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The Conundrum of Legality of Capital Punishment in India: An Empirical Research Study

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ABSTRACT

Returning violence for violence, multiplies violence, adding deeper darkness to a sky already devoid of stars. - Martin Luther King

*Today the world stands at the crossroads of progressive criminal justice systems and maturation of our ideas of human rights and justice. Yet, capital punishment persists even today, in a world that boasts of individual liberty and rehabilitation over violent retaliation. Capital punishment is one of the most severe form of punishment that is given to criminals in the world. Major powers of the world, including the United States, China, India, Saudi Arabia have retained capital punishment. Over 60% of the world population lives in countries where capital punishments still remain a norm. However, till date, it remains one of the most controversial and debatable concept. After the recent Nirbhaya judgement that was passed by the Supreme Court of India, the United Nations called upon all nations to stop the use of capital punishment or put a moratorium on it. In light of these developments, where almost 70% of the countries of the world have abolished death penalties, India still remains a strong advocate. India is a developing democracy, where efforts are being taken in order to reduce the crime rates. In pursuance of this motive, India has taken a strong stance in favour of capital punishment to deter and prevent heinous crimes, punish criminals and provide justice to the victims and their families. In opposition of this view, is the view of the countries who have abolished capital punishments who argue of the inhumane nature, high costs, no scientific evidence of their efficiency and irreversible nature of capital punishments. The main aim of this paper is to examine the issue of legality of capital punishment in India even after persistent backlash. This paper, under **Part I**, provides a comprehensive understanding of the debate surrounding death penalty and the contemporary status of the same in India and internationally. In **Part II**, the paper presents a review of the existent literature on capital punishment and nuanced studies that interlink various aspects of capital punishment with characteristics of individuals to establish trends. **Part III** of the paper is an analysis of the perspective of the Indian demographic on the legality of capital punishment and the impact of the same on Indian laws and policies*

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on capital punishment.

I. INTRODUCTION

Today, we live in a world where crime rates are only on the rise. Crimes such as murder, kidnapping, terrorism, rapes, child abuse have been on the increase. According to the World Population Review, the crime rate of India is almost 43%.² In such a scenario the punishments and legislations to curb and prevent crimes need to be given immediate attention. Punishments range from fines and imprisonment to death and life imprisonment.

Capital punishments are considered to be one of the most severe and controversial methods of punishment. *Capital punishment, or “the death penalty,” is an institutionalized practice designed to result in deliberately executing persons in response to actual or supposed misconduct and following an authorized, rule-governed process to conclude that the person is responsible for violating norms that warrant execution*³. Capital punishment is a very diverse concept with equally diverse opinions on its morality and legality. Ethical, religious and philosophical considerations have become extremely important, but it is important to keep factual evidence in mind as well. There has been an everlasting debate around capital punishments, with strong arguments on both ends of the same spectrum.

II. THE DEBATE: RETENTIONIST VIEW V. ABOLITIONIST VIEW

Capital Punishment has been a point for contention since time immemorial. It has been argued that both the points of view, retentionist and abolitionist have their own pros and cons. An interesting paper by Jan Gorecki⁴ articulates the two views by providing an analysis of the book, *The Debate* wherein the two authors provide their own empirical and axiological arguments in support of the two views. This paper provides a fundamental background to further research by giving an insight into both the views that are presented in the form of an entertaining exchange. Research on capital punishment needs to be continued due to the literal question of life and death.⁵

²Crime Rate by Country 2021, WORLD POPULATION REV. (Sept 5, 2021, 9:21 PM), <https://worldpopulationreview.com/country-rankings/crime-rate-by-country>.

³ R. Hoag, *Capital Punishment*. INTERNET ENCYCLOPAEDIA OF PHILOSOPHY (Sept. 5, 2021, 9:31 PM) <https://iep.utm.edu/cap-puni/>.

⁴ Jan Gorecki, *Capital Punishment: For or Against*, 83 MICH. L. REV., 1180 (1985), <https://repository.law.umich.edu/mlr/vol83/iss4/53>.

⁵ John Whitehead et al., *Elite versus citizen attitudes on capital punishment: Incongruity between the public and policymakers.*, 27 J. CRIM. JUST. (1999), [https://doi.org/10.1016/S0047-2352\(98\)00063-4](https://doi.org/10.1016/S0047-2352(98)00063-4).

III. RETENTIONIST VIEW

“Contrary to the views of some social theorists, I am convinced that the death penalty can be an effective deterrent against specific crimes”. -Richard M. Nixon⁶

One of the most controversial and prominent views on the veracity of capital punishment is the retentionist view. Retentionists argue that capital punishment should be retained as a method of punishment for criminals. The argument behind this view is the human need for justice. One of the most dominant of human instincts is the desire for justice.⁷ And in line with this desire for justice, it is important that the criminal is punished in the most fitting manner. Emmanuel Kant, a leading sociologist and philosopher, in his book *The Metaphysical Elements of Justice*, argued that “*jus talionis*,” justifies capital punishment as only this principle can determine the kind and degree of punishment⁸. This is based on the principle of “*eye for an eye*.” The main idea behind this concept is that the abuser or criminal should suffer equally to the victim. The amount of punishment merited is to be proportional to the seriousness of the offense, more serious offenses being punished more severely than less serious crimes. It is considered to be a ‘*unique*’ deterrent to crime.⁹

According to Amnesty International there are 56 retentionist countries in the world as of the latest data available of 2017.¹⁰ This list includes the major superpowers of the world including the United States of America, China, India, etc. In these countries capital punishment is considered a legally enforceable punishment.

IV. ABOLITIONIST VIEW

Substantial progress has been made in the arena of human rights and liberty. In pursuance of this motive, capital punishments have been completely abolished in more than 106 countries.¹¹ The abolitionist view argues for a complete ban on capital punishments in lieu of a number of concerns. The main argument of the abolitionists is that the usage of capital punishment is completely against the human rights, due process of law and equal protection of law.¹² The state should not be allowed to give itself rights and should not have the liberty to kill an individual. There are many concerns that are propounded by the abolitionists:

⁶John Lamperti, *Does Capital Punishment Deter Murder?* J. SOC. ISSUES. (2010), <https://math.dartmouth.edu/~lamperti/my%20DP%20paper,%20current%20edit.htm>.

⁷M.H. Staples, *Capital Punishment: A Retentionist's View*, CHITTY'S L. J. (1996)

⁸R. Hoag, *supra* note 3.

⁹William O' Jr. Hockhammer, *Capital Punishment Controversy, The*, 60 J. CRIM. L. CRIM. & CRIMINOLOGY, (1970), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5609&context=jclc>

¹⁰*Abolitionist and Retentionist Countries*, DEATH PENALTY INFORMATION CENTRE (7 Sept. 2021, 9:32 AM) <https://deathpenaltyinfo.org/policy-issues/international/abolitionist-and-retentionist-countries>

¹¹*Id.*

¹²William O Jr. Hockhammer, *supra* note 9.

(A) Capital punishments are cruel and inhumane

Capital punishments emerged and were in use when branding, slavery, and such inhumane activities were commonplace. This was a savage concept of the past, that is in derogation of individual rights today.¹³ This should be entirely uprooted because today we live in the 21st century where the cruelty of capital punishments is entirely non-justiciable and invalid.

(B) Capital punishments deny the due process of law as it is irreversible.

Abolitionists argue that capital punishments are arbitrary and unfair in nature. They do not allow the criminal the chance of reformation or allow him to benefit from any new evidence or law. Once an individual is killed and new evidence in his favour is presented, nothing can be done as death is irreversible. It is clearly justice denied for the individual.

(C) There is no scientific evidence of the viability of capital punishments to prevent crimes.

There is no scientific evidence whatsoever that capital punishment deters or prevents crimes. Amnesty International reported that in a study published in the Journal of Criminal Law and Criminology, it was strongly asserted by the researchers that Capital punishments in no way deter criminals.¹⁴ Threatening death does not prevent crime, as a criminal will always focus on ways to escape punishment, whatever form it may be in. Especially in crimes such as sedition and terrorism, which are usually punishable by death, where the criminals function on an ideology that views them as martyrs.

(D) Capital Punishment wastes State resources

It squanders the time and energy of courts, prosecuting attorneys, defence counsel, juries, and courtroom and law enforcement personnel.¹⁵ This money could be used for other reformatory means of punishment such as rehabilitation camps, etc.

(E) It is an act that disrespects human life

It is often argued that murder is an act that should be proportionately punished by death, but on the contrary capital punishments also mean bloodshed, violence and a voluntary killing of a human being.

On the whole, the arguments against capital punishment are many, yet the governments as well as citizens of many countries believe that capital punishment is the biggest deterrent of crime.

¹³ *The Case Against Death Penalty*, AMERICAN CIVIL LIBERTIES UNION, (Sept. 7, 2021, 9:30 AM) <https://www.aclu.org/other/case-against-death-penalty>.

¹⁴ Radelet, M., & Lacock, T., *Do Executions lower Homicide Rates?: The View of Leading Criminologists*, 99 *J. CRIM. L. & CRIMINOLOGY*, (2009) <https://files.deathpenaltyinfo.org/legacy/files/DeterrenceStudy2009.pdf>

¹⁵ *Supra* note 13.

Apart from a complete abolitionist view, there exist two different variables of the view.¹⁶

First, Abolitionist for ordinary crimes only: There are 8 nations in the world where capital punishment is abolished for ordinary crimes such as murder, and is practised for extraordinary crimes including crimes under military or sedition.

Second, Abolitionist in practice: As many as 28 countries that have retained capital punishment for ordinary crimes such as murder but have not executed anyone in the past 10 years or have pledged internationally to do away with death penalties.

Hence, it is clear that various perspectives exist on the legality and resulting validity of capital punishments in the globalised world today. While these views have led to a passionate debate, the Indian scenario does not adopt a strict abolitionist or retentionist view and employs a situation specific policy.

V. CONTEMPORARY STATUS OF CAPITAL PUNISHMENT IN INDIA

India is a retentionist country where capital punishment has been in use as a method of preventing and deterring crime since time immemorial. Crimes have been punishable by death in India under its ancient Hindu and medieval Muslim empires. However, it became an institutionalised practice under the British empire, and continued after independence. According to the *Death Penalty India Report (DIPR)* published by Project 39A, NLU-Delhi, it was established that as many as 755 prisoners had been subject to death penalty since 1947¹⁷. The crimes punishable by death under the Indian Penal Code 1860¹⁸, include, criminal conspiracy (*Section 120B*), murder (*Section 302, Section 303*), waging or attempting to wage war against the Government of India (*Section 121*), abetment of mutiny (*Section 132*), dacoity with murder (*Section 396*), giving or fabricating false evidence with intent to procure a conviction of a capital offence (*Section 194*), abetting the suicide of a minor (*Section 305*), kidnapping, (*Section 364A*), Dacoity with murder (*Section 396*) and Rape if the perpetrator inflicts injuries that result in the victim's death or incapacitation in a persistent vegetative state, or is a repeat offender. (*Section 396*)

The central legislations where crimes are made punishable by death include are large in number under Indian law. A few of these legislations include the Air Force Act, 1950, Arms Act, 1959, Army Act, 1950, Indo-Tibetan Border Police Force Act, 1992, POSCO Act, 2012, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, The Unlawful Activities Prevention Act, 1967, etc.

¹⁶ *Id.*

¹⁷ *Death Penalty India Report*, PROJECT 39A, (Sept 18, 2021, 8:30 PM) <https://www.project39a.com/dpir>.

¹⁸ INDIA PEN. CODE.

The Indian mode of thinking is aptly expressed by the Supreme court in the case of *Dhananjay Chatterjee v. State of West Bengal*,¹⁹ where the bench argued that, “*In our opinion, the measure of punishment in a given case, must depend on the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of the appropriate punishment is the manner in which the court responds to the society’s cry for justice against the criminals.*”

In India it is argued that it is impossible for the nation to do away with capital punishment due to the different social upbringing, disparity in level of morality and education of citizens, vastness of area and diversity of population, and the extreme need to ensure justice.²⁰ India is an extremely diverse nation where deterrence of crime can be done through brutal means such as the threat of death. However, there are many human rights activists and groups that argue that India should take an abolitionist stance for the sake of humanity.

VI. THE INTERNATIONAL PERSPECTIVE ON DEATH PENALTY

The UNGA affirmed in a formal resolution that throughout the world, it is desirable to “*progressively restrict the number of offenses for which the death penalty might be imposed, with a view to the desirability of abolishing this punishment.*”²¹ Today, over 140 nations are abolitionist in nature, with only 58 still retaining death penalty in its entirety. However, it is important to note that capital punishment is not a violation of international law.²²

The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) adopted by the United Nations General Assembly The main aim of the treaty is to abolish executions and death penalty and make them illegal in favour of human rights.²³ However, *Article 2* of the protocol does allow states to use death penalty in case of military crimes of a serious nature. As many as 135 member countries of the UN have signed this treaty²⁴ however, India is not a signatory. This protocol is the only worldwide treaty calling upon a complete abolition of death penalty throughout the world. However, there are other regional international treaties that have been signed by different regional organisations. In

¹⁹ 1994 SCC (2) 220.

²⁰ A. R. Blackshield, *Capital Punishment in India*, 21 J. INDIAN L. I., (1979) <https://www.jstor.org/stable/43950631>.

²¹ Carolyn Hoyle, *Progress Towards World-Wide Abolition of Death Penalty*, UNIVERSITY OF OXFORD, FACULTY OF LAW, (Sept. 23, 2021, 7:21 A,M) <https://www.law.ox.ac.uk/centres-institutes/centre-criminology/blog/2015/01/progress-towards-world-wide-abolition-deat>.

²² Caplan, *The Growing Gap between the U.S. and the International Anti-Death Penalty Consensus*, THE NEW YORKER. (2015), <https://www.newyorker.com/news/news-desk/the-growing-gap-between-the-u-s-and-the-international-anti-death-penalty-consensus>.

²³ UN General Assembly, *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty*, (1989), A/RES/44/128, <https://www.ohchr.org/en/professionalinterest/pages/2ndopcpr.aspx>.

²⁴ *Id.*

2002, The European Council adopted the 13th *Protocol to the European Convention on Human Rights*, which provided for the abolition of the death penalty in all situations, including war or imminent threat of war. This treaty has been signed and ratified by almost 44 European countries.²⁵ In 1990, The Organisation of American States adopted the *Protocol to the treaty of American Convention on Human Rights* which essentially provided for abolishing death penalty, but allowed its use during certain imminent times such as warfare. This treaty has been ratified by 25 of the member states.²⁶

*United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*²⁷ is a treaty that outlaws and prohibits all kinds of intentional physical and psychological abuse on the prisoners. While this treaty does not explicitly ban capital punishment, it does prohibit intentional infliction of pain. 176 member nations of the UN have signed or ratified this treaty; however, India is only a signatory and hasn't ratified the treaty which means that the treaty is not formally in force in India²⁸.

As of 2017, the number of countries that have outlawed capital punishment has been on the rise, with 84% of the executions coming from the same four nations, Iran, Saudi Arabia, Pakistan and Iraq. Moreover, it is also believed that China, where execution records remain a state-secret, could be one of the leading nations in executions²⁹. What differs amongst the approaches adopted by the world when it comes to death penalty is, **first**, the nature of crime for which it is awarded, **second**, the individuals who can be awarded death penalty and **third**, the procedural protection.

In pursuance of this, the United States recognises 41 capital crimes where more than majority of them are violent and heinous homicide-related offences such as murders, rapes, terrorism, genocide, hijacking, etc while almost 35 countries across the world punish drug-related non-violent crimes as well³⁰. In India, a number of crimes including kidnapping with ransom, mutiny against Government, etc are punished with capital punishment. There is no space for error in judgement.

²⁵ *Chart of signatures and ratifications of Treaty 187*. (2020), https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/187/signatures?p_auth=ydoXzKYS

²⁶ William Schabas, *International Law and Abolition of the Death Penalty*, 55 WASH. & LEE L. REV. (1998) https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1517&context=wlu_l.r.

²⁷ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, <https://legal.un.org/avl/ha/catcidtp/catcidtp.html>

²⁸ *Id.*

²⁹ *The Death Penalty: An International Perspective*, DPIC, (Sept 8, 2021, 9:43 PM), <https://deathpenaltyinfo.org/death-penalty-international-perspective>.

³⁰ The Death Penalty for Drug Offences 2019, HARM REDUCTION INTERNATIONAL, (Sept 10, 2021, 7:29 AM) <https://www.hri.global/death-penalty-2019>.

As to the *second* difference, many countries do not punish juveniles or individuals under the age of eighteen years, including the US and India. But others such as Pakistan, Iran, China and Saudi Arabia do not follow this dictate. Specifically, Amnesty International found that since 1990, nine countries were responsible for the executions of 138 offenders under the age of eighteen.³¹

Third, when it comes to procedural safeguards, *Article 6 of the ICCPR*³² clearly lays down the rights of those given death penalty, which includes the right to be represented by an attorney, and the right to a free and fair trial before being awarded death penalty. Under international law, a fair trial requires, at the minimum, “*the presumption of innocence, being informed promptly and in detail of all charges, the right to appoint counsel of one’s own choosing, sufficient time to prepare a defence, the right to be tried without undue delay by an independent, impartial tribunal, and the right to review by a higher tribunal.*”³³ However, till date, unfortunately there are countries such as Indonesia and India where this is followed only in theory, not in practice. In India, according to the *DPIR (Death Penalty India Report)*, out of the 189 prisoners who spoke about whether they were represented at the time of first production before the Magistrate, 169 (89.4%) did not have a lawyer. In Indonesia, there have been cases where the defendants have been denied basic rights and have faced immense intimidation by police due to vagueness of laws.

All in all, there is a prominent cry world over to ban and outlaw capital punishment due to the various consequential effects of the punishment and its inhumane nature. The number of executions internationally has fluctuated in recent years, but currently the global trend seems to be moving towards abolition of capital punishment.³⁴

Part II

VII. REVIEW OF LITERATURE

(A) International Perspective

In favour of the abolitionist view, it is argued that substantial progress has already been made in favour of abolishing death penalty all over the world and that is the trend that should be followed given its ever increasing popularity. The reasons for this could be, change in political leadership or change in the perception of capital punishment as a human rights violation rather

³¹ *Id.*

³² UN General Assembly, *International Covenant on Civil and Political Rights*, (1966), United Nations, Treaty Series, vol. 999, p. 171, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³³ *The Death Penalty under International Law*, INTERNATIONAL BAR ASSOCIATION, (Sept 21, 2021, 8:10 AM), https://www.ibanet.org/human_rights_institute/about_the_hri/hri_activities/death_penalty_resolution.aspx.

³⁴ Lexi Thiel, *Capital Punishment- An International Perspective*, J. L. & INT’L AFF.. (2019) <https://sites.psu.edu/jlia/capital-punishment-an-international-perspective/>.

than a domestic criminal issue. (Johnson, 2019)³⁵

Sethuraju, Sole and Oliver, 2016³⁶ conducted a study among American law enforcement and criminal justice majors to analyse their perception on capital punishment and the underlying rationale behind it. The results of this study indicated that the influence of age, gender, race, religion, education and political affiliation was major when the perception of death penalty was studied. The study successfully concluded that the level of education did have a significant impact on one's perception of death penalty. It was found that students in upper levels of education show less support to death punishment than those in the lower levels.

Another study conducted by Doston and Carter (2012)³⁷ gave the view that in terms of gender, males are more supportive of death penalty than females. This is the most recent study that was conducted on the factor of gender influence on death penalty and corresponds with a number of previous studies done on the same topic.

The results related to the influence of age on death penalty has been varied, with some studies suggesting that those people belonging to the older age group tend to be more supportive of death penalty than the younger demographic (Vidmar & Ellsworth, 1974).³⁸ While other researches tend to suggest quite the opposite, where the young demographic seems to be more supportive of death penalty. (Borg, 1997). Interestingly, other research has also suggested that age is not a significant influencing factor when it comes to death penalty. (Robbers, 2004)³⁹

When it comes to the subject of the reasons or arguments in opposition to death penalty, there are a number of studies, articles and research papers written. Reasons given in opposition of the death penalty include the argument that it is immoral in nature, that it is wrong to respond to violence with violence perpetuating the 'eye for an eye' ideology, that it is unfairly applied, and that innocent people may have been executed (Zeisel & Gallup, 1989)⁴⁰

However, one of the most salient argument is death for those who are innocent. In a study conducted by Harmon, (2001)⁴¹ in the United States Department of Justice it was concluded

³⁵ David Johnson, *A Factful Perspective on Capital Punishment*, 11 *J. HUM. RTS. PRAC.*, (2019), <https://doi.org/10.1093/jhuman/huz018>.

³⁶ Raj Sethuraju et al, *Understanding Death Penalty Support and Opposition Among Criminal Justice and Law Enforcement Students*, 1 *SAGE OPEN J.* (2016) <https://journals.sagepub.com/doi/pdf/10.1177/2158244015624952>.

³⁷ Hilary Doston & Scott Carter, *Changing Views Toward the Death Penalty? The Intersecting Impact of Race and Gender on Attitudes, 1974–2006*, 33 *JUST. SYS. J.* (2012), <https://www.tandfonline.com/doi/abs/10.1080/0098261X.2012.10767999>.

³⁸ Neil Vidmar & Phoebe Ellsworth, *Public Opinion and the Death Penalty*, 26 *STAN. L. REV.*, 1245–70 (1974), <https://doi.org/10.2307/1227989>.

³⁹ Monica Robbers, *Extremists of Believers? Religious Salience, Literalness, Attribution Styles and Attitudes toward the Death Penalty among Students*, 27 *J. CRIM. JUST.* 119-149 (2004), <https://www.tandfonline.com/doi/abs/10.1080/0735648X.2004.9721198>.

⁴⁰ HANS ZEISEL & ALEC GALLUP, *DEATH PENALTY SENTIMENT IN THE UNITED STATES*, 5 *J. QUANTITATIVE CRIMINOLOGY* (1989) [HTTPS://LINK.SPRINGER.COM/ARTICLE/10.1007%2FBF01062741](https://link.springer.com/article/10.1007%2FBF01062741).

⁴¹ Talia Harmon, *Predictors of miscarriages of justice in capital cases*, 18 *JUST. Q.* 949 (2001)

that a number of prisoners and criminals who were subject to death penalty were released due to doubts about their guilt. This indicated that there could've been incidents wherein there were innocent individuals who were punished with death because of lack of evidence or proof.

Another frequently cited reason is the “deterrence” factor. The question of whether the death penalty is a more effective deterrent has long-term imprisonment has been debated for decades or longer by scholars, policy makers, and the general public. (Radelet and Lacock, 2009).⁴² Those who oppose death penalty argue that death penalty has no deterrent effect, but rather has the effect of brutalization and increasing the rates of criminal activities and homicide. In an interesting study they examined the opinions of leading criminology experts on whether there is any scientific evidence that capital punishments play a significant role in preventing and deterring crimes. *It was found that 88.2% of respondents do not think that the death penalty deters murder. At the same time, only 9.2% of surveyed experts indicated that they believed the death penalty results in a significant drop in murder cases, 56.6% completely disagreed with the said statement, while 32.9% thought that creating any correlation between capital punishment and lower murder rates is “largely inaccurate”.* This study further states that there are other studies that are conducted from the views of economists, where an altogether different conclusion was found where there was support for the hypotheses, however, these studies were highly criticised and were not found to be credible.

In another study done by Lamperti (1994),⁴³ wherein it was found that many nations, including the United Nations has seen an increase in murders during the time of executions. Furthermore, the paper makes two interesting observations Firstly, that executions invite homicides, in support of this assertion is the evidence provided by a prison warden the book, *88 Men and 2 Women* wherein there were several cases where executions were a cause of homicides. Secondly, the brutalization hypotheses is supported with cases from New York and London where after highly publicised executions there were more killings as capital punishments seem to legitimize the kill your enemies hypotheses.

Another interesting paper was written by Dando (1994)⁴⁴ on the status of Japan on its path towards becoming an abolitionist country from a strong retentionist. While Japan remains a retentionist nation till date, it is argued that the obstacles on its path to becoming an abolitionist

<https://www.tandfonline.com/doi/abs/10.1080/07418820100095141>.

⁴² ML Radelet & Traci Lacock, *Do Executions Lower Homicide Rates: The Views of Leading Criminologists*, 99 J. CRIM. L. & CRIMINOLOGY 489 (2009), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jclc99&div=17&id=&page=>.

⁴³ John Lamperti, *Does Capital Punishment Deter Murder?*, (1994) <http://www.sas.rochester.edu/psc/clarke/214/Lamperti04.pdf>

⁴⁴ S. Dando, *Toward the Abolition of the Death Penalty*, 72 Ind. L.J. (1994), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/indana72&div=9&id=&page=>.

lies in lack of awareness among the citizens, the fact that executions are done in secrecy and kept away from mass media. Public opinion in the nation is 70% against abolition of death penalty. He argues that the reasons for support are strong advocacy for the revenge sentiment but also questions the possible misjudgement, humanistic dignity and morality of capital punishments all in all.

On the other hand, when it comes to the retentionist perspective, the common grounds for arguments range from deterrence, retribution, law and order maintenance (**Zeisel & Gallup, 1989**),⁴⁵

In an interesting study conducted by **Finckenaer, (1988)**, the retributive argument is analysed and it was found that individuals or victims and their families usually delve on two different concepts of retribution when it comes to capital punishments. The 'just deserts' argument is based on the psychological reasoning that punishments should be proportionate to the harm that has been inflicted. And the revenge argument is a sentimental argument that asks for vindication. When capital punishment is supported, the most common argument is on retribution and justice.

A rare argument that was found in a paper written by **Whitehead & Blankenship, (2000)**,⁴⁶ is of incapacitation. The authors of this paper argue that there is an underlying belief that if a murderer of criminal is not punished, there are chances of them repeating the act again. And in order to prevent any future occurrence of the crime, death is the most suited option.

Kirchmeier (2006)⁴⁷ has argued that when it comes to the identification of crimes and criminals who can be possibly convicted under a death sentence, there has to be some categorisation. "*The Court has emphasized that the application of the death penalty cannot be arbitrary and capricious, and that the death penalty must be administered "in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not"*⁴⁸. This consideration becomes especially important today because the global trend is strongly in favour of the abolitionist perspective and the retentionist nations need to be aware in their application of capital punishment. Historically, death penalty has been used for homicidal rapes, murders and espionage, but today as times and crimes progress it seems to be based on individual countries to decide the crimes to be awarded death

⁴⁵ Hans Zeisel, *supra* note 40.

⁴⁶ JOHN WHITEHEAD & MICHAEL BLAKENSHIP, *THE GENDER GAP IN CAPITAL PUNISHMENT ATTITUDES: AN ANALYSIS OF SUPPORT AND OPPOSITION*, 25 AM. J. CRIM. JUST. (2000), [HTTPS://LINK.SPRINGER.COM/ARTICLE/10.1007/BF02886807](https://link.springer.com/article/10.1007/BF02886807).

⁴⁷ Jeffrey Kirchmeier, *Casting a Wider Net: Another Decade of Legislative Expansion of the Death Penalty in the United States*, 34 PEPP. L. REV. 1 (2006), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/pepplr34&div=9&id=&page=>

⁴⁸ Spaziano v. Florida, 468 U.S. 447, 460 (1984).

penalty.

(B) Indian Perspective

India is one of the strongest democracies that is a retentionist till date after the United States. While there is significant research available on the retentionist perspective of capital punishments in India, it still remains unclear as to whether the Indian demographic, till date, in the 21st century after the Nirbhaya judgement remains a strong advocate of the view.

In a research paper by **Blackshield (1979)** it is argued that India cannot adopt the abolitionist view due to the diversity that the country boasts. It is argued that since India is large in size and diversity, retributive and harsh punishments prove to be the best ways to manage the delinquent population. Interestingly, the same paper states that during the ancient times, Hindu humanitarianism led to efforts to abolish death penalty. While the retention of capital punishment was a stance that was strongly asserted in India, there were two recommendations that were propounded, one that offenders under 18 years of age shouldn't be subject to death penalty, and two there has to be a legal provision which requires the courts to enlist the reasons for awarding death penalty. Moreover, the paper gave a reasoning to support capital punishment that was particular to the Indian circumstances. It was argued that while a large number of murders are a result of sudden passion, many are cruel in execution and diabolical in conception. The western approach views them as only passionate motivation and this perspective cannot be followed in India. Further the paper discusses a number of Indian cases where death penalty was awarded.

A study by **Swathi and Roja (2018)**⁴⁹ is a critical analysis of capital punishment in India. Herein it is argued that capital punishment needs to be replaced by reformatory practices and punishments. The most efficient manner of doing this is to adopt life imprisonment rather than capital punishment, which is far more effective and less expensive than death penalty. This paper expresses the support for Indian experts to adopt an abolitionist purview.

Abolishing the Death Penalty: Why India Should Say No to Capital Punishment, is a book by **Gopalkrishna Gandhi (2016)**⁵⁰ which provided the insights of leading criminologists, human rights activists, scholars and jurists on capital punishments. The major drawback of the book, according to me, is the lack of involvement of the opinion of the general public. However, the book has provided a very strong foundation and explanation of how India should become an abolitionist nation as soon as possible because of the unequivocal application in the unequal

⁴⁹ M. Swathi and K. Roja, *A Critical Study on Capital Punishment in India*, 120 INTL J. PURE & APPLIED MATHEMATICS (2018), <https://acadpubl.eu/hub/2018-120-5/1/98.pdf>

⁵⁰ GOPALKRISHNA GANDHI, *ABOLISHING THE DEATH PENALTY: WHY INDIA SHOULD SAY NO TO CAPITAL PUNISHMENT* (Rupa Publications India 2016).

society that we live in. He provides a very detailed description of how various considerations such as caste, status, economic background also play a role.

A report published by NLU, Delhi under **Project 39(a) (2016)**⁵¹ called the Death Penalty Report, India provided the backgrounds of the prisoners who were on death row and throws light on their narratives. Many of the prisoners claim their innocence and their position in terms of having no option or safeguard except the justice system of our nation. The argument produced by this report is of the excessive time taken for mercy pleadings, based on empirical evidence. On an average reaching the Supreme court on a mercy petition takes over 2 years. The report also asserts that most of the sentences have been given for murder simpliciter, and secondly to sexual offences. This report provides the opportunity for us to understand the purview of the other side, the probable innocent prisoners who are now helpless with no other option but to wait. This is one of the significant arguments made in opposition of capital punishment, the penalty of death, custodial torture and waste of time of probable innocent prisoners on death row.

In conclusion, it can be noticed that the global trend is strongly in favour of capital punishment being abolished worldwide. While death penalty remains an issue of controversy, different countries have waxed and waned it in their specific ways. (Thiel, 2019)⁵² This review of literature provides an overview of the international perspective as well as the Indian retentionist view and allows us to compare trends.

VIII. METHODOLOGY

(A) Statement of the Problem

The statement of problem is that there exists no conclusive research on the opinion of the Indian demographic on capital punishment and trends. Furthermore, after the Nirbhaya hanging there is no conclusive research on the topic of death penalty. There is an abrupt need to find out the public opinion in India on capital punishment and try to maintain human rights in the country. This study will aid in forming the Indian public opinion on capital punishment and add significantly or create a foundation for further research. This is the rationale and the problem the study seeks to solve.

(B) Scope of the study

The scope of this study can be divided into two aspects:

⁵¹ *Death Penalty India Report*, *supra* note 17.

⁵² Lexi Thiel, *supra* note 34.

- This study aims to analyse the status of capital punishment in India, the dynamic that exists between the morality of the act of death penalty and its legality in India, the international perspective of capital punishment and the existing trends. This is done above using doctrinal research.
- The study further aims to circumference the notions and opinions on various aspects of capital punishment among the Indian demographic. Hence, the scope of this study involves understanding and analysing the opinions of a random sample of 80 participants belonging to the three states of Gujarat, Maharashtra and Kerala using exploratory and empirical research.

(C) Objectives of the Study and Research Questions

The objectives of this study are threefold:

- **To establish the dynamic between the morality and legality of capital punishment in India.**
 - Q. What is the status of capital punishment in India?
 - Q. What are the international trends and perspective on capital punishment?
 - Q. Are there any similarities between Indian and International trends?
- **To analyse the opinions of the Indian demographic on various aspects of capital punishment.**
 - Q. What is the attitude of the Indian demographic on various aspects of capital punishment such as its morality, its deterrence power, what are the reasons to abolish death penalty, etc.?
 - Q. Are there any correlations between factors such as age, gender and views on capital punishment and do they correlate with the existing international trends?
- **To examine if India is ready to adopt an abolitionist stance on capital punishment.**
 - Q. Based on research and survey analysis, is India ready to abolish capital punishment completely?

(D) Hypothesis

The hypotheses of the study is:

Recent global backlash and moratorium against capital punishment will lead to extinction of support for capital punishment in India.

(E) Research Design

This study involves an assessment of the dynamics between the morality and legality of capital punishment in India through a descriptive and exploratory method of research.

Exploratory research is a preliminary study of an unfamiliar problem about which little or no data is available. Here, very little data is available on the attitudes of the general Indian demographic on capital punishment in recent times, especially after the Nirbhaya judgement after which the UN issued a moratorium against it.

Descriptive method is used to provide an in-depth understanding of the existing research to better understand the problem and its solutions. Here, many aspects of the study have been thoroughly studied previously and is used to draw out trends and conclusions.

Cross-Sectional research design has been adopted, because the study comprises of participants from diverse age groups and genders studied at a single point of time. Furthermore, it is an attempt to comprehend and provide a thorough purview of the participants views on capital punishment and number of comprehensive outcomes will be researched all at once and this study can be used as a starting ground for further research.

Qualitative research method aims to draw information from journals, books, newspaper articles, websites. Quantitative method has been employed through surveys. The Research design will play a major role in understanding and analysing the perspective of the Indian demographic on death penalty, establish a link with the laws around death penalty in India and the moral and social issues surrounding the same. Furthermore, the study aims to explore if India can adopt an abolitionist stance as that is the prominent trend worldwide.

(F) Data Sources and Methods

This research paper involves a combination of primary and secondary data. Primary data collected from structured questionnaire and other secondary data from sources such as books, journal articles, newspaper articles, websites and reports.

Further, as mentioned above the paper consists of a mix of data collected from qualitative and quantitative to provide a comprehensive analysis. Qualitative data is collected from secondary sources such as journal articles, newspaper articles, websites and other relevant sources to express the ideal definitions and notions existent in the discourse of capital punishment. Quantitative data has been collected from the questionnaire that was filled by the respondents to create a tabular and graphical representation of the responses and analyse and interpret them.

(G) Sampling Design

The research study was conducted using a Random Sampling Design for collection of data for the questionnaire, and the data has been collected from all possible respondents in the cities selected to be surveyed upon (Gujarat, Maharashtra and Kerala), as was feasible to the researcher. In addition, there also has been the application of Snowball Sampling, whereby Google Forms were forwarded by the respondents to their relatives and friends in order to

provide for a larger respondent population.

(H) Data collection

Data has been collected from 80 respondents spread across the three states of Gujarat, Maharashtra and Kerala from various age groups, though the means of Google Forms sent across and distributed through various social media platforms.

The tool for data collection has been the survey method which consisted of a questionnaire of 14 questions covering the different aspects of the dialogue around capital punishment. The aim is to provide an overview of the opinions and attitudes of the Indian people on the different questions that are posed on this topic. The questionnaire was sent through the means of google forms and was intended to cover as diverse viewpoints as possible.

Apart from this doctrinal research has also been conducted by analysing the various articles, journals, books and reports available and comparing them thereby establishing different viewpoints and conclusions.

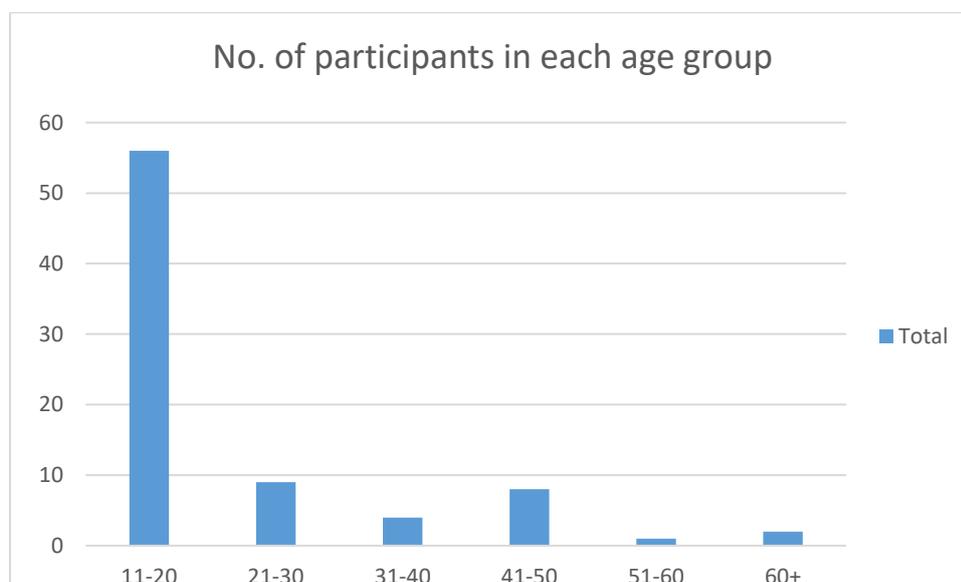
(I) Research Setting

The research setting of this study is spread across India in the three states of Gujarat, Maharashtra and Kerala. A total of 80 respondents were surveyed, belonging to a diverse background, age group, gender and other aspects

IX. DATA ANALYSIS AND INTERPRETATION

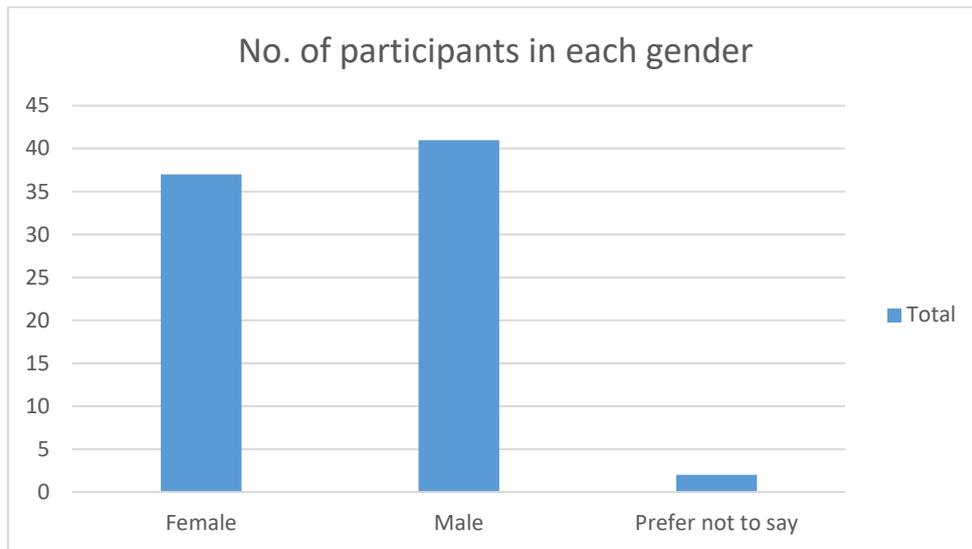
1:

Graph 1.1 Bar graph representing the number of participants in each age group.



2:

Graph 2.1 Bar graph representation of the number of participants in each gender.



Interpretation

In order to provide a comprehensive analysis and interpretation of data, it is important to have an understanding of the composition of the respondents which is clearly provided by graphs 1 and 2. The respondents that have participated in the survey, can be divided on the basis of their age and gender. It can be seen that the participants surveyed are divided into *six age groups*, where *majority of the participants being to the young demographic belonging to the 11-20 age group and the lowest to the 50-60 age group*. Further, the population of the survey is divided on the basis of their gender, with **37 women and 41 men and 2 belong to the third gender**. This is the description of the population of the survey.

Graph 3.1. Graphical representation of responses based on gender of the question do you believe in the power and authority of capital punishments.

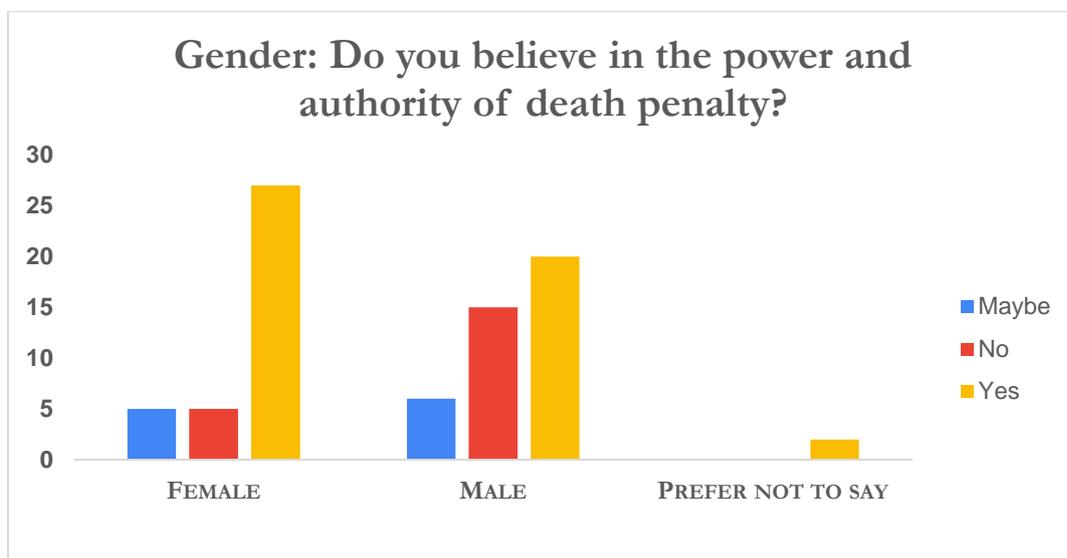


Table 3.1. Tabular representation of responses based on gender of the question do you believe in the power and authority of capital punishments.

Gender: Do you believe in the power and authority of capital punishments?	Maybe	No	Yes	Grand Total
Female	5	5	27	37
Male	6	15	20	41
Prefer not to say			2	2
Grand Total	11	20	49	80

Graph 3.1 is a graphical representation of the number of individuals who believe in the power and authority of capital punishments and those who do not. The trend that we can observe is a significant number of women, 72% (27) of women strongly believe that capital punishments do hold the power and authority till date. On the other end of the spectrum, majority of the males 48% (20) believe the same. In finality majority of the population, 58.75% (49) believes that capital punishments till date hold the power and authority and can be a major method to deter crime. The two individuals of the third gender also believe in the importance of capital punishments as a method of deterring crime.

Graph 3.2. Graphical representation of responses based on age group of the question do you believe in the power and authority of capital punishments.

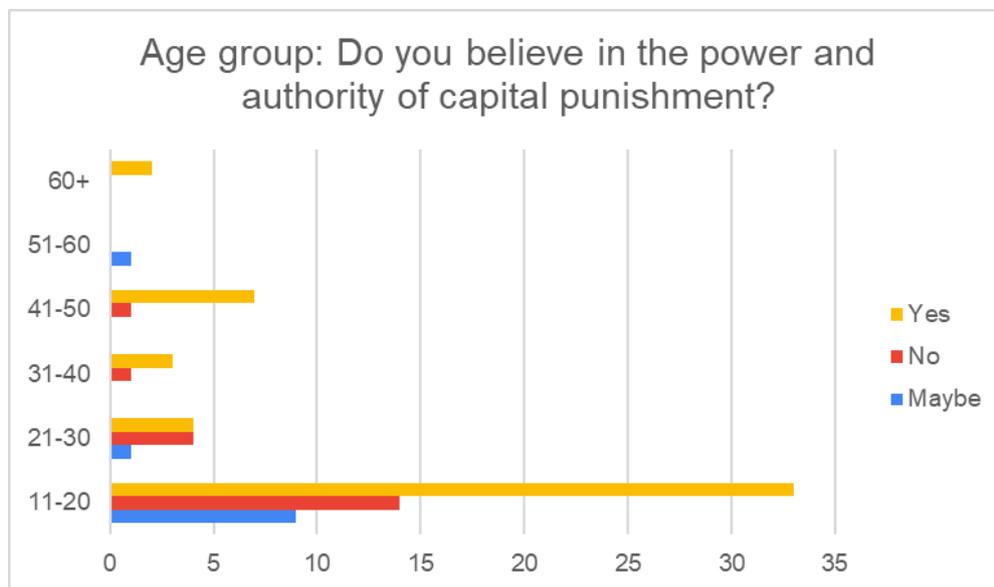


Table 3.2. Tabular representation of responses based on age groups of the question do you believe in the power and authority of capital punishments.

Age Group: Do you believe in the power and authority of capital punishments?	Maybe	No	Yes	Grand Total

11-20	9	14	33	56
21-30	1	4	4	9
31-40		1	3	4
41-50		1	7	8
51-60	1			1
60+			2	2
Grand Total	11	20	49	80

Graph 3.2 visually represents the number of people who believe in the power and authority of capital punishments and those who do not. We can clearly see a trend amongst the young demographic of ages 11-20 who strongly believe in the power an authority of capital punishments. About 58.9% of the individuals of 11-20 age group believe in the power of capital punishments, which is a majority of the demographic. This support is found in 61% of the total population. The senior demographic, 60+ also believes in the power capital punishments. However, the middle age from 21-50 we see a slightly different trend where there are advocates for lack of power and authority of capital punishments amounting to 28% of the total middle population.

Interpretation

We can see that there is a majority belief in the power and authority of death penalty. Even today, people believe that there is a strength in death punishment that other punishments do not possess. Interestingly, it is the youngsters that believe in their power. This correlates with the recent trend existing in the west, where the younger generation is more supportive of the power of death penalty propounded by Borg, 1997. Secondly when it comes to genders, women believe more in the power of capital punishments than men, but the difference is not very large between men and women.

4: Graph 4.1. Graphical representation of responses based on gender, to the question, Do you believe that capital punishments deter crime.

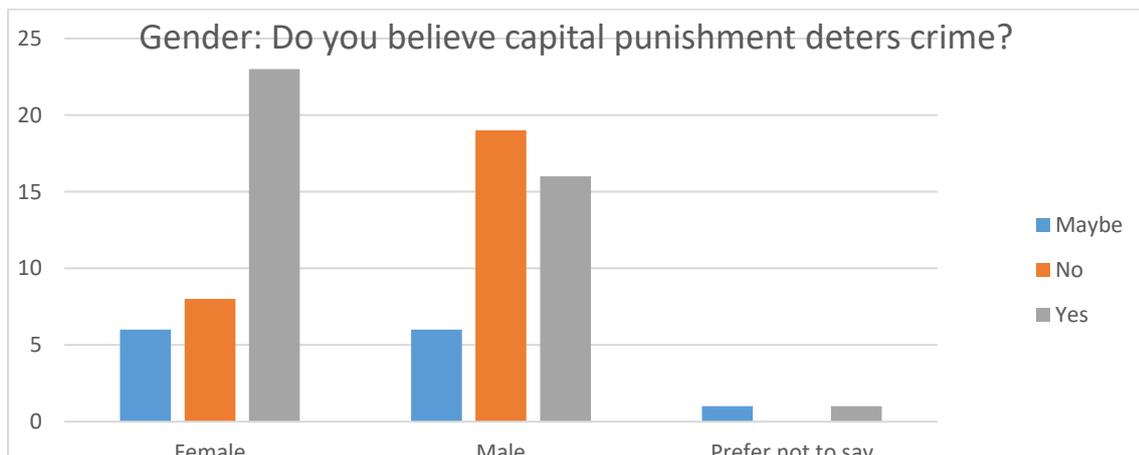


Table 4.1. Tabular representation of responses based on gender, to the question, Do you believe that capital punishments deter crime.

Count of Do you believe that capital punishments play a major role to deter crimes?						
	Maybe	No	Yes	Grand Total		
Female	6	8	23	37		
Male	6	19	16	41		
Prefer not to say	1		1	2		
Grand Total	13	27	40	80		

The graph above represents the number of individuals who believe that capital punishments have the ability to deter crime. In terms of gender, majority women 62% believe death penalty can deter crimes, while majority men 46% believe exactly the opposite, that they do not have such an effect. In total, there is a 50-50 belief in its deterrence power. It is interesting to note that a number of them were not sure about its deterrence power.

Graph 4.2. Graphical representation of responses based on age groups, to the question, do you believe that capital punishments deter crime.

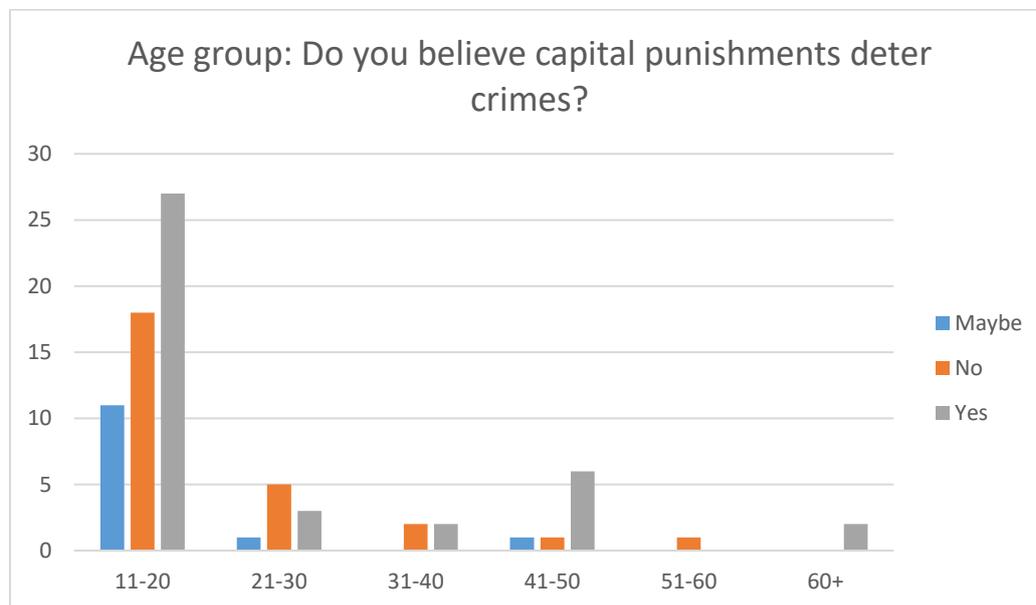


Table 4.2. Tabular representation of responses based on age groups, to the question, Do you believe that capital punishments deter crime.

Count of Do you believe that capital punishments play a major role to deter crimes?						
	Maybe	No	Yes	Grand Total		
11-20	11	18	27	56		
21-30	1	5	3	9		
31-40		2	2	4		

41-50	1	1	6	8
51-60		1		1
60+			2	2
Grand Total	13	27	40	80

In Graph 4.2. we can see that majority of those belonging to the younger age group, believes in the deterrence power of capital punishments. Almost 48% youngsters in the age group on 11-20 believe in their power, majority do not or are unsure. While in the 21-30 age group, only 33% believe in their deterrence effect. Both the senior citizen respondents also believe in their deterrence power.

Interpretation

While it has been empirically established that capital punishment has no deterrence effect, and is one of the significant argument in opposition to it, it is interesting to see that there are a significant number of young people who support its deterrence argument, but majority 52% are against it, or unsure. This shows us how the deterrence argument is losing its momentum because of new scientific evidence especially among the 11-30 young age group. This means the younger age group is becoming more aware. While the support still remains strong among the older generation. This could be because of lack of awareness on new findings among the older people.

5:

Graph 5.1. Graphical representation of responses based on gender to the question do you believe the capital punishment is the only way to bring about justice to victims of heinous crimes.

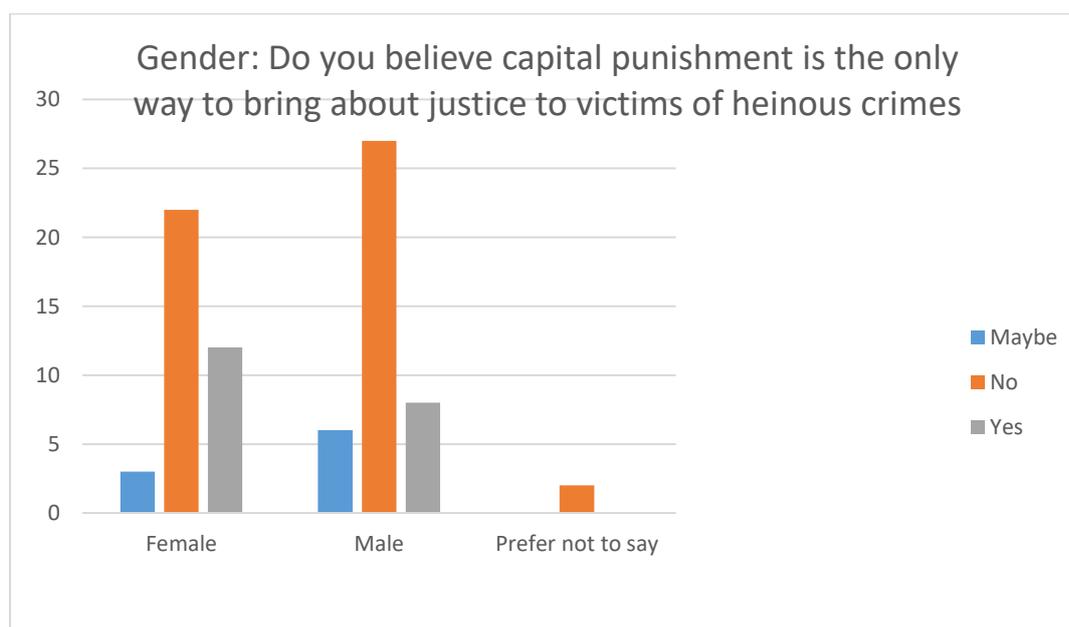


Table 5.1. Tabular representation of responses based on gender to the question do you believe

the capital punishment is the only way to bring about justice to victims of heinous crimes.

Count of Do you believe that capital punishments are the only way to bring about justice to victims of heinous crimes?					
	Maybe	No	Yes	Grand Total	
Female	3	22	12	37	
Male	6	27	8	41	
Prefer not to say		2		2	
Grand Total	9	51	20	80	

Graph 5.1. is a representation of the number of individuals who believe that death is the only way to punish offenders of heinous crimes based on gender. However, we see that both men, women and the third gender believe it isn't the only method of punishing heinous crimes. Majority of the respondents, 63% do not believe in death being the only way out.

Graph 5.2. Graphical representation of responses based on age group to the question do you believe the capital punishment is the only way to bring about justice to victims of heinous crimes.

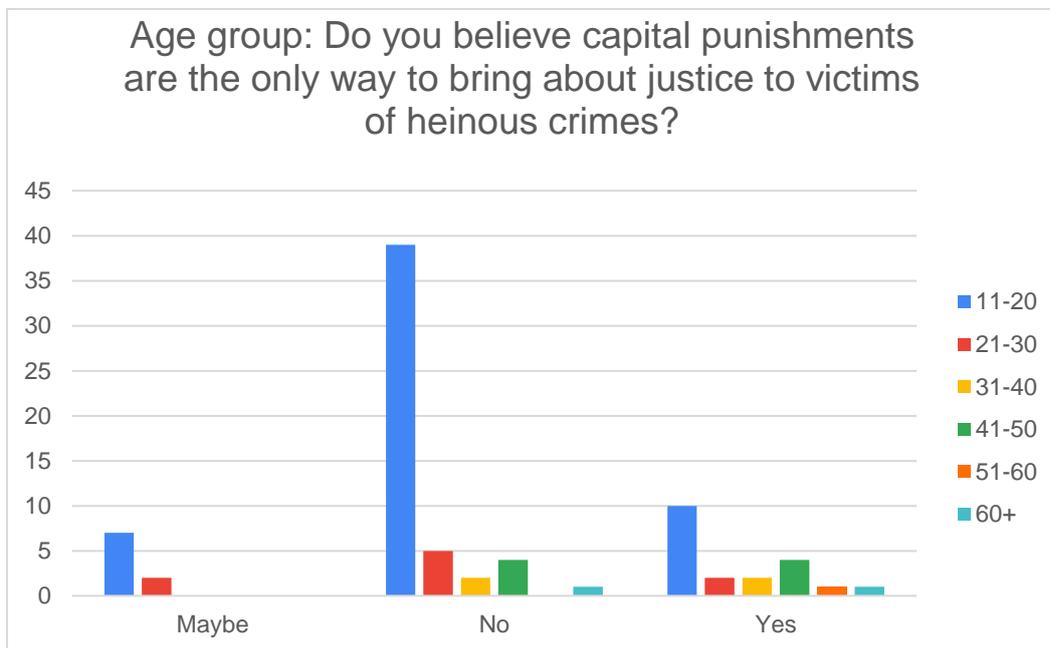


Table 5.2. Tabular representation of responses based on age group to the question do you believe the capital punishment is the only way to bring about justice to victims of heinous crimes.

Count of Do you believe that capital punishments are the only way to bring about justice to victims of heinous							

crimes?	11-20	21-30	31-40	41-50	51-60	60+	Grand Total
Maybe	7	2					9
No	39	5	2	4		1	51
Yes	10	2	2	4	1	1	20
Grand Total	56	9	4	8	1	2	80

In graph 5.2. we can clearly see the existent trend, wherein, between ages 11-30 there is a clear consensus on death penalty not being the only method of punishment for heinous crimes. This group (11-30) who doesn't believe in the validity of death penalty against heinous crimes constitutes almost 55%. However, as we move further down, there is divided opinion.

Interpretation

The inference that we can draw from the two graphs, is that there is a clear understanding and consensus that death penalty is not the only way. While it may be supported as one of the methods of punishment, there is consensus that there are other ways to punish criminals. This is the idea behind abolishing death penalty, to use other methods of reformatory punishment. It is interesting to note that 63% of the respondents believe that there are other ways of punishment. While there has been a support for the power and authority of the punishment, 61%, yet 63% still believe that it is not the only method of deterrence and punishment.

6:

Table 6.1. Graphical representation to the question, what are the crimes heinous enough to be punished by death.

Crimes	No. of affirmative responses
Child Rape	55
Terrorism	49
Murder	38
Rape	50
Nothing, it should be abolished	15

Interpretation:

This table represents the subjective opinions of the participants on which crime are heinous enough to be awarded death penalty. Majority of the participants believe that child rape is an offense that should be punished most heavily. As many as 68% respondents are in support of this. Quite interestingly the least number of responses are in favour of murder 47%. While most of the offenses awarded death penalty in countries such as the U.S are homicide related. This is a trend that seems to be due to the complete animal behaviour of human beings in India where there is a rise in the number of sexual offenses against children. Apart from the options

mentioned, there were three participants who argued that drug-related offenses should also be punished as they are in 35 other nations of the world. Another prevailing opinion was crimes should be punished only if they are proven.

7

Graph 7.1 Graphical representation of responses based on gender to the question Do you believe reformative means (Community service, rehabilitative sentencing, etc) of punishing crimes are better than such drastic punishments?

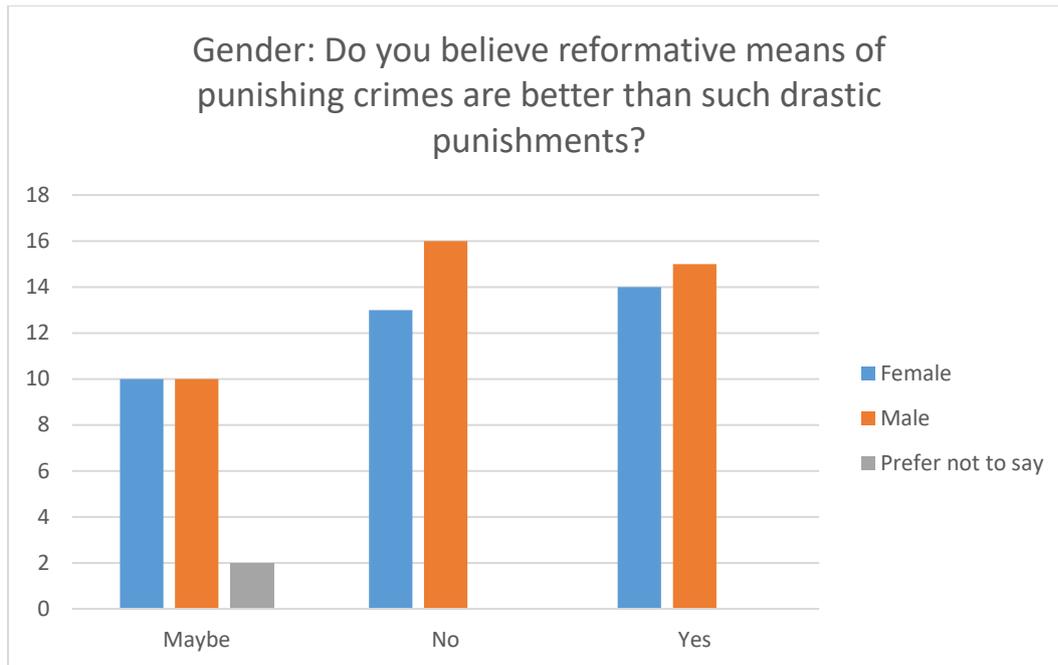


Table 7.1. Tabular representation of responses based on gender to the question Do you believe reformative means (Community service, rehabilitative sentencing, etc) of punishing crimes are better than such drastic punishments?

Count of Do you believe reformative means (Community service, rehabilitative sentencing, etc) of punishing crimes are better than such drastic punishments?	Female	Male	Prefer not to say	Grand Total
Maybe	10	10	2	22
No	13	16		29
Yes	14	15		29
Grand Total	37	41	2	80

This graph represents the number of individuals who believe that reformative means can be used more effectively than drastic punishments. By an analysis of the graph we can see that while both males and females are in support of reformative means, but an equal number of them are in opposition as well. However, it remains clear that a significant number are unsure (27.5).

Graph 7.2. Graphical representation of responses based on age groups to the question Do you believe reformative means (Community service, rehabilitative sentencing, etc) of punishing crimes are better than such drastic punishments?

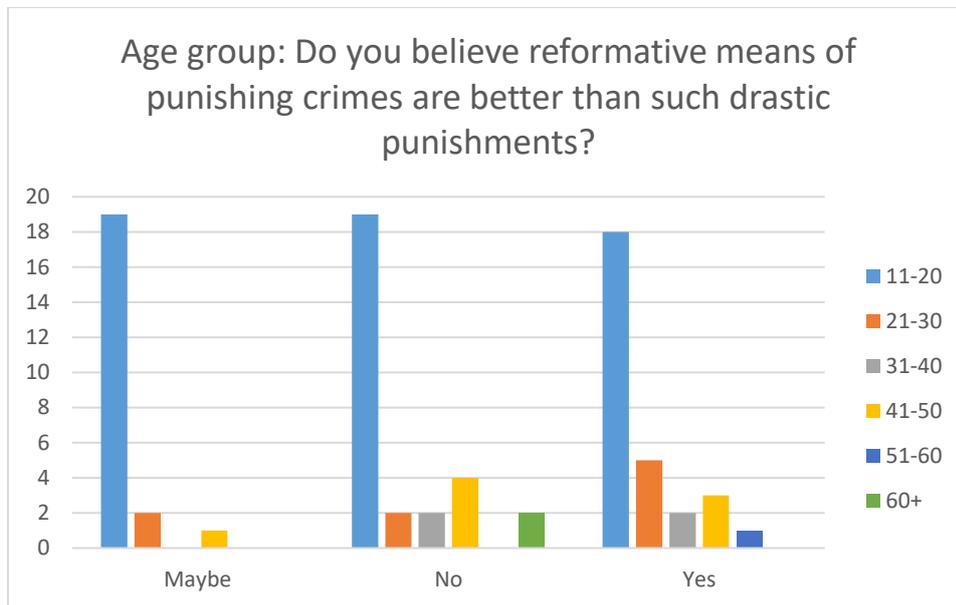


Table 7.2. Tabular representation of responses based on age groups to the question Do you believe reformative means (Community service, rehabilitative sentencing, etc) of punishing crimes are better than such drastic punishments?

With respect to graph 7.2. which represents the opinion on reformative means of punishment based on age groups, it is clear that the greatest support for reformative means lies among the age group of 21-30 years at 55%. However, there lies confusion in support for reformative means over death penalty in almost all age groups, with 11-20 being at the highest.

Interpretation

In recent times, the support for reformative means of punishments have been gaining immense attention because of their ability to be efficient and effective in the long run. Based on an

Count of Do you believe reformative means (Community service, rehabilitative sentencing, etc) of punishing crimes are better than such drastic punishments?							Grand Total
	11-20	21-30	31-40	41-50	51-60	60+	
Maybe	19	2	0	1	0	0	22
No	19	2	2	4	0	2	29
Yes	18	5	2	3	1	0	29
Grand Total	56	9	4	8	1	2	80

understanding of graphs 7.1 and 7.2. we can see that while there is a significant support for reformative means of punishment, 36%, yet there are almost 27% of people who are unsure.

This means that complete support for death penalty is a minority opinion. This seems to be taking India and Indian demographic closer to the trend of reformation over death penalty, which is a prevailing international trend as well. This could be due to increasing awareness over human rights issues and global consensus.

8:

Graph 8.1 Graphical representation of responses based on gender to the question 106 countries have completely abolished capital punishment, do you think India should abolish it as well?

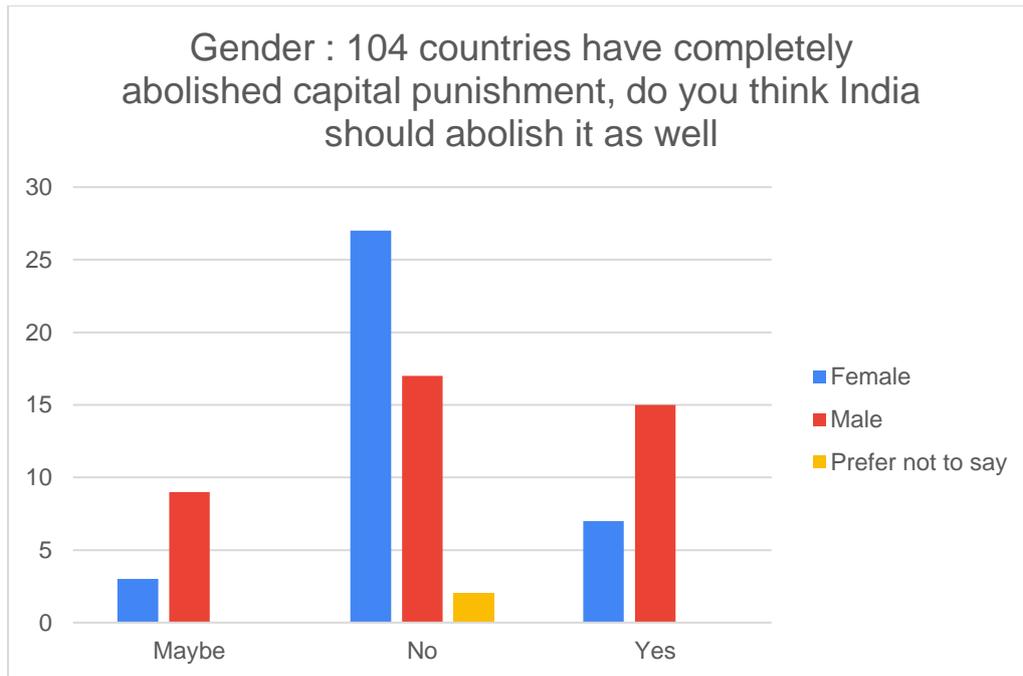


Table 8.1. Tabular representation of responses based on gender to the question 104 countries have completely abolished capital punishment, do you think India should abolish it as well?

Count of 106 countries have completely abolished capital punishment, do you think India should abolish it as well?	Female	Male	Prefer not to say	Grand Total
Maybe	3	9		12
No	27	17	2	46
Yes	7	15		22
Grand Total	37	41	2	80

This Graph represents the number of people who advocate a complete abolition of capital punishment in India on the basis of gender. It is interesting to note that there is a clear consensus in favour of the retentionist view. Majority women, 72% and a significant proportion of men, 41% have shown complete support in favour of death penalty. While there is a proportion of the demographic that supports its abolition, it is a minority.

Graph 8.2. Graphical representation of responses based on age group to the question 106

countries have completely abolished capital punishment, do you think India should abolish it as well?



Table 8.2. Tabular representation of responses based on age group to the question 106 countries have completely abolished capital punishment, do you think India should abolish it as well?

Count of 106 countries have completely abolished capital punishment, do you think India should abolish it as well?	s						Grand Total
	11-20	21-30	31-40	41-50	51-60	60+	
Maybe	11	1					12
No	34	3	2	5		2	46
Yes	11	5	2	3	1		22
Grand Total	56	9	4	8	1	2	80

This graph is a representation of the number of people who advocate a complete abolition of death penalty in India on the basis of their age groups. It is interesting to note that majority of the young demographic, 60% is against its abolition. Even the senior citizens are against its complete abolition.

Interpretation

This is one of the defining questions of the research and reflects the prevailing trend in India. We are divided on the issue of whether death penalty should be abolished or not. While there is a significant proportion of people who feel that death penalty should be abolished, 42.5%, yet the majority is in favour of its retention. This could be due to the prevailing belief of its power and authority. And as a research scholar had remarked, the diverse and disparate

backgrounds and beliefs of the Indian people, it was difficult to do away with death penalty, at least for now.

9.

Graph 9.1. Graphical representation of responses based on gender, to the question, In the recent hanging that took place in the Nirbhaya case, do you believe a death sentence was the best way for the victim and her family to gain justice after seven years?

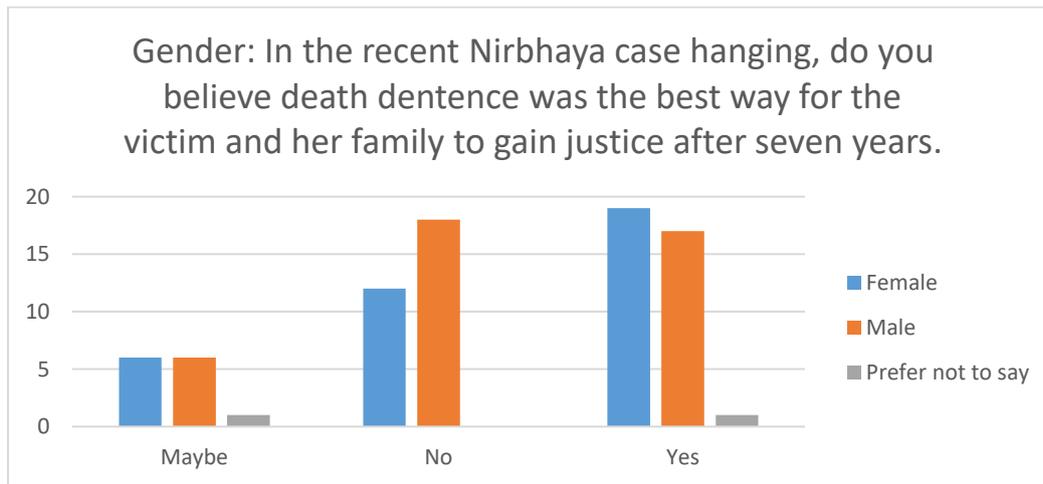


Table 9.1. Tabular representation of responses based on gender, to the question, In the recent hanging that took place in the Nirbhaya case, do you believe a death sentence was the best way for the victim and her family to gain justice after seven years?

Count of In the recent hanging that took place in the Nirbhaya case, do you believe a death sentence was the best way for the victim and her family to gain justice after seven years?					
	Female	Male	Prefer not to say	Grand Total	
Maybe	6	6	1	13	
No	12	18		30	
Yes	19	17	1	37	
Grand Total	37	41	2	80	

The graph is a representation of the support to death sentence as the punishment of Nirbhaya gangrape convicts based on gender. Here, the trend in terms of gender is while there is a clear support amongst women, at 51%, there is a lack of majority support amongst men at 41%.

Graph 9.2. Graphical representation of responses based on age group, to the question , In the recent hanging that took place in the Nirbhaya case, do you believe a death sentence was the best way for the victim and her family to gain justice after seven years?

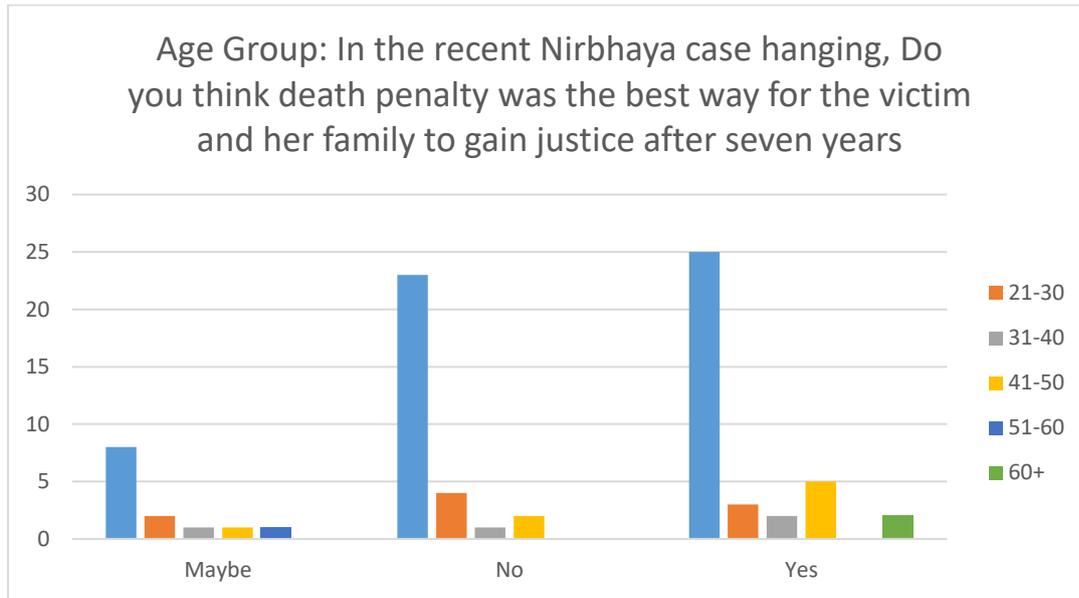


Table 9.2 Tabular representation of responses based on age group, to the question , In the recent hanging that took place in the Nirbhaya case, do you believe a death sentence was the best way for the victim and her family to gain justice after seven years?

Count of In the recent hanging that took place in the Nirbhaya case, do you believe a death sentence was the best way for the victim and her family to gain justice after seven years?							Grand Total
	11-20	21-30	31-40	41-50	51-60	60+	
Maybe	8	2	1	1	1		13
No	23	4	1	2			30
Yes	25	3	2	5		2	37
Grand Total	56	9	4	8	1	2	80

This graph represents the support to death punishment as the punishment to the convicts of Nirbhaya gangrape case in terms of the age groups of the respondents. A defining trend here is support amongst the older generation at 62%, (41-50) of capital punishment for the convicts of a heinous crime. This correlates to the study of Vladimir and Ellsworth, 1974 that the older generation is more supportive of capital punishment than the younger generation as the immediate punishment of extremely heinous crimes.

Interpretation

It is easily inferable that majority of the individuals voted for death penalty for the victims of the Nirbhaya case which was also what the judgement of the supreme court was. The highest support was amongst women, 51% and the older generation, (41-50) 62% .

10:

Graph 10.1. Graphical representation of responses based on gender to the question, Do you

believe capital punishments are grounded in morality?



Table 10.1. Tabular representation of responses based on gender to the question, Do you believe capital punishments are grounded in morality?

Count of Do you believe capital punishments are grounded in morality?				
	Maybe	No	Yes	Grand Total
Female	11	14	12	37
Male	14	12	15	41
Prefer not to say		1	1	2
Grand Total	25	27	28	80

The graph represents the opinions of the respondents on the morality of capital punishment based on gender. Here the trend that we can derive is that there is a larger proportion of individuals who believe that capital punishment is not grounded in reality or that it may be. The conclusive yes, is only 32% for women and 36% for men.

Graph 10.2. Graphical representation of responses based on age group to the question, Do you believe capital punishments are grounded in morality?

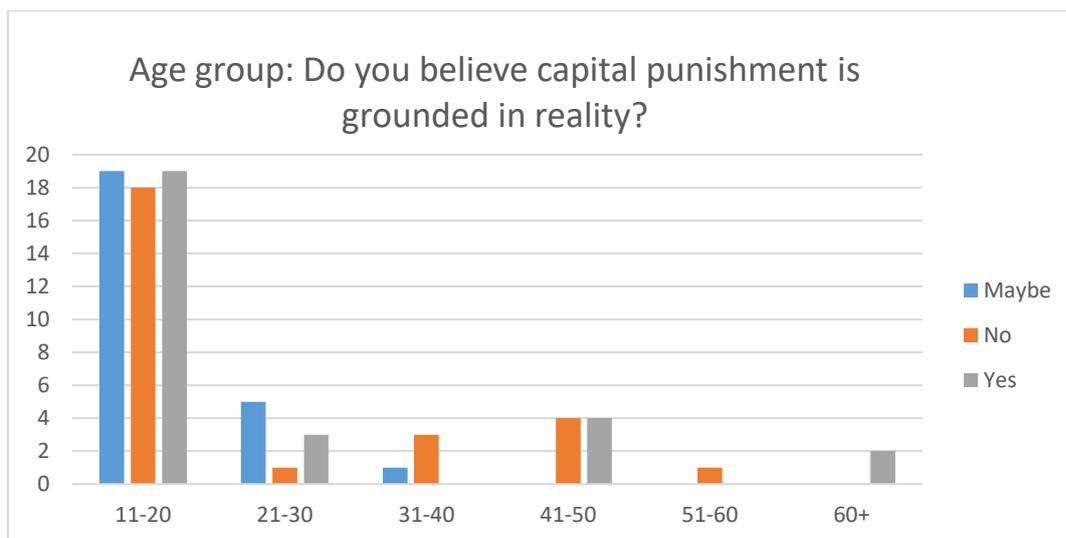


Table 10.2. Tabular representation of responses based on age group to the question, Do you

believe capital punishments are grounded in morality?

Count of Do you believe capital punishments are grounded in morality?	Maybe	No	Yes	Grand Total
11-20	19	18	19	56
21-30	5	1	3	9
31-40	1	3		4
41-50		4	4	8
51-60		1		1
60+			2	2
Grand Total	25	27	28	80

This table demonstrates the opinions of the respondents on the morality of capital punishment based on age group. We can see that, a majority of individuals are either unsure or believe that capital punishment is not grounded in morality. This trend can be seen through all the age groups.

Interpretation:

We can easily interpret that there is no conclusive consensus that capital punishment is grounded in morality. There is a lot of ambiguity amongst people about the dynamic between morality and capital punishment. Perhaps because capital punishment is a very controversial issue and individuals have different perceptions of morality, it becomes difficult to arrive at a conducive stance on this topic.

11:

Graph 11.1. Graphical representation to the question , if you think death penalty should be abolished, what are the reasons?

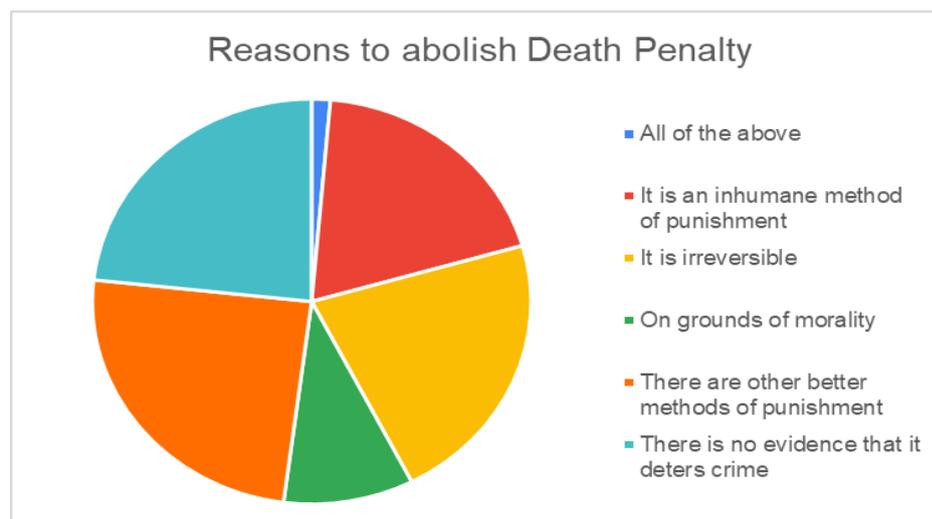


Table 11.1. Tabular representation to the question, if you think death penalty should be abolished, what are the reasons?

Reason	No. of responses
There is no evidence that it deters crime	17

It is irreversible	16
It is an inhumane method of punishment	14
There are other better methods of punishment	18
On grounds of morality	7
All of the above	1

Interpretation

This table is a representation of the opinions of the Indian demographic on reasons as to why capital punishment should be abolished. 40% are of the view that capital punishment should be abolished because there are other better methods of punishment. As many as 38% of the respondents who believe death penalty should be abolished, believe that this is due to the fact that there is no evidence that it deters crime. Apart from these, there were other subjective opinions and arguments such as the idea of killing an individual is very normalised and can lead to mobocracy, and should be abolished because of its costliness. This correlates with the various reasons that the international organisations and other nations have used to abolish capital offenses. This shows that there exists an awareness among the Indian demographic about the reasons and arguments of the abolitionists and they can relate to it in the Indian scenario.

12:

Graph 12.1. Graphical representation of responses based on gender, based on the question, if someone close to you was an advocate of a heinous crime, would you advocate death penalty for them?

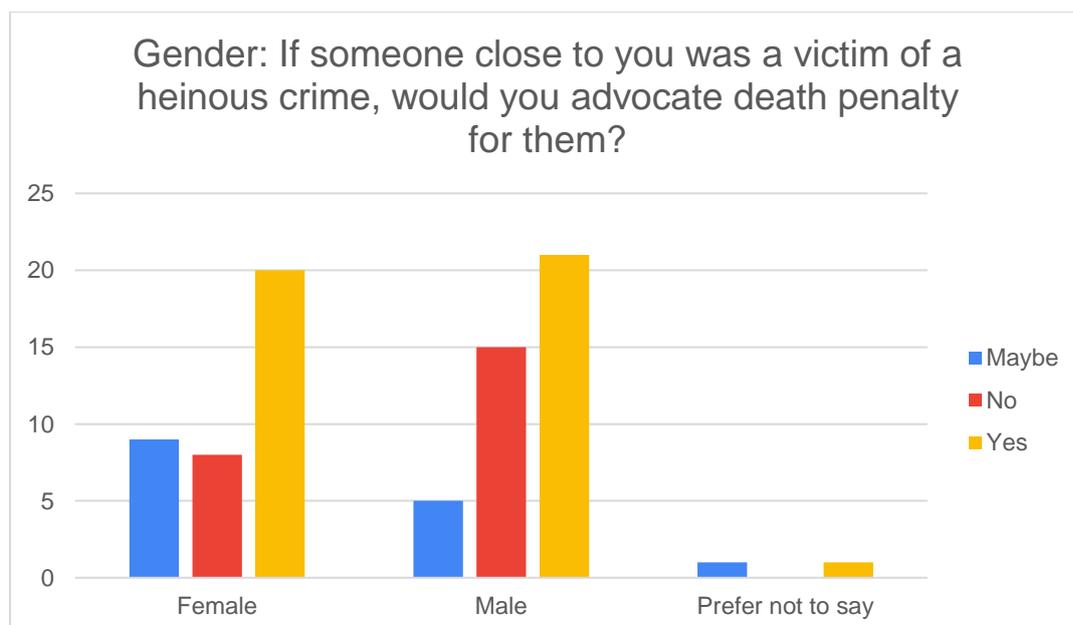


Table 12.1. Tabular representation of responses based on gender, based on the question, if someone close to you was an advocate of a heinous crime, would you advocate death penalty for them?

Count of If someone close to you was a victim of a heinous crime, would you advocate death penalty for them?	Maybe	No	Yes	Grand Total
Female	9	8	20	37
Male	5	15	21	41
Prefer not to say	1		1	2
Grand Total	15	23	42	80

This graph represents the opinions of the respondents based on their support to death penalty if the crime took place in a personal capacity, based on their gender. Majority women support death penalty if it happened to someone close to them, at 54%. Majority men also show support to death penalty for a close relative at 51%.

Graph 12.2. Graphical representation of responses based on age group, based on the question, if someone close to you was an advocate of a heinous crime, would you advocate death penalty for them?



Table 12.2. Tabular representation of responses based on age group, based on the question, if someone close to you was an advocate of a heinous crime, would you advocate death penalty for them?

Count of If someone close to you was a victim of a heinous crime, would you advocate death penalty for them?	Maybe	No	Yes	Grand Total
11-20	11	16	29	56
21-30	1	3	5	9
31-40	1	1	2	4
41-50	2	2	4	8
51-60		1		1

60+			2	2
Grand Total	15	23	42	80

This graph represents the opinions of the respondents based on their support to death penalty if the crime took place in a personal capacity, based on age groups. Majority of the 11-20 age group, 51% would advocate death penalty if the victim was personally related to them. In fact, all the age groups show majority support for death penalty, if the victim was personally related.

Interpretation

It is easily inferable that when it is the question of supporting death penalty for a personal victim, there is clear support among all age groups and across all genders. This may be due to the fact that as Indians, belonging to different backgrounds our ways of thinking bind us together. The retributive thinking of death for heinous crime is still alive in our minds, demonstrated by the majority support for death penalty, 52.5%. Yet, there is a significant support for its abolition as well. We are making steady progress.

X. FINDINGS

The findings that have been gathered through this research study are as follows:

- India has been a strong retentionist nation throughout history and remains so today. The last execution in India was in the year 2020. Even after the issuance of a moratorium against capital punishment and a call on nations to abolish it by the U.N, a majority of the Indian demographic, 57.5% is staunchly against the abolition of death penalty.
- When it comes to the power and authority of death penalty, 61% believes in it. This means that there are some individuals who see death penalty as a powerful tool, but are against its usage. Mainly women and the younger generation see death as an authoritative punishment.
- A major argument used by retentionists is that capital punishment deters crimes. Through a number of empirical studies including one conducted by Amnesty International it is proven otherwise. Here we see a divided opinion, majority of the men 46% do not believe in the deterrence power, while majority women 62% believe in it. However, opinion is 50-50, where quite a few remain unsure.
- A divergent trend is seen wherein we see that 63% of the total demographic believes that death penalty is not the only way to bring about justice. This means that Indians, while supporting death penalty, also believe that other methods can be used. Alongside, it was interesting to note how most people believed that child rapes and sexual offenses should be punished most with death, and not homicidal offenses. This is a diverging trend from the west, where most capital offenses are homicidal in nature.

- Another important finding was that there was support for reformative means of punishing offenses at 36.3% which was exactly equal to the support for death penalty. A major portion of the demographic was unsure, which meant that there still lies some confusion about rehabilitative means. This seems to be taking India and Indian demographic closer to the trend of reformation over death penalty, which is a prevailing international trend as well.
- With respect to the Nirbhaya judgement, there was support for capital punishment at 46% for the offenders. While there were 16% unsure population, the highest support was seen amongst women at 51% and the older generation 41-50 years at 62%. This shows us that though 46% is not a majority of the total population, yet while people were unsure, the support for capital punishment is significant.
- The dynamic between morality and the legality of capital punishment in India is very ambiguous. The three responses of (yes 35%), no (33.8%) and maybe (31.3) to the question are very close to each other in terms of the frequency of responses. This means that the idea and understanding of morality in India is very distinct, varied and ambiguous. Just as Blackshield, had written in his paper Capital Punishment in India, India is too vast and diverse a country to have a common understanding to morality and hence, cannot take a consensual stance to abolish capital punishment.
- There are many reasons to abolish capital punishment, that have been propounded by various scholars in this paper, but 40% Indians believe that it should be abolished because there are other better means. The highest consensus is for this reason, and this correlates to the previous question of rehabilitative means being a better mode of punishment than death. This can be inferred to understand that most Indians believe in reformation.
- The last finding is based on a moral picture, where 52% claim they would advocate capital punishment if the victim was someone close to them. This shows us that Indians do have a retributive method of thought till date.

XI. REFORMS AND CONCLUSION

The purpose of this discussion of the study is to interpret and relate what was known through previous studies and what this new research has added to previous understanding. Upon analysing the findings of the research study with the literature that has been reviewed, one thing is quite clear, India is a clear retentionist nation with the national demographic still upholding the same stance. While a large number of international treaties for human rights have been

signed, we need to take a bolder stance. More than a majority of our population is against abolishing death penalty, which means that we need to take a look at our justice system. Moreover, just as Project 39a states, the innocent die and the culprits roam free, and we need to keep in consideration the psychological, economic, social backgrounds of the prisoners and their families. We need to make efforts to make our system quicker and more efficient. Furthermore, there is a need to educate our citizens. A recurring answer through the survey was “maybe” which means the respondents, most of who were college students, were left unaware and did not have enough knowledge on the topic to form an opinion on the burning questions of our time. We need to have a healthy discourse and dialogue.

XII. CONCLUSION

The conclusion of this study is that India is a nation which is on its way to becoming the next superpower. Yet, the age-old controversial issue of death penalty awaits its resolution. While keeping India in mind, given the diversity it entails, it is difficult to arrive at a conclusion that suits all. However, we can see certain trends. Though there have been recent advances, and there are several human rights organisations and International Organisations that are arguing to bring about an end to death penalty, yet the public opinion in India is in favour of retaining death penalty. ***The hypotheses is proven false as recent global backlash and moratorium against capital punishment has not led to a complete extinction of support for capital punishment in India.*** In my opinion, through a comprehensive analysis on the paper it can be seen that death penalty is considered by a majority of the demographic to be the most suited means of punishment. The “eye for eye” mentality still exists amongst most. Especially amongst the younger generation, the youth of the nation can be seen as strong proponents of capital punishment. This can be due to reasons such as the retributive quality of the punishment, the extreme strength of the punishment and its ultimate fear. Even after the Nirbhaya judgement that has been greatly criticised, it has been seen that though the majority opinion is in favour of death penalty, though there is a significant proportion of the population that has asked for its abolition citing various global human rights issues. There is a need for more clarity and awareness in the dialogue around capital punishment in India.
