial interpretation of the death penalty was therefore bitmasked-shaped by landmark judgments of the Supreme Court. The application of the “rarest of the rare” doctrine means that capital punishment should be imposed only in those gravest cases where alternative sentences are unquestionably inadequate. Judgment, therefore, was based on the balancing of aggravating and mitigating circumstances, which really limited its scope. The doctrine was later developed in subsequent cases, such as *State of Punjab vs. Machhi Singh* in 1983,<sup>17</sup> building on the aforementioned logic, and *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra* in 2009,<sup>18</sup> building on the previous jurisprudence for consistency in sentencing and fairness. These judgments vindicate the judicial role in ensuring that this death penalty is applied judiciously and sparingly.

Recent legal reforms and debates in India undoubtedly reflect a change of attitude toward capital punishment. There is growing advocacy for the abolition of the death penalty due to rising concerns over human rights violations, wrongful conviction issues, and arbitrariness in death sentences.<sup>19</sup> The Law Commission of India, in its 262nd report in 2015,<sup>20</sup> advocated the abolition of the death penalty for all crimes except those related to terrorism and waging war against the state. What the recommendation underscores is a new perspective that has begun to emerge in legal and human rights circles: justice should be made a bit more humane. Public opinion and political considerations continue to delay the abolition of the death penalty, mostly in crimes such as heinous crime cases and those touching on national security threats. All these agitations demonstrate a changing scene of legal reform in India, tugged between the dictates of tradition and modernity.

The legal regime surrounding the death penalty in Indonesia is basically founded on its Constitution and Criminal Code. Nowhere is the death penalty explicitly mentioned in the Indonesian Constitution, but the Indonesian Criminal Code does grant implicit permission for it to be carried out under certain conditions. The Criminal Code, which was initially derived from Dutch colonial law, provides that the death penalty shall be inflicted on whosoever commits any of the serious offenses, including premeditated murder, drug trafficking, terrorism, and others. Subsequent legislations, specifically the Narcotics Law in 1997<sup>21</sup> and the Anti-Terrorism Law in 2003,<sup>22</sup> further consolidated this legal basis by prescribing capital punishment for specific crimes. The Indonesian legal system has also borrowed from the traditions of the Dutch legal system and indigenous customary laws, thus making it very special in its use of the death penalty domestically.

<sup>17</sup> *Machhi Singh v. State of Punjab*, AIR 1983 SC 957.

<sup>18</sup> *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra*, AIR 2009 SC 1023.

<sup>19</sup> Project 39A, "Abolition of the Death Penalty: A Tough Road Ahead for India," Project 39A, accessed June 29, 2024, <https://www.project39a.com/writings/abolition-of-the-death-penalty-a-tough-road-ahead-for-india>.

<sup>20</sup> Asian Centre for Human Rights, "The Status of Mercy Petitions in India" (New Delhi: Asian Centre for Human Rights, October 9, 2015), <http://www.uncat.org/wp-content/uploads/2019/05/The-Status-of-Mercy-Petitions-in-India.pdf>.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

The bulk of the administration of the death penalty in Indonesia has been largely charted by landmark judgments. Indonesian courts have regularly held that capital punishment is constitutional, largely based on the heinousness of crimes and on grounds of deterrence. For instance, the judgment in the case of Zulfiqar Ali,<sup>23</sup> a Pakistani national convicted of drug trafficking, noted that Indonesia took a very strict view of serious drug offenses. Ali was convicted in 2005, with very strong evidence of his wrongful conviction and claims of torture during the interrogation phase. His case drew huge international attention and advocacy but was executed in 2016. This essentially sets a strong precedent for how much the courts will continue carrying out capital punishment for drug-related offenses, even amidst enormous controversy with calls for clemency.

However, there is also some flexibility within Indonesian courts in a few instances, commuting death sentences down to life in prison or shorter sentences in mitigating circumstances or where procedural irregularities exist. In the case of Rodrigo Gularte,<sup>24</sup> a Brazilian national who was convicted of drug trafficking, her case sustained international and domestic advocacy emphasizing his mental disorders. Even though Gularte was executed in 2015, his case has only drawn attention to procedural and ethical complexities involved in fateful decisions over capital punishment within Indonesia. In the case of Mary Jane Veloso,<sup>25</sup> a Filipina accused of drug trafficking, her execution was halted indefinitely due to new evidence proving that she was, in fact, a victim of human trafficking. These judicial decisions underline how challenging and variable the execution of capital punishment could be within Indonesia in terms of balancing stringent enforcement with considerations of justice and due process.

Recent legal reforms and public debates in Indonesia have been indicative of changes occurring within the death penalty. Domestically and internationally, there has been a rise in pressure to reform capital punishment with particular attention being paid to human rights and due process.<sup>26</sup> These include reforms in the conduct of fair trials, better legal representation for accused persons, and transparency in judicial proceedings. Public debates have also focused on ethical and humanitarian aspects related to the death penalty, increasingly being oriented toward advocating against its abolition or reduction. On the other hand, in states where globalization encourages grave crimes like terrorism, drug trafficking, and others, the comparative analysis places center-stage the view that support for the death penalty is there to guide government policy. These debates correspond to a clear tension between stiff law enforcement and high human rights standards.

Comparative analysis between the legal systems and judicial interpretations in India and Indonesia shows marked dissimilarities and similarities. Both countries have retained the death

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<sup>23</sup> The New York Times, "Indonesia Executes Four Drug Smugglers Despite Protests," last modified August 13, 2016, accessed June 29, 2024, <https://www.nytimes.com/2016/08/14/world/asia/indonesia-executions-drug-smuggling.html>.

<sup>24</sup> Amnesty International, "Indonesia: Reprehensible Executions Show Complete Disregard for Human Rights Safeguards," last modified April 29, 2015, accessed June 29, 2024, <https://www.amnesty.org/en/latest/news/2015/04/indonesia-reprehensible-executions-show-complete-disregard-for-human-rights-safeguards/>.

<sup>25</sup> "Mary Jane Veloso: A Geopolitical Pawn in Southeast Asia's War on Drugs," Death Penalty Worldwide, accessed June 29, 2024, <https://deathpenaltyworldwide.org/mary-jane-veloso-a-geopolitical-pawn-in-southeast-asias-war-on-drugs/>.

<sup>26</sup> Jack Britton, "Capital Punishment, Human Rights, and Indonesia's Chance for the Moral High Ground," The Diplomat, last modified April 3, 2018, accessed June 29, 2024, <https://thediplomat.com/2018/04/capital-punishment-human-rights-and-indonesias-chance-for-the-moral-high-ground/>.

penalty under their respective legal frameworks, which speaks volumes about historical legacies and contemporary socio-political contexts. In India, through the “rarest of rare” doctrine, the judiciary has made the system more restrictive, thus bringing in the element of careful scrutiny by the courts and balancing the aggravating and mitigating circumstances. It is an approach that holds a deep perception of justice, hence structuring efforts to minimize the arbitrary administering of capital punishment. On the other hand, the legal framework in Indonesia has, under influences from the colonial past and stringent anti-drug and anti-terrorism policies, been all the more expansive in its application of the death penalty, although recent reforms show a shift towards greater fairness and transparency.

Case studies clarify these differences and similarities quite well. Nirbhaya's case,<sup>27</sup> a gang rape and murder in India that resulted in the execution of convicts in 2020, exemplifies the “rarest of rare” doctrine at work, in which the judiciary balances public outrage<sup>28</sup> for justice with the imperatives of fairness and due process. In Indonesia, drug traffickers, like those involved in the Bali Nine case,<sup>29</sup> face execution under its enhanced policies against drugs and like offenses. These instances make it clear that there are different approaches and judicial philosophies in both countries, which form constituents of their respective legal and socio-political milieus.

This comparative analysis places center-stage the view that any understanding of the broader legal and judicial landscapes lies at the heart of capital punishment practices. Legal reforms and judicial interpretations in these two countries have continued to change with time in tandem with changing societal values and international human rights standards. It is within this dynamic interplay among law, society, and politics that the future of capital punishment resides rooting for perpetual scrutiny and reform. Moving on in the study, as much as the functions that make up capital punishment should be considered, it is sufficiently important to look into practical aspects of the methods and procedures of execution to have a better understanding of the application of capital punishment in India and Indonesia. This will further enlighten the complexities and ethical considerations surrounding the death penalty in such diverse contexts.

### C. Methods and Procedures of Execution

In India, the primary method of execution is hanging, as provided for under the Indian Penal Code. This method, adopted from the colonial rule of the British, has been put down in black and white under Section 354(5) of the Code of Criminal Procedure, stating that when any person is sentenced to death, he shall be hanged by the neck until he is dead. The process of execution is subject to rigorous legal procedures that ensure due process and human treatment. Once a death sentence is confirmed by the Supreme Court, the condemned person is entitled to seek mercy from the President of India.<sup>30</sup> An important part of the legal framework, this clemency process entitles another level of review with the possibility of reprieve. The entire process is documented

<sup>27</sup> *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1.

<sup>28</sup> Tamara Abdelwahed, Stella Gaumert, and Laura Konrad, "The Influence of Public Outrage on Law Making: The Example of Indian Rape Cases," *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 51, no. 4 (2018): 478–98, accessed June 29, 2024, <https://www.jstor.org/stable/26745778>.

<sup>29</sup> Charles Sturt University, "Bali Nine Executions Politically and Ethically Complex," accessed June 29, 2024, <https://news.csu.edu.au/latest-news/charles-sturt-university/bali-nine-executions-politically-and-ethically-complex/>.

<sup>30</sup> "Presidential Pardon: Can it be Subjected to Judicial Scrutiny?" *Manupatra*, accessed June 29, 2024, <https://articles.manupatra.com/article-details/Presidential-Pardon-Can-it-be-Subjected-to-Judicial-Scrutiny>.

in minute detail so as not to leave any room for misconduct, thus upholding the highest traditions and ideals that the judiciary holds dear for a fair dispensation of justice.

India's evolution of execution methods reflects the diverse ancient and standardized modern procedures. Ancient times in the Indian subcontinent were such that methods of capital punishment had a highly varying nature according to regional customs and the severity of the crime.<sup>31</sup> These included beheading, drowning, and impalement, which certainly reflect the harsh punitive measures of the age.<sup>32</sup> These methods were replaced, after the advent of British colonial rule in the 19th century, by hanging which was considered more humane and in keeping with British legal standards. It was a direct and major transformation in the administration of justice to bring India's penal standard in alignment with its colonial rulers. After independence, hanging remained the method of execution, and more detailed legal procedures relating to executions were developed, which included judicial protection and concurrence of considerations of human rights. These events, therefore, underline the dynamic variance of capital punishment practices in India under the influences of historical, cultural, and legal factors.

Firing squad is widely the primary method of execution in Indonesia and, therefore, follows both traditional influences and colonial legacies.<sup>33</sup> The Indonesian Criminal Code requires the executions to be carried out by a squad of twelve shooters firing six rifles with live ammunition and the rest with blanks, ensuring that no single shooter knows who has fired the fatal shot. This method is supposedly quick and relatively humane. The process of execution is accompanied by detailed legal procedures that are allegedly aimed at fairness and transparency. Once the Supreme Court confirms the sentence of death, a condemned person has the opportunity to seek clemency from the President.<sup>34</sup> In the event that clemency is refused, the date of the execution is fixed, and prior to this, the condemned is allowed to see family members and spiritual advisors. Minute documentation of such processes, along with careful procedural safeguards, therefore testifies to the painstaking commitment of Indonesia toward the maintenance of a just and humane execution process.

The historical development of execution methods in Indonesia was mixed with a dose of traditional practices and colonial rule. Methods of capital punishment during pre-colonial times were very wide, ranging from beheading to stoning, and other forms of execution deeply rooted in local customs and beliefs. These soon gave place, for the most part, to the firing squad after the establishment of Dutch colonial rule early in the 17th century, a method consistent with Dutch military practices. This was a tremendous change in the dispensation of justice and brought penal practices in Indonesia generally in line with those of the colonial masters. Following Indonesia's independence, the government maintained the execution-by-firing-squad method, and the codification of legal proceedings surrounding executions has been continually refined with the inclusion of judicial safeguards along with human rights considerations. Blanks used by some rifles,

<sup>31</sup> Ronet Bachman and Russell K. Schutt, *The Practice of Research in Criminology and Criminal Justice*, 7th ed. (New Delhi, India: SAGE, 2020).

<sup>32</sup> Indian Bar Association, "Death Penalty: Contemporary Issues," accessed June 29, 2024, <https://www.indianbarassociation.org/death-penalty-contemporary-issues/>.

<sup>33</sup> Rappler, "How Indonesia Executes Death Row Convicts," last modified July 30, 2016, accessed June 29, 2024, <https://www.rappler.com/features/world/indonesia/141384-executions-death-penalty-process/index.html>.

<sup>34</sup> Human Rights Watch, "Indonesia: Free All Political Prisoners," last modified May 9, 2015, accessed June 29, 2024, <https://www.hrw.org/news/2015/05/09/indonesia-free-all-political-prisoners#:~:text=Clemencies%20require%20a%20request%20for%20clemency%20from%20the,whose%20legal%20process%20is%20not%20yet%20exhausted%20abolition.>

family members, and spiritual advisers present before execution<sup>35</sup> reflect Indonesia's commitment to maintaining a humane execution process. It has become part of historical development, influenced by colonial legacies shaping contemporary penal practice in Indonesia.

These methods have major implications both on ethics and procedures. In many countries, the capital punishment system based on hanging was under heavy criticism for the potential of inflicting a long and painful death and for the scenario of psychological burden carried out by the executioner. This has also led to the urge to adopt more humane methods of execution, such as lethal injection, which is believed to be less painful and decent.<sup>36</sup> Execution by firing squad has also been criticized in Indonesia as akin to colonialism, and the executioners themselves may also potentially be haunted by the psychological trauma of executing a fellow human being. Firing some rifles with blanks in an attempt to reduce the psychological trauma of killing a person has also been highly criticized. This criticism comes from the ethical concern that it never heals the basic trauma of participation in the process of execution. It is additionally responsible for the view in the minds of the executioners that something wrong has been done, leading to further psychological problems and moral ambiguity. These very criticisms remind both nations to engage in continual scrutiny and alteration of methods of execution, keeping pace with evolving human rights and justice standards.

Moving on in this study, a deeper look has to be taken into the application, frequency, and demographic analysis of capital punishment in India and Indonesia. In this way, through the trends in statistics and demographic patterns of the death sentence and executions, it can portray the whole situation of the implementation of capital punishment in both varied contexts. It is only upon such an exploration that the complexities and ethical concerns in the use of the death penalty by India and Indonesia will be traced out in greater detail and more light thrown on the same for policymakers, academics, and human rights advocates.

#### **D. Application, Frequency, and Demographic Analysis**

The application of the death penalty, its rate, and the demography of condemned people vary tremendously in India as compared to Indonesia. Such research takes a difference in drawing from detailed reports and data emanating from both countries. Understanding these factors is very important in having a comprehensive argument on the ethical, legal, and social implications of capital punishment in these regions.

While the death penalty in India is reserved only for the "rarest of rare" cases under a doctrine laid down by the Supreme Court in *Bachan Singh v. State of Punjab*, 1980, the threshold demanded on account of this yardstick continues to be easily breached. The judgment has specified a rigorous sentencing analysis, but in practice, it has proved quite the opposite. For example, the reports show that, in many cases, hearings on sentencing were routine, with mitigating factors

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<sup>35</sup> Rappler, "How Indonesia Executes Death Row Convicts," last modified July 30, 2016, accessed June 29, 2024, <https://www.rappler.com/features/world/indonesia/141384-executions-death-penalty-process/index.html>.

<sup>36</sup> Human Rights Watch. *So Long as They Die: Lethal Injections in the United States*. April 23, 2006, accessed June 29, 2024. <https://www.hrw.org/report/2006/04/23/so-long-they-die/lethal-injections-united-states>.

rarely considered.<sup>37</sup> The quality of legal representation for people sentenced to death is also low, which further prejudices the fairness of the process of sentencing.<sup>38</sup>

On the other hand, under Indonesian law, the death penalty exists for a number of crimes that are much wider in the ambit and include drug trafficking, terrorism, and corruption in certain circumstances. The Indonesian legal framework has permitted the death penalty to be imposed easily, reflecting a difference in judicial and cultural approaches to capital punishment. In recent years, there have been calls for the death penalty for corruption, particularly during the COVID-19 pandemic, which has again put a spotlight on a country that continues to use capital punishment as a deterrence.<sup>39</sup> The actual execution of death sentences, however, has been less frequent, with the last executions in 2016.<sup>40</sup>

This diversity in the legal landscape forms the reason for the frequency of death sentences in India. Additionally, according to the data obtained in the Death Penalty India Report, some states, because of some specific kinds of crimes, reveal a more significant number of death sentences. For example, Uttar Pradesh and Bihar have more death sentences for crimes like rape with murder and kidnapping with murder.<sup>41</sup> Such variability attests to regional differences in the administering of the death penalty, sometimes depending on local jurisdiction and rates of crime. In Indonesia, this high frequency is closely associated with drug-related offenses; the country has a very strict anti-drug policy in relation to drug trafficking offenses.<sup>42</sup> As shown in the data, despite continuous international criticism and domestic debates about the effectiveness and human rights implications, the death penalty continues to be utilized.

The demographic profile of death row prisoners in India is a telling story of disparities. Many death row prisoners come from the marginalized and socioeconomically deprived sections of society. This again is due to the poor legal representation, lack of resources, and systemic bias that works to their detriment.<sup>43</sup> After all, the question of mental health among death row inmates is generally ignored, which further problematizes the fairness and humanity part of the death penalty system.<sup>44</sup>

Demographically, death row inmates in Indonesia might also be viewed as a reflection of the greater social and economic inequalities. Most of those condemned to death, according to the investigation by The Death Penalty Project, are those from poor economic backgrounds who were

<sup>37</sup> National Law University, Delhi, *Deathworthy: A Mental Health Perspective of the Death Penalty* (Project 39A), [https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/616fd7988256c93ab9735618/1634719720928/Deathworthy\\_MainReport\\_19Oct\\_2021.pdf](https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/616fd7988256c93ab9735618/1634719720928/Deathworthy_MainReport_19Oct_2021.pdf).

<sup>38</sup> Ibid.

<sup>39</sup> Adhigama Andre Budiman, Ajeng Gandini, Kamilah Genoveva Alicia, K. S. Maya Ifitahsari, and Maidina Rahmawati, *2020 Indonesian Death Penalty Report: Taking Lives During Pandemic* (Institute for Criminal Justice Reform, 2020), <https://icjr.or.id/wp-content/uploads/2020/12/Death-Penalty-Report-ICJR-2020.pdf>.

<sup>40</sup> Carolyn Hoyle, *Investigating Attitudes to the Death Penalty in Indonesia Part I Opinion Formers: An Appetite for Change*, (London: The Death Penalty Project, 2021), accessed June 2021, [https://www.deathpenaltyproject.org/wp-content/uploads/2021/06/DPP-Indonesia-Opinion-Formers-Report\\_Web.pdf](https://www.deathpenaltyproject.org/wp-content/uploads/2021/06/DPP-Indonesia-Opinion-Formers-Report_Web.pdf).

<sup>41</sup> National Law University, Delhi, *Death Penalty India Report (DPIR)*, Volume 2 (2016; Project 39A), accessed June 29, 2024, [https://drive.google.com/file/d/0By7frQ8Q1\\_moUTJUZjUxelRFWE0/view?resourcekey=0-S0DHQDHnjFIqzTfERoNWDQ](https://drive.google.com/file/d/0By7frQ8Q1_moUTJUZjUxelRFWE0/view?resourcekey=0-S0DHQDHnjFIqzTfERoNWDQ).

<sup>42</sup> Carolyn Hoyle, *Investigating Attitudes to the Death Penalty in Indonesia Part I Opinion Formers: An Appetite for Change*, (London: The Death Penalty Project, 2021), accessed June 2021, [https://www.deathpenaltyproject.org/wp-content/uploads/2021/06/DPP-Indonesia-Opinion-Formers-Report\\_Web.pdf](https://www.deathpenaltyproject.org/wp-content/uploads/2021/06/DPP-Indonesia-Opinion-Formers-Report_Web.pdf).

<sup>43</sup> National Law University, Delhi, *Deathworthy: A Mental Health Perspective of the Death Penalty* (Project 39A), [https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/616fd7988256c93ab9735618/1634719720928/Deathworthy\\_MainReport\\_19Oct\\_2021.pdf](https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/616fd7988256c93ab9735618/1634719720928/Deathworthy_MainReport_19Oct_2021.pdf).

<sup>44</sup> Ibid.

pulled into selling drugs due to their failure to secure any meaningful employment.<sup>45</sup> The report's public opinion and opinion formers' analysis also shows a complex scenario where strong support for abolition exists among the informed sections of society despite the official policies.<sup>46</sup>

Comparing the application, frequency, and demographics of the death penalty between India and Indonesia shows traces of both similarities and differences. These are founded within two different legal, cultural, and socio-economic contexts. On the one hand, the doctrine of the “rarest of rare” theoretically binds the use of the death penalty by India, though its application remains practically very difficult to have it applied consistently and completely. On the other hand, Indonesia applies the death penalty to a more comprehensive list of crimes, generally representing a much wider use of capital punishment within its system. In India, imposition of the death sentence varies dramatically from state to state, as well as on the nature of the offense. In Indonesia, actual death sentences are far more consistent, particularly in the matter of drug-related offenses; however, the actual executions are less frequent. Both countries exaggerate the number of death row inmates who come from marginalized, economically disadvantaged backgrounds. While in India, mental health problems are a key but barely touched battleax in the demographics of death row prisoners, in Indonesia, it is mainly socio-economic influencers and those involved in drug trafficking.

This comparative analysis underlines the complexity and ethical dilemmas turned in by the death penalty within these two very diverse legal contexts. The implementation and demographic discharge of death penalty cases underpins the huge impact socio-economic factors, the quality of legal representation, and judicial consistency can make. These questions naturally sidetrack into aspects that have to do with larger socio-political dynamics and media influences on the perception and administration of the death penalty, in a way giving a comprehensive view of forces shaping capital punishment in India and Indonesia.

### **E. Socio-political Dynamics and Media Influence**

Public opinion and media portrayal play very important roles in shaping attitudes toward capital punishment in India. The general criminal cases and serious ones, such as rape and murder cases, well represented the capital punishment policy in the eyes of the media. Such high-profile cases usually capture the sensational interest of the Indian media, thereby amplifying public outrage for capital punishment. In fact, an important case in point is that of the 2012 gang rape of Nirbhaya, in which the judiciary has taken the reasons like the public outcry and hyperactive media as rationales for imposing death sentence on the convicts.<sup>47</sup> Indeed, media depictions of capital punishment play on repetition in framing it as a useful deterrent, thereby stoking demands for retributive justice from society. However, at the same time, the media also popularizes the stories of the wrong accusations and miscarriages of justice, thus balancing public discourse on the grounds of questioning the fairness and effectiveness of the death penalty.

Political parties and movements in India play a big role in the debate surrounding capital punishment. Here, political rhetoric is one and the same with the public imagination most of the

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<sup>45</sup> Carolyn Hoyle, *Investigating Attitudes to the Death Penalty in Indonesia Part I Opinion Formers: An Appetite for Change*, (London: The Death Penalty Project, 2021), accessed June 2021, [https://www.deathpenaltyproject.org/wp-content/uploads/2021/06/DPP-Indonesia-Opinion-Formers-Report\\_Web.pdf](https://www.deathpenaltyproject.org/wp-content/uploads/2021/06/DPP-Indonesia-Opinion-Formers-Report_Web.pdf).

<sup>46</sup> Ibid.

<sup>47</sup> IIT Bombay. "Death Penalty: When Justice is Seen to be Done," accessed June 29, 2024. <https://www.cps.iitb.ac.in/death-penalty-when-justice-is-seen-to-be-done/>.

time, particularly through the elections, where there is a trade-off in which the party that is seen to be tough on crime gets the vote. The Bharatiya Janata Party (BJP) has, for example, consistently argued in favor of stringent punishment against terrorism<sup>48</sup> and rape<sup>49</sup>. This resonates with a huge part of the electorate that feel punishment have to be stringent to maintain law and order. On the contrary, some political movements and left-leaning parties argue for the abolition of the death penalty, citing human rights abuses and mistakes in judgments. These political divergences, on the issue of capital punishment, mirror the broader ideological and value differences within India that sets the tone for legislative debates and judicial practices.

Civil society groups and NGOs play a major role in the death penalty discourse within India. Groups such as the People's Union for Civil Liberties and Amnesty International India work in and out to campaign against it, bringing out the ethical and human rights implications. Such groups undertake deep, detailed research and bring out reports related to wrongful convictions, thereby mobilizing public opinion. They have brought attention to cases of judicial miscarriage, influenced public opinion, and thus judicial reconsideration of death sentences. The advocacy by these groups underscores the growing movement towards the abolition of the death penalty in India, bringing a more informed and critical public discourse on the issue.

Moreover, public opinion and media representation play major roles in this discourse of capital punishment in Indonesia. On many occasions, the Indonesian media portrays capital punishment as a necessary weapon to fight serious crimes, such as drug trafficking and terror-related crimes. High-profile cases like the execution of the Bali Nine members receive wide coverage that usually justifies such a hardline stance of the government. The media themselves often feature narratives of severity and the need to deter future crimes by strict enforcement. However, some other media voices are critical, pointing at an unprecedented scale of human rights abuses and wrongfully sentenced individuals who were executed. This sets up a balance in public discourse. The double role of media supporting and criticizing capital punishment reflects the complexity of public opinion in Indonesia.

Political dynamics in Indonesia significantly shape attitudes towards capital punishment. The government, under President Joko Widodo, appears to stick by capital punishment, mainly for drug offenders.<sup>50</sup> This is partly driven by immense public support for strict penalties as a way of addressing the drug problem in the country. The case wherein a stronger stand for the retention of death punishment exists is when it is embraced by nationalist and more conservative parties, with calls for its consideration or abolition by some progressive and human rights-based parties. These political dynamics mirror, more generally, the shifts in attitude of society and influence acts of legislation and judiciary concerning capital punishment.

NGOs and advocacy groups have a strong stand on the death penalty as well. Organizations such as the Commission for the Disappeared and Victims of Violence (KontraS) and the Indonesian Legal Aid Foundation (YLBHI) campaign about death penalty issues by raising human rights, legal fairness, and wrongful conviction issues. They organize public education, litigation, and international lobbying campaigns to achieve their goals of capital punishment abolition.

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<sup>48</sup> BJP. "Resolution on Terrorism," accessed June 29, 2024. <https://www.bjp.org/political-resolution/resolution-terrorism>.

<sup>49</sup> BJP. "Victim-Centric Laws Ensure Swift and Timely Justice: Shri Amit Shah," accessed June 29, 2024. <https://www.bjp.org/interviews-and-articles/victim-centric-laws-ensure-swift-and-timely-justice-shri-amit-shah>.

<sup>50</sup> The Conversation, "Indonesia Uses Faulty Stats on Drug Crisis to Justify Death Penalty," accessed June 29, 2024, <https://theconversation.com/indonesia-uses-faulty-stats-on-drug-crisis-to-justify-death-penalty-36512>.

Efforts from these groups have created greater sensitivity to the ethical and legal issues of the death penalty, peaking at a more critical public and political discourse. Nevertheless, one strong obstacle to abolitionist movements remains the strength of public opinion in support of the death penalty, particularly for drug-related offenses.

A comparative analysis of socio-political dynamics, besides media influence, in India and Indonesia, reveals both common strands and contrasting shades in the way capital punishment is perceived and debated. Within sensational cases, demands for extreme punishment can be overdramatized through such media portrayals, but both are critical media landscapes that also highlight the associated risks and ethical concerns of the death penalty. Political dynamics in both countries reflect broader societal attitudes, with parties and movements leveraging public sentiment to influence legislative and judicial outcomes. In India, the political division over the issue of capital punishment is a little starker, with large-scale advocacy for its abolition, mainly infused with high human rights concerns. The political environment in Indonesia really demonstrates some consensus, without a strong voice discrediting the desire to retain capital punishment in general and for drug-related offenses in particular, reflecting some of the socio-political urgencies in that country, however.

It is also important, through case studies of high-profile cases in both countries, to illustrate the interplay of media, public opinion, and political dynamics in shaping the application of the death penalty. It would be cases like Nirbhaya in India and that of the Bali Nine case in Indonesia which most fittingly exemplify how the burgeoning media coverage and public outcry altered the course of judicial verdict and the political jargon used subsequently in such instances. Here, as in all instances, the media's narrative became an essential part of the development of public sentiment and political action. Such instances display the power of media and public opinion in legal decisions and in the wider socio-political discourse of capital punishment.

The socio-political dynamics and media influence on capital punishment in India and Indonesia are multilevel and deeply intertwined with cultural, legal, and political variables. The media in both countries will then play supporting and critical roles in capital punishment, reflecting its multilayered nature. These sentiments are exploited at all levels by political parties and movements shaping policy and legislative action; there are important differences in emphasis and advocacy between the two countries. NGOs and advocacy groups within both nations are a central factor in continuing to promote a better-educated and more critical discourse regarding the death penalty. Next, human rights and ethical considerations, international perspectives, need to be ascertained in relation to the complexities of capital punishment in India and Indonesia.

## **F. Human Rights, Ethical Considerations, and International Perspectives**

The compliance of India with international human rights treaties on capital punishment is a matter of considerable debate. Having signed many international covenants, especially the International Covenant on Civil and Political Rights (ICCPR), India is duty-bound to protect human rights. Article 6 of the ICCPR does not expressly forbid the death penalty but reaffirms its use as restrictive and calls for standards of fair trial. The judicial system in India has tried to adhere to these yardsticks by grim procedural safeguards and the “rarest of rare” doctrine enunciated by the Supreme Court. Despite these best efforts, India continues to attract international criticism for retaining the death penalty, especially in view of the evolving global trend towards abolition. Today,

the country's position is often justified on grounds of national security and public order,<sup>51</sup> yet it remains an extremely contentious point in international human rights discourse.

The ethical debates on the death penalty in India are absolutely polarized. Proponents argue that it deters heinous crimes and is needed to bring closure for victims of crime, arguing that some crimes are so egregious as to warrant the ultimate punishment. Often, that perspective gets taken forward when public sentiment right after any brutal crime strongly feels in favor of retributive justice. On the other hand, opponents point out the risk of wrongful conviction and irreversible execution as the death penalty is a violation of the basic right to life and there is a possibility of judicial errors and biases. These ethical considerations are again complicated because of the diversity of India's socio-cultural landscape, with a predominance of different religious and cultural beliefs that shape attitudes towards capital punishment, creating multi-faceted debate.

Several cases have been on record wherein persons condemned to death were found to be innocent, which definitely puts a question mark on the fallibility of the judicial system. For instance, the case of Devinder Pal Singh Bhullar,<sup>52</sup> convicted and sentenced to death on the basis of a confession extracted through dubious investigation techniques, evoked wide criticism and brought out the risk of a miscarriage of justice. The consequences of judicial errors are very grave, as these cases show, and have led to many arguments for the abolition of the death penalty. Human rights groups continue to document and contest such wrongful conviction cases in courts, both at home and abroad, and press for urgent reforms in the system to check further miscarriages of justice.

The case of Indonesia regarding international human rights treaties on capital punishment is, however, a debatable issue. Indonesia is a signatory to the ICCPR and other international instruments on human rights that agitate for the limitation, and later abolition, of the death penalty. On the other hand, however, the rigorous anti-drug laws and frequent use of capital punishment for offenses of drug trafficking have received significant international criticism. The execution of foreign nationals, especially cases such as the Bali Nine, has put diplomatic relations on an uneasy level<sup>53</sup> and invited human rights groups and foreign governments' condemnation. Indonesia justifies the retention of the death penalty based on national security and public health policies, especially with respect to the severe drug problem it faces, which the government claims require adverse penalties to deter crime.

In Indonesia, capital punishment raises ethical debates that mirror the complex interplay among legal, cultural, and political factors. On the other side are the advocates for the necessity of the death penalty to maintain order in view of drug trafficking and terrorism. They argue that the elements of deterrence are core in a country like Indonesia with considerable drug problems. The death penalty has long been opposed by some who view it as inhuman and consider that it infringes on the right to life. Critics cite a lack of solid proof that it acts as a deterrent and indicates the possibility of judicial mistakes and abuses. Here, the ethical debate is further muddled by the historical multicultural and religious mosaic, with traditional beliefs and Islamic principles

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<sup>51</sup> David D. Peck, "Journal of the Indian Law Institute 53, no. 1 (2011): 137–42," accessed June 29, 2024, <http://www.jstor.org/stable/45148551>.

<sup>52</sup> *Devender Pal Singh Bhullar v. State of N.C.T. of Delhi*, April 12, 2013.

<sup>53</sup> The Diplomat, "Australia-Indonesia Relations after the Executions," last modified May 7, 2015, accessed June 29, 2024, <https://thediplomat.com/2015/05/australia-indonesia-relations-after-the-executions/>.

inscribed into ideas of justice and punishment, further tangling into a finely textured and morality-laden discourse on the righteousness of capital punishment.

Examples of wrongful conviction and other human rights violations in the administration of Indonesia's death penalty are rampant. Very few capital punishment cases are transparent and conducted fairly;<sup>54</sup> indeed, a very large proportion of them raise concerns about insufficient legal representation,<sup>55</sup> forced confessions,<sup>56</sup> and other procedural irregularities.<sup>57</sup> Rodrigo Gularte, a Brazilian national who was sentenced to death after being convicted of drug trafficking despite the diagnosis of schizophrenia in his case, had exposed shocking flaws in the implementation of the death penalty in Indonesia.<sup>58</sup> The cases more than raise questions that challenge the systemic problems within the judiciary and underline human rights violations; they posit a challenge to capital punishment altogether. With international and local human rights bodies urging reforms and contesting wrongful convictions, the urgency of a more just and humane legal system becomes imperative.

Comparative analysis of human rights records and ethical considerations between the countries of India and Indonesia shares common challenges alongside distinct national contexts. Both countries face enormous international criticism for retaining the death penalty, especially in light of global human rights trends that favor abolition. These ethical debates in both countries are pervaded by a tension between arguments for deterrence and retributive justice on the one hand, and concerns over human rights, judicial mistakes, and the morality of state-sponsored killing on the other. Evidence of wrongful convictions and human rights abuses in India and Indonesia brings to the fore the fallibility of the judicial process and the irreversibility of capital punishment.

The degree of international criticism and support for each country's practices also vary, reflecting broader geopolitical and diplomatic considerations. India, on a global scale, with immense standing and a strong, strategic partnership, often prompts a more nuanced international response to criticisms over human rights, balancing it with various forms of diplomacy. Indonesia's executions of foreign nationals, particularly in drug-related cases, have led to more direct international confrontations, reflecting the immediate impacts that its death penalty practices have on diplomatic relations. Both countries operate in complex international landscapes wherein their use of the death penalty intersects with broader human rights and geopolitical interests. The intersection of the death penalty with human rights issues reaches the very ethical question of whether any state should ever be empowered to take away life, which produces a direct antagonism with human rights principles that underscore the value of life and the right to a fair trial. Further, the use of capital punishment affects the country's international reputation and relations. Countries maintaining and actively using the death penalty face sanctions, reduced diplomatic engagement, and criticism by international human rights organizations and foreign governments. However, reform or abolition enhances a nation's relationship on the global front, promoting higher diplomatic and economic ties with countries that put a premium on human rights. Thus, the

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<sup>54</sup>Amnesty International, *Flawed Justice: Unfair Trials and the Death Penalty in Indonesia*, October 15, 2015, accessed June 29, 2024, <https://www.amnesty.org/en/documents/asa21/2434/2015/en/>.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Amnesty International, "Indonesia: Report Reveals Endemic Judicial Flaws in Death Penalty Cases," last modified October 15, 2015, accessed June 29, 2024, <https://www.amnesty.org/en/latest/news/2015/10/indonesia-report-reveals-endemic-judicial-flaws-in-death-penalty-cases/>.

administration of the death penalty cannot be reduced merely to domestic law; it is also an important question for interstate relations and global human rights advocacy.

Conclusively, capital punishment in India and Indonesia reflects legal, cultural, and socio-political contexts in connection with human rights and ethics. More significantly, to a tremendous extent, in both countries, there are considerable challenges to compliance of practices with international human rights standards, amidst continued ethical debates and issues of wrongful conviction. This comparative analysis gives special emphasis to the imperative of further advocacy and reform. It therefore marks the implications that capital punishment has on justice and human rights. As will be done for this study, further steps to be taken entail examining the set policy recommendations and future directions through which both countries could evolve towards more humane and just practices. This would prepare the enabling framework that would facilitate a detailed examination of reforms and interdisciplinary research areas that are possible.

### **G. Policy Recommendations and Future Directions**

Specific recommendations to policy for India, in view of the above findings, pertain to further fine tuning the legal framework toward reducing biases and improving procedural fairness. The abolition of the death penalty for non homicide crimes must be debated in light of existing global trends that restrict capital punishment only to homicidal crimes. Legal representation for marginalized groups and rigorous review processes for preventing wrongful convictions need strengthening. The process of clemency has to be transparent and accessible, so that mercy petitions may be heard and considered with merit appropriately. Another way this can be done is through public education on the limitations and ethics of capital punishment through awareness campaigns to elicit change in public opinion towards more humane alternatives.

The recommendations brought to the surface, for Indonesia, include fundamental changes in law and process that would be required if the country were to carry out the death penalty more justly. Indonesia should develop legislation that would substantially limit cases in which the death penalty could be applicable, notably excepting non-violent drug offenses that have constituted, by a huge margin, the largest proportion of international criticism. Special consideration should be channeled toward the establishment of fair proceedings where adequate legal representation exist and processes operate transparently to uphold human rights standards. The establishment of independent review bodies by the government will investigate cases of wrongful convictions while correcting these wrongs, hence regaining the people's confidence in the justice system. It is pivotal and very likely to bring forth relevant insights and frameworks for Indonesia's reforms by engaging in effective dialogues with international human rights organizations and adopting good practices among countries that have had any success in reforming their capital punishment systems.

Successful research on capital punishment in both India and Indonesia will have to be interdisciplinary in approach, where the disciplines involved would include legal studies, sociology, psychological input, and human rights studies applying perspectives toward a holistic understanding. One possible area for research would be the psychological impact of death row imprisonment on inmates and their families, which is comparatively understudied. Factors at the socio-economic level that contribute to the overrepresentation of marginalized groups on death row could be discerned through investigative studies. Comparative studies with countries that have abolished the death penalty might identify certain effective strategies and policies that can be

adapted to the Indian and Indonesian contexts. Further, the attempt can be to study restorative justice practices in substituting capital punishment, thereby opening up vistas of reform.

The future of capital punishment in India and Indonesia lies in the hands of both governments and societies in performing reforms that are relevant to each country. In India, the gradual abolishment of the death penalty through decreasing usage and increasing judicial scrutiny reflects a cautious approach toward eventual abolition. It does require, however, sustained efforts to redress the socio-economic and systemic biases underpinning its application. The path to reform is much more challenging in Indonesia, where the public and political will to continue to use the death penalty in drug-related offenses remains very strong. Nonetheless, incremental reforms backed by rigorous human rights advocacy open the door toward a humane justice system.

The world is gradually drifting towards the abolition of the death penalty, especially upon recognition of ethical, legal, and human rights issues surrounding its administration. The experiences of India and Indonesia demonstrate how intricate and difficult the process of national legal reform can be within the context of international human rights. During this journey, while both countries grapple with these challenges, they can greatly contribute to the international debate on matters of justice and human rights and thereby make lessons learned and frameworks for other countries in their struggles with similar challenges. Eventually, the decisions reached on capital punishment's future in India and Indonesia would set the scene with regards to their international standing on human rights and their commitment to justice and human dignity.

It is thus that this research calls for comprehensive legal and procedural reforms in India and Indonesia to address a host of issues associated with capital punishment. A humane and just approach toward sentencing will therefore help both countries be consistent with international human rights standards and set a pace for the global effort toward the abolition of the death penalty. Further research and advocacy are accordingly necessary for keeping such efforts alive, making sure that the stakeholders' voices affected by the death penalty are effectively represented and their rights safeguarded. In the future, an educated, critical public discourse on capital punishment will be needed, one that will pave the way toward a time when justice is identified with human dignity and respect for life.

## **Conclusion**

This empirical study intersects with discourses in a socio-political critique of practices of capital punishment in India and Indonesia, teasing out media portrayals and public opinion. Sensationalist media coverage boosts the stand of people demanding retributive justice and, as such, controls judicial outcomes in both countries. The political fault lines are very sharp in the case of India; some sectors push for drastically stiff penalties, while others call for abolition based on human rights concerns. Many civil society organizations actively campaign based on wrongful convictions and ethical considerations against the death penalty. On the other hand, Indonesia's strict enforcement, in particular of narcotic crimes, has wide public and political support, while advocacy groups continue to loudly protest against these practices with respect to human rights grounds. It underlines the ethical dilemmas of both nations and international criticisms, drawing a comparative analysis, by which legal reforms become highly necessary to ensure procedural fairness and human rights standards within those countries.

As Mahatma Gandhi once said, "The true measure of any society can be found in how it treats its most vulnerable members". This paper argues for incessant legal and procedural reform

to safeguard justice and human dignity. Recommendations for policy action in both countries pertain to fine-tuning the legal frameworks, improving the level of legal representation for repressed groups, and increasing public education related to capital punishment for ethical reasons. In this way, interdisciplinary research and advocacy will have meaningfully interlinked development of more humane and just practices for the future. Through these complex issues, India and Indonesia will intervene meaningfully in the global discourse surrounding capital punishment and strive to achieve a justice system upholding human dignity and life.

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