International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

The Evolution and Status of Capital Punishment in Indian Criminal Jurisprudence

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Abstract
Capital punishment is not just a legal sentence but is the most irreversible act of the state, ending a human life. Beneath the structures that uphold it are real human stories of victims seeking closure and of offenders often shaped by circumstances like poverty, trauma, or systemic failure. Over time, there has been a shift towards a more restrained and compassionate approach to the death penalty. Legal systems increasingly consider not only the severity of the crime but also the individual behind it. While capital punishment remains a part of the legal framework, there is a noticeable shift toward justice that focuses on healing, dignity, and transformation rather than mere retribution.

Keywords: Capital Punishment, Human Dignity, Justice System, Criminal Law, Legal Reform, Ethics in Punishment, Reformative Justice

1. INTRODUCTION

Capital punishment is more than a legal sentence it's the state's final, irreversible act against a human life. Behind the courtroom verdicts are real people: victims longing for justice, families torn apart, and convicts often shaped by desperation or broken systems. It forces us to ask—can justice be served without extinguishing hope?

Capital punishment has been a long-standing component of the criminal justice system across civilizations. Although its nature and application have evolved depending on geographical, cultural, and temporal factors, it continues to remain a controversial yet integral aspect of penal jurisprudence in many countries.[1] Law and justice are often regarded as the most distinguished outcomes of human evolution. Throughout history, societies have aspired to uphold righteousness and eliminate wrongdoing, driven by an innate human sense of justice and morality. The principle of retributive justice, symbolized by the ancient age of "an eye for an eye, a tooth for a tooth," demonstrates this outlook. This idea becomes particularly pertinent in the case of heinous crimes such as murder, where the taking of life has traditionally attracted the severest of penalties.[2]

Historically, legal thinkers and lawmakers have rationalized capital punishment for grave offenses. Ancient Indian scriptures like the **Bhagavad Gita, Mahabharata, and Ramayana** advocate for the punishment of severe offenders. For instance, the Dharmasastras sanctioned the killing of a murderer as a

[1] *Outlines of Indian Legal and Constitutional History* (11th ed.). LexisNexis.
[2] *The Laws of Manu* (G. Bühler, Trans.). Sacred Books of the East, Vol. 25. Oxford University Press.

moral and social duty, irrespective of the offender's social status.[3] The ancient Indian penal philosophy was firmly rooted in deterrence.

The Mauryan period under Kautilya and the medieval era under the Mughals reflected varying intensities of capital punishment. While Kautilya supported a structured penal code, during Mughal rule, capital punishment often assumed brutal forms such as execution through suffocation in animal hides or crucifixion practices later abolished during British colonial administration, which standardized death by hanging.[4]

In contemporary India, a gradual shift is evident from retributive to reformative justice. Modern criminal jurisprudence emphasizes rehabilitation, with courts increasingly focusing on constitutional interpretation rather than legislative policymaking.

Despite this shift, capital punishment continues to evoke heated debate. Abolitionists cite moral, legal, and statistical arguments against it, viewing it as a violation of human dignity and an outdated relic of punitive excess. Conversely, proponents argue it serves as a deterrent and just recompense for heinous crimes. Parliamentary efforts to abolish capital punishment in India such as the 1956 Bill in the Lok Sabha[5] and the 1958 and 1961 resolutions in the Rajya Sabha have consistently failed, indicating limited political consensus on the issue.[6]

Judicial discourse has also grappled with the constitutionality of capital punishment. In **State of Madras v. V.G. Row (1952)**, Chief Justice Patanjali Sastri outlined the test of reasonableness in restrictions imposed by law, stressing that this test must be context-specific, accounting for the nature of the rights affected, the goals of legislation, and prevailing social conditions. The judiciary must exercise its authority with restraint, considering diverse societal values and constitutional plurality.[7]

Over the years, the Supreme Court of India has deliberated on capital punishment's constitutionality in several landmark rulings, balancing legal, moral, and human rights dimensions. These decisions, along with those of international judicial bodies, reflect an evolving jurisprudence on the issue. The proposed research aims to analyze such decisions and evaluate existing laws, reforms, and human rights concerns surrounding capital punishment.

2. INDIAN CONSTITUTIONAL LAW AND CAPITAL PUNISHMENT

Capital punishment, rooted in the Latin word capitalis, means "of the head," refers to the judicial execution of an individual found guilty of a serious crime. In India, as in many parts of the world, the constitutionality of the death penalty continues to be a subject of intense moral and legal scrutiny. The fundamental question often raised is: how can a practice so violent, irreversible, and arguably inhumane be sanctioned by a Constitution that upholds human dignity, liberty, and justice?

Justice Krishna Iyer, in the case of **Rajendra Prasad v. State of Uttar Pradesh** (1979)[8], pointed that the humanitarian ideals embedded in the Indian Constitution must inform and guide the punitive mechanisms of our criminal justice system. He lamented the lack of judicial exploration into the compatibility of capital punishment with the rights enshrined in Articles 14, 19, and 21, which guarantee equality, freedom, and the right to life, respectively.

[3] *Religion, Law and the State in India*. Faber and Faber.
[4] *Writing the Mughal World: Studies on Culture and Politics*. Columbia University Press.
[5] Lok Sabha Debates, November 23, 1956
[6] *Rajya Sabha Debates*.
[7] *State of Madras v. V.G. Row*, AIR 1952 SC 196.
[8] *Rajendra Prasad v. State of Uttar Pradesh*, AIR 1979 SC 916.

His analysis was grounded in four distinct considerations. First, he acknowledged the imperfect reliance on "judicial hunch" and "ad hoc forensic impressionism" due to the lack of systemic methods to assess the social and personal background of the convict before sentencing. He emphasized the need for individualized sentencing, where the focus must shift from the crime alone to the criminal—their circumstances, history, and potential for reform.

Secondly, he tried to articulate the unspoken moral intuitions—what Justice Holmes might call the "inarticulate premises"—that judges draw upon in such grave decisions. He viewed these intuitions as being increasingly shaped by evolving sociological and penal thought, internationally and within India.

Thirdly, justice Iyer highlighted the global movement against the death penalty, referencing decisions like **Furman v. Georgia (1972)[9] and People v. Anderson (1972)[10]** in the United States, where courts struck down capital punishment as cruel and unusual under constitutional scrutiny. He also invoked the humanitarian spirit of the Universal Declaration of Human Rights, pointing to a global shift from retribution to reform.[11]

Finally, and most critically, he drew attention to domestic legislative changes that reflected a shift in Indian penal policy. He traced the evolution of 392(2) of Bhartiya Nagrik Suraksha Sanhita, 2023 (Section 354(3) of CrPc), which now requires judges to record "special reasons" when imposing the death sentence[12]. Previously, under Section 367 of Crpc, death was the default punishment for murder unless reasons were given for awarding life imprisonment. This statutory amendment reversed the presumption—now, life imprisonment is the rule and the death penalty the exception.[13]

Justice Iyer interpreted this as a legislative acknowledgment of the state's discomfort with the finality and morality of the death penalty. He saw it as a step toward a cautious retreat from capital punishment, aligning with India's constitutional ethos and global human rights commitments.

In essence, while the death penalty has not been abolished in India, its constitutional validity is constantly being re-evaluated through a lens that prioritizes human dignity, reform, and the evolving conscience of society.

2.1 Constitutionality of Capital Punishment in India

The Indian Constitution, while protecting life and liberty, does permit the deprivation of these rights under specific legal conditions. Article 21 guarantees that no person shall be deprived of life or personal liberty except according to "procedure established by law"[14]. This implies that capital punishment, if administered through a fair, just, and reasonable procedure, can be constitutionally valid. Similarly, Article 19 provides a framework for the protection of fundamental freedoms but allows their restriction under certain circumstances deemed reasonable in the interest of public order, morality, and state security.[15] However, the meaning of these provisions cannot be interpreted in isolation. The Preamble of the Constitution[16] enshrines the ideals of justice, dignity, and equality, along with the Directive Principles of State Policy under Part IV[17], shape the moral and social vision that must guide penal policy in India.

[9] 408 U.S. 238 (1972).
[10] 493 P.2d 880 (Cal. 1972).
[11] *Universal Declaration of Human Rights*. https://www.un.org/en/about-us/universal-declaration-of-human-rights
[12] Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 392(3)
[13] Code of Criminal Procedure, 1973, S. 354(3).
[14] Constitution of India. Article 21.
[15] Constitution of India. Article 19.
[16] Constitution of India. Preamble.
[17] Constitution of India. Part IV.

Therefore, any imposition of the death penalty must be scrutinized not only for legality but for its alignment with constitutional morality and human dignity.

The choice between life imprisonment and death must also withstand the test of Article 14, which guarantees equality before the law and protection against arbitrary action. This means that capital punishment must not be imposed capriciously or discriminatorily. Discretion in sentencing must be exercised uniformly and based on rational principles. The **"rarest of rare" doctrine**, developed by the Supreme Court in **Bachan Singh v. State of Punjab (1980)**, emerged from this requirement to restrict judicial arbitrariness.[18]

Capital punishment cannot be constitutionally justified simply because a murder has occurred. For instance, if a young boy, under the emotional influence of older siblings, retaliates violently against the killer of a family member, it may still be murder—but one influenced by circumstances that could call for leniency rather than the harshest penalty. The Court must consider such social and psychological factors. Equality, in this context, does not demand uniformity of punishment, but rational differentiation based on the facts of each case.

Article 19 serves as a moral compass with its six freedoms—speech, assembly, association, movement, residence, and profession. The question a judge must ask before imposing the death penalty is this: is it reasonably necessary, as required under Articles 19(2) to 19(6), to extinguish not just liberties but life itself? The answer must be rooted in constitutional necessity—not emotion or retribution.

In sum, while the death penalty is constitutionally permissible, it must be imposed with extreme caution, in rarest of rare cases, and guided by a humane and equitable interpretation of constitutional principles.

2.2 Judicial Approaches to the Constitutionality of Capital Punishment in India

A well-established maxim in constitutional law asserts that **"what cannot be done directly cannot be done indirectly."** Courts have historically relied on this principle to prevent legislative circumvention of constitutional mandates. This maxim featured implicitly in the Indian judiciary's early engagement with the constitutionality of the death penalty.

In **Jagmohan Singh v. State of Uttar Pradesh**, the Supreme Court upheld the constitutionality of capital punishment, refusing to strike it down outright. The Court reasoned that since sentencing followed a judicial process prescribed by law, it did not violate **Article 21**, which mandates that no one shall be deprived of life or liberty except by a procedure established by law. However, even though the Court refrained from the "sledgehammer" approach of invalidating capital punishment outright, there remained judicial space for gradually undermining it through statutory interpretation and judicial discretion[19].

Just eighteen months later, a two-judge bench comprising Justice Krishna Iyer and Justice Sarkaria advanced a more humanistic and nuanced interpretation of sentencing policy. Though the case did not invalidate the death penalty, it represented a significant moment of judicial creativity and reformist passion. The decision revealed the judiciary's willingness to explore more humane sentencing options without contradicting precedent.

The argument based on Article 14, which ensures equality before the law and equal protection of the laws, was summarily dismissed by the Court in Jagmohan Singh. Citing precedents like **Budhan Choudhry v. State of Bihar**, the Court reiterated that differential treatment in judicial processes such as summary trials versus full trials does not violate Article 14 unless purposeful discrimination or arbitrariness is proven.

[18] *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.
[19] *Jagmohan Singh v. State of Uttar Pradesh*, AIR 1973 SC 947.

Variation in sentencing, the Court suggested, is often a necessary result of judicial discretion and case-specific circumstances, not necessarily a violation of the principle of equality[20].

In addressing **Article 21**, the Court maintained that Indian criminal procedure especially trial and appellate safeguards was sufficient to ensure that the deprivation of life was lawful. The absence of a specific procedural stage for sentencing evidence was not fatal, according to the Court, because relevant information affecting sentencing is generally introduced during the trial. Any additional mitigating evidence could also be brought forward, and such proceedings were governed by the Indian Evidence Act and Criminal Procedure Code. Therefore, the sentencing procedure formed part of the "procedure established by law" under Article 21.[21]

The more complex and subtle constitutional challenge, however, arose under Article 19, which guarantees six fundamental freedoms but permits them to be curtailed under "reasonable restrictions" in the interest of public order, morality, or state security. This mirrors debates in constitutional theory where regulation is distinguished from prohibition. Though the Court did not address this argument in its strongest form, it reformulated it to say that the right to life is foundational to the exercise of all other Article 19 freedoms. If so, then depriving life must also satisfy the reasonableness requirement meaning it must serve public interest and be proportionate.

This line of argumentation echoed the abolitionist stance adopted in the U.S. Supreme Court's decision in **Furman v. Georgia**. In that case, the U.S. Court struck down death sentences in three cases as constituting "cruel and unusual punishment" under the Eighth Amendment. However, the Indian Supreme Court noted that even in the liberal constitutional climate of the United States, only two justices: Brennan and Marshall held capital punishment per se to be unconstitutional. Thus, the Indian Court concluded, it would be even more difficult under the Indian constitutional framework to declare the death penalty as inherently unreasonable or against the public interest.[22]

2.3 Constitutional Powers of the President and Governor: Mercy Jurisdiction

The Indian Constitution entrusts the President and Governors with a vital humanitarian function which is "the power to grant mercy".

- **Article 72**[23] of the Indian Constitution empowers the President, while similar authority is provided to the Governors of states under **Article 161**[24] of the Indian Constitution. These powers allow them to suspend, remit, or commute a sentence in certain cases, stepping in only after a court has delivered a conviction and has passed the sentence.
- This "mercy jurisdiction" acts as a final safeguard within the justice system, allowing for compassion to temper the rigidity of law. However, it is important to note that this power is not a right of the convict pardon is an act of grace, not a legal entitlement, and thus cannot be demanded as a matter of right.[25]
- While both the President and Governors share this clemency power, the President's authority under Article 72 is broader. It includes the exclusive right to grant pardon in cases involving death sentences and court-martial convictions, areas where a Governor has no jurisdiction. The President can also grant reprieves, respites, remissions, or commute punishments, regardless of any decision already

[20] *Budhan Choudhry v. State of Bihar*, 1955 SCR 1045.
[21] *Jagmohan Singh v. State of Uttar Pradesh*, AIR 1973 SC 947.
[22] *Furman v. Georgia*, 408 U.S. 238 (1972).
[23] Constitution of India, Article 72.
[24] Constitution of India, Article 161.
[25] *Kehar Singh v. Union of India*, AIR 1989 SC 653.

taken by a state Governor.[26] Though this power is discretionary, both the President and Governors are expected to exercise it fairly, reasonably, and in the spirit of justice especially when the stakes are life and death. The Supreme Court has clarified that while the mercy power is not subject to judicial review on merits, it can be challenged on grounds of arbitrariness, mala fide, or non-application of mind.

2.4 Constitutional Powers of the President and Governor in Capital Punishment Cases

After all legal remedies through the judiciary have been exhausted, a person on death row has the final option of submitting a mercy petition to the President of India[27]. This petition, often seen as a last resort, may be submitted either by the convict personally from prison or through an authorised representative. The President may accept or reject the petition, and is expected to do so within a reasonable timeframe. However, this power is not exercised independently, it must be based on the advice of the Council of Ministers, as per Article 74 of the Constitution.[28]

Article 72 of the Constitution grants the President the authority to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the sentence of any person convicted of an offence:

- In cases where the sentence is imposed by a court-martial;
- Where the offence involves a law within the Union government's executive domain;
- In all cases involving a sentence of death.

Article 72(2) clarifies that this provision does not affect the powers of officers of the Armed Forces to remit or commute sentences under military law. Article 72(3) preserves the Governor's authority under Article 161 to deal with death sentences in cases governed by state law.

Under Article 161, the Governor of a state has a similar power to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute a sentence[29]. This authority applies in cases related to offences governed by laws within the executive power of the state (Constitution of India, art. 161). However, in matters involving military justice or capital punishment governed by Union law, the President retains exclusive jurisdiction.

This distinction was addressed in Kuljeet Singh alias Ranga v. Lt. Governor of Delhi, where the petitioner challenged the President's refusal to grant mercy under Article 72. The Supreme Court held that the President's decision was constitutionally valid and within his authority.[30]

Further, in Mohinder Singh v. State of Punjab, the Supreme Court ruled that while a mercy petition is pending before the President, the judiciary has no authority to stay the execution. A stay on execution can only be granted by the President during the pendency of such a petition.[31]

3. Appeals and Review Powers of the Apex Court: Judicial Trends

Once a trial court imposes the death penalty, the Indian legal system provides essential procedural safeguard thorough judicial scrutiny. One of these is the right to appeal against the death sentence. As outlined in International Human Rights Law, particularly in Article 6 of the UN Safeguards Guaranteeing

[26] *Epuru Sudhakar v. Government of Andhra Pradesh*, (2006) 8 SCC 161.
[27] *Maharashtra mercy petitions: Dedicated cell*. https://www.nextias.com/ca/current-affairs/01-04-2025/maharashtra-mercy-petitions-dedicated-cell
[28] Kehar Singh v. Union of India, AIR 1989 SC 653, Maru Ram v. Union of India, (1981) 1 SCC 107.
[29] *Pardoning power of Governor: Meaning, types & provisions*. Retrieved June 21, 2025, from https://testbook.com/ias-preparation/pardoning-power-governor
[30] Kuljeet Singh alias Ranga v. Lt. Governor of Delhi, (1981) 2 SCC 11.
[31] Mohinder Singh v. State of Punjab, AIR 1978 SC 1095.

Protection of the Rights of Those Facing the Death Penalty, anyone sentenced to death must have the opportunity to appeal to a higher judicial body, and such appellate reviews must be made mandatory[32].

In the landmark case of **Bachan Singh v. State of Punjab (1980)**[33], former Chief Justice P.N. Bhagwati, in his dissenting opinion, strongly advocated for an automatic and unanimous review of all death penalty cases by the Supreme Court sitting as a full bench. He opined that this approach could reduce the arbitrariness in imposing capital punishment. Justice Bhagwati argued that the death sentence should be reserved only for the rarest of rare cases where the offender is proven to be entirely beyond reform even after long-term incarceration and rehabilitative efforts. However, he acknowledged that such cases would be exceptionally rare in practice.

Justice Bhagwati also highlighted a significant problem i.e. the lack of consistency in judicial reasoning behind awarding the death penalty. He noted that individual judges often decide based on their personal moral beliefs, value systems, or attitudes towards capital punishment, resulting in divergent outcomes for similar cases. For instance, a death sentence might be upheld by one bench while another could commute it to life imprisonment, solely depending on the ideological leanings of the judges hearing the case.

The issue of inconsistency was also discussed in the U.S. Supreme Court's decision in McGautha v. California (1971)[34], where Justice Harlan observed that the task of formulating precise guidelines for when the death penalty should be applied is virtually impossible due to the complex variables involved in each case.

In India, this inconsistency is further exacerbated by the fragmented bench structure in the Supreme Court. Although the number of judges in the Court has grown over the years, most capital punishment cases are now decided by two-judge benches, rather than larger constitutional benches. Legal scholar Prof. Andrew Blackshield studied 70 capital sentencing cases decided by the Supreme Court between April 28, 1972, and March 8, 1976. His analysis revealed a wide disparity in how individual judges voted on death penalty cases. The decision to impose or commute a death sentence appeared to depend heavily on the composition of the bench rather than any consistent legal standard.

In **Rajendra Prasad v. State of Uttar Pradesh (1979)**, the death sentence was commuted to life imprisonment by a majority of Justices Krishna Iyer and Desai, while Justice A.P. Sen dissented, arguing that the sentence should be upheld.[35] Likewise, in the initial hearing of Bachan Singh, Justice Kailasam disagreed with the majority view in Rajendra Prasad and referred the matter to a larger constitutional bench. These examples reflect how judicial philosophy and personal attitudes significantly influence sentencing outcomes. The failure to establish standardised, objective criteria for the imposition of the death penalty means that judicial discretion continues to be exercised in an arbitrary and inconsistent manner.

4. CONCLUSION

The administration of criminal justice and its attendant punishments have evolved dramatically from ancient times to the present. Early societies whether in Egypt, Greece, India, or elsewhere often gave the state sweeping powers to satisfy retribution, frequently through brutal methods. Over time, legal thought

[32] United Nations Economic and Social Council. (1984). *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*. E/RES/1984/50.
[33] AIR 1980 SC 898.
[34] 402 U.S. 183 (1971).
[35] AIR 1979 SC 916.

shifted towards more reasoned approaches, and modern India's death-penalty regime now stands at the crossroads of constitutional safeguards, legislative reforms, and international human-rights norms.

- **Ancient and Classical Roots:** In antiquity, punishments such as amputation, stoning, and burning alive were common across civilizations. The ancient Egyptians codified severe corporal penalties to deter crime.[36] In Greece, early legal codes reflected similar harshness, yet philosophers began to temper retribution with reflection. Plato defended a retributive model of justice, whereas his student Aristotle urged proportionality and the consideration of mitigating circumstances.[37]
- **Indigenous Indian Traditions:** India's earliest legal texts, including the Manusmṛiti, recognized "danda" (coercive authority) as essential to upholding dharma but also hinted at limits on its use.[38] Under medieval Muslim rule, Islamic criminal principles often permitting capital punishment were adapted regionally, though practical applications varied by sultanate.[39]
- **Colonial Legacy and Early Reform:** The British Draft Penal Code of 1837 placed the death penalty at the forefront of sanctions for grave offences, but counseled its sparing application.[40] Independence saw India inherit this framework, yet gradually introduce checks such as the 1955 amendment to the Criminal Procedure Code removed the presumption in favour of death, and the 1973 Code reversed the default again now life imprisonment is the norm, death its exception, permitted only when the court records "special reasons".
- **From "Blood-Lust" to Rehabilitation:** Post-independence penological philosophy in India has steadily shifted toward offender reformation and societal rehabilitation. Legislators and jurists have narrowed capital-punishment's scope to the "rarest of rare" cases.[41] Hanging once public spectacle has been confined to private gallows as a constitutional safeguard against degrading treatment.[42]
- **International and Domestic Pressures:** Globally, over 100 countries have abolished the death penalty in law or practice, and many retentionist states limit its use.[43] Amnesty International continues to urge India to impose a moratorium pending full abolition.[44] As a signatory to the International Covenant on Civil and Political Rights, India faces growing calls at home and abroad to align its practices with evolving human rights standards.
- **A Humane Future?:** Recognizing lingering arbitrariness and the irreversible nature of execution, the Law Commission of India's recent report recommended offering condemned prisoners a choice among quick, painless, and dignified methods of execution-should the death penalty remain.[45] Yet, as the world moves towards abolition, India's gradual retrenchment suggests it, too, is poised to follow the global trend.

India's long journey with the death penalty reflects not just changes in law, but also in collective conscience. From the brutal punishments of ancient times to a modern legal system grounded in fairness and dignity, our nation has come a long way. Today, capital punishment is no longer the rule it is the rare

[36] (n.d.-a). *Ancient Egyptian law*. Retrieved from https://www.britannica.com/topic/ancient-Egyptian-law
[37] *Nicomachean Ethics* (T. Irwin, Trans.). Hackett Publishing.
[38] Manusmṛti, ch. 8 (ca. 200 CE).
[39] *Islamic criminal law in medieval India* (Doctoral dissertation). Aligarh Muslim University.
[40] India Office Records, British Library.
[41] AIR 1980 SC 898.
[42] AIR 1983 SC 1035.
[43] art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.
[44] *Death penalty*. Retrieved from https://www.amnesty.org/en/what-we-do/death-penalty/
[45] *Report No. 262: Alternative methods of execution*.
Manusmṛti, ch. 8 (ca. 200 CE).

exception, imposed only in the "rarest of rare" cases when the special reasons are provided for executing the accused.

But our place in the world brings added responsibility. As a signatory to the International Covenant on Civil and Political Rights, India has committed to upholding the highest standards of human rights, including a person's right to life. Within India too, voices are growing louder from civil society to former judges urging that the state must not take life, even in the name of justice.

Importantly, India has already shown signs of change. Executions are rare, the Law Commission of India has recommended more humane and less painful alternatives if the death sentence must be carried out.[46]

At this turning point, India has a choice. We can continue to hold on to capital punishment, or we can embrace a future where justice does not mean revenge. Abolishing the death penalty would not make us weaker it would reaffirm our strength as a democracy that believes in reform, redemption, and above all, in the dignity of every human life.

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