



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

+91 70421 48991
editor@ijlar.com
www.ijlar.com

DISCLAIMER

The views and opinions expressed in the articles published in the Indian Journal of Legal Affairs and Research are those of the respective authors and do not necessarily reflect the official policy or position of the IJLAR, its editorial board, or its affiliated institutions. The IJLAR assumes no responsibility for any errors or omissions in the content of the journal. The information provided in this journal is for general informational purposes only and should not be construed as legal advice. Readers are encouraged to seek professional legal counsel for specific legal issues. The IJLAR and its affiliates shall not be liable for any loss or damage arising from the use of the information contained in this journal.

IJLAR

Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

IJLAR

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

IJLAR

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

IJLAR

CAPITAL PUNISHMENT, HUMAN RIGHTS, AND THE GLOBAL ABOLITION MOVEMENT: AN ANALYSIS WITH SPECIAL REFERENCE TO INDIA

AUTHORED BY - MRS. LALITA PRASAD

Lecturer, Dogra Law College, Jammu & Kashmir, India

CO-AUTHOR - MRS. MANMEET KOUR BALI

Lecturer, Dogra Law College, Jammu & Kashmir, India

Abstract:

Human life holds a central place in society, as it is deeply intertwined with emotional, social, and moral dimensions that shape the human experience. This inherent value distinguishes human existence from other forms of life. Despite significant global progress toward the abolition of capital punishment, the death penalty continues to be a subject of intense debate in many countries. Its retention raises complex moral, legal, political, and practical concerns, particularly in regions where it is still enforced. The movement toward abolition reflects not only a growing commitment to the protection of fundamental human rights but also the progressive development of modern legal systems. This abstract explores the global trend toward the abolition of the death penalty by examining practices in countries that have either formally or effectively eliminated it. It further evaluates the role of international organizations in promoting the discontinuation of capital punishment across different jurisdictions. The research is based on an

extensive review of reliable and objective sources, incorporating both statistical data and qualitative analysis to assess differing viewpoints. Relevant examples and scholarly perspectives are used to support the discussion. Additionally, the abstract traces the historical evolution of the death penalty as a human rights issue and highlights the expanding international movement advocating for its abolition. It also addresses emerging challenges associated with its continued use. This abstract concludes by presenting a critical perspective on the relationship between human rights law and the practice of capital punishment. Additionally, the abstract traces the historical evolution of the death penalty as a human rights issue and highlights the expanding international movement advocating for its abolition. It also addresses emerging challenges associated with its continued use. The abstract concludes by presenting a critical perspective on the relationship between human rights law and the practice of capital punishment.

Keywords: Death Penalty, Human Rights, Law, Crime, Punishment

1. INTRODUCTION: VALUE OF HUMAN LIFE IN SOCIETY

Human life offers access to a vast array of emotions and interactions in the natural cycle; it plays a significant role in society. That might be one of the things that set our life apart from that of other creatures on this endless globe. The simplest definition of the death penalty is the state taking a person's life for a serious crime in accordance with established legal procedures. However, the death sentence has a long and distinguished history that reaches back to antiquity and appears to have enduring force; it is not a modern invention. Throughout history, every human culture has followed a certain set of rules. The public recognition that the death penalty should be abolished, supported by rational arguments and a set of guidelines for when it should be applied, is a novel development of the twenty-first century. Since the death penalty has been abolished in a number of emerging nations, this topic has been the focus of a contentious political debate. India, a renowned developing country, has not yet secured an agreement to abolish the death sentence, but it has done so under very unusual circumstances. Despite a number of rules and penalties, the death penalty is an essential part of the criminal justice system in the United States.

2. HISTORICAL EVOLUTION OF THE DEATH PENALTY

The death penalty as a legal punishment emerged when societies began to be organized around legal relations. In the earliest state structures, the death penalty was imposed for acts considered guilty. For instance, in some areas, trespassing on noble property led to death, while in others, one could face the death penalty for breaking rules related to exogamy or class marriage. The elders were no longer in charge. In certain cases, the elders told their sons that their day of death had arrived. The elder's will was the law for the tribe members. With the rise of state-legal relations, the "talion principle" appeared. This principle stated that punishment should match the crime. This idea is reflected in the saying "Blood for blood, blood for soul," taken from the Old Testament. In practice, it means accepting the death penalty for murder. In many cultures, the term "dietary fee" refers to a person killed, compensated not with life but with money or an equivalent amount of property. By examining how the death penalty developed and was applied in ancient first slave states, we can understand its origins and evolution in human history. A look at the criminal law of these ancient states shows that many remnants of the primitive community system have survived. The main purpose of punishments was to instill fear. The penalties in the ancient Chinese penal system were well known for being extremely harsh. When we talk about the laws of ancient India, we should first talk about the laws of Manu. These laws were developed by one of the schools of Brahmanism and are named after the legendary king Manu for religious purposes. The law consists of 12 chapters and 2685 articles, the rules of which are expressed in the form of two lines of poetry. Manu's laws provide for the death penalty for any assassination attempt against the state or social order. In addition, for the premeditated murder, for any betrayal of the couple, for the third time, for the theft, for the abduction of noble people, especially women, were also sentenced to the death penalty. Manu's laws distinguish between simple and complex forms of execution. Common forms of death included beheading, while more complex forms included stoning, drowning, burning in a fire, and throwing at an elephant's feet. Although its precise origin are still unknown, the laws of ancient Mesopotamia date back to BC. The rules of Lipid-Ishtar, the ruler of the kingdom of Isina, and King Ur-Nammu, who established the Ur dynasty in the third millennium. Avv. Bilalam's regulations in the kingdom of Eshkunna, mil, during the start of the second millennium. Avv. In the middle of the second millennium, the ancient Babylonian king Hammurabi is included in the "Laws of the Middle Ages," the most significant legal document of Mesopotamia, the legal system of antiquity, and the great monument of the legal system—the

largest state in the Middle Kingdom. There are 282 articles and three sections in Hammurabi's laws. In more than thirty instances, it allows for the death punishment. Here are a few instances of Hammurabi's law: Those who falsely accused someone of murder faced the death penalty. Article 1: Those who have risked someone's death by providing false testimony are subject to the death penalty. Article 3: The master who constructed the house is punished to death if the deposit building's builder passes away as a result of the building's demolition or occupation. Article 229: If the landlord's son died as a result of the building's demolition or occupation, the master's son likewise perished. Article 230 if the demolition or possession of the building results in the death of the master's slave, the master substitutes another slave. Additionally, according to Hammurabi's laws, slaves were regarded as their own property and any violence against them was a major crime. A person is specifically sentenced to death if he hides a runaway slave, locks him in his home, refuses to give the slave back to its owner, or purchases anything from the slave. Even if the warriors failed to comply with the king's instruction or send a replacement, they would still be executed.

3. GLOBAL TRENDS TOWARD ABOLITION

46 nations had abolished the death penalty for common crimes by 1986. After sixteen years, there were nearly twice as many nations in the same category—89.6. Additionally, 22 more countries have stopped carrying out actual executions, increasing the total number of nations without the death penalty to 111—much more than the 84 that still use the death penalty. The number of countries abolishing the death penalty has increased from 1.5 annually (1965–1988) to 4 annually (1989–1995) about three times as many, as noted by Roger Hood in his study on the evolution of the death sentence worldwide. International law scholar William Schabas has noted that the idea of abolition was unknown fifty years ago because there were hardly any abolitionist governments. For a society where the death penalty has been prevalent for millennia, this is a startling shift. Although the death sentence was legally abolished in Venezuela in 1867, the Netherlands in 1870, and even Michigan in 1846, the movement to abolish the death penalty is relatively new. Human Rights as the Foundation for Reform and Abolition. The death penalty has been abolished in an increasing number of countries, albeit there are numerous other reasons for this tendency. For some nations, it was a broader notion of human rights. When Spain announced in 1995 that "the death penalty has no place in the general criminal system of modern, civilized society," the last

traces of the death penalty were eliminated. Switzerland has abolished the death penalty because it is "a gross breach of the right to life and dignity." The landmark decision by the South African Constitutional Court to abolish capital must be demonstrated by the State in all it does, including how it handles criminals. However, the concept that this practice should be acknowledged as a violation of human rights is met with resistance by governments that largely rely on the death penalty. Singapore contended that "capital punishment is not a human rights problem" during a 1994 UN General Assembly debate on a proposal to restrict the death penalty and support a moratorium on executions. 74 countries did not vote in favor of or against the resolution, which ultimately led to its rejection. But in an increasing number of countries, human rights organizations are growing increasingly concerned about the death sentence. The United Nations High Commission for Human Rights passed a resolution in 1997 stating that "abolition of the death penalty contributes to the improvement of human dignity and to the gradual development of human rights." That resolution was strengthened in subsequent resolutions by a call for a moratorium on all executions and a restriction of offenses for which the death penalty can be imposed, leading eventually to abolition. The issue of whether or not the death sentence should be abolished is not seen as a domestic one. Many European countries, as well as Canada, Mexico, and South Africa, have declined to extradite people to countries like the United States on the grounds that doing so would result in their execution. The Council of Europe has threatened to suspend its observer status if the United States does not take action regarding the death sentence. Mexico recently started a scheme to assist its residents who are in danger of being executed in the United States. These Mexican citizens were typically denied the protections provided by the Vienna Convention and Paraguay and Germany both took their citizens facing death in the United States to the International Court of Justice in The Hague because of this breach.

5. ROLE OF INTERNATIONAL ORGANIZATIONS

The right to live is a natural and fundamental human right recognized in core documents of international human rights law. "Specifically, Article 3 of the Universal Declaration of Human Rights (UDHR) in 1948 states: 'Everyone has the right to life, to have freedom and to be personal safety'. Article 6 of the International Convention on Civil and Political Rights (ICCPR) in 1966 concretizes Article 3 UDHR, which states: There is a universal right to life." This privilege requires legal safeguards. "The taking of anyone's life must be based on objective criteria, not on

prejudice or hatred." A number of other international human rights agreements, such as the Convention on the Rights of the Child, the Convention on the Prevention and Punishment of Genocide, etc., also protect the right to life. Human Rights Committee discussions have focused on the right to life's essence, definition, and history (HRC - an agency established under the ICCPR to oversee the implementation of this convention by member states). No.6 General Remarks (adopted at the 16th session in 1982), the key points can be summarized as follows:

- The right to live is 'a human supreme right that in any circumstance, even in the state of emergency, cannot derogation the performance ...'.
- The right to live is broader than only protecting one's own life; it also encompasses measures to preserve the human race. According to this theory, for nations to fulfil their responsibility to ensure its citizens have the right to life, they must take action to end preventable causes of death, such as hunger and sickness. That entails taking both proactive and reactive steps to protect the lives of people, particularly those in the lowest socioeconomic strata.
- War crimes and other major crimes, such as genocide or crimes against humanity, are a regular danger to people's right to life. Consequently, protecting against these offences is equivalent to defending the right to life. According to this view, Article 6's protection of the right to life is intertwined with Article 20's prohibition on actions that promote war, inspire hate, or result in acts of violence.
- Preventing violent crimes that endanger or kill human life is crucial in protecting that right. "All subjects, including state agencies and officials, shall be held accountable for the arbitrary taking of human lives, and the member states should take the necessary precautions to avoid and punish such acts." As a consequence, member states have a duty to devise methods and programmes that lead to concrete outcomes in the fight against and investigation of abduction and disappearance, both of which are recognised as forms of deprivation of the right to life. General Comment No. 14 (23rd session, 1984) was also approved by HRC with regards to the right to life, restating the significance of respecting Article 6 of the ICCPR under all circumstances and reaffirming the right to life as the foundation of all human rights. Human Rights Council (HRC) believes that all forms of conflict are crimes against humanity and calls on nations to prohibit the development, testing, production, stockpiling, deployment, and use of nuclear weapons.¹⁸ The right to

life is rooted in the principle that governments shouldn't take people's lives unless absolutely necessary. "To be clear, the right to life is not an absolute right, but it is the highest and most important human right and must be upheld at all times, especially in times of national emergency (as mentioned in General remark No. 6 of the HRC) (for example right cannot be taken away under all circumstances). The fact that the ICCPR (Article 6)19 still provides the death penalty is a clear proof of that, because the death penalty is essentially a deprivation of the right to live of an individual, but only when applied arbitrarily; it would be considered an arbitrarily international human rights law." While the United Nations vigorously advocated for its member states to ratify the First Protocol to the ICCPR on the Abolition of the Death Penalty (1989), this ratification was not required but rather voluntary. As a deterrent and punishment for offenders, the death penalty is not prohibited under international human rights legislation. "However, nations are encouraged to reduce and eventually eliminate the death sentence." The right to life, as well as all other human rights, are protected against arbitrary breaches by means of international human rights legislation, which provides highly explicit and thorough limitations on the boundaries of the conduct of law enforcement agents. However, in accordance with international human rights legislation and the criminal law of countries, death caused by the necessary use of force to defend one's own and/or those of another person who is threatened by the murdered person is not deemed a breach of the right to life. Furthermore, the use of fatal force in criminal arrests, repression, or insurrection is not seen as a breach of the right to life if it is authorised and justified. In general, the death sentence is permitted under international law. 'In countries where the death penalty has not been abolished, it is only allowed to apply this penalty to serious crimes most are based on the law prevailing at the time the crime was committed and must not be inconsistent with the provisions of this Convention and the Convention on the Prevention and Punishment of Genocide,' states paragraph 2 of the International Convention on Civil and Political Rights (ICCPR). To put it simply, a court's ruling must be final and binding for the

6. HUMAN RIGHTS PERSPECTIVE

Amnesty International opposes the death penalty on the grounds that it is inhumane and violates two of the most basic human rights: the right to life and the right to be free from harsh, barbaric,

and degrading punishment. "The Universal Declaration of Human Rights, as well as other international and regional human rights documents, and state constitutions and legislation, all acknowledge both of these rights." When law enforcement officers are in imminent danger and must act to protect themselves or others, or when a nation is at war, the taking of a life may be justified in the name of defending life and the state. Although deadly action may be necessary, it is nonetheless governed by human rights and humanitarian law norms to prevent misuse. More than two-thirds of humanity resides in nations with a death penalty, and the four most populous countries (the People's Republic of China, India, the United States, and Indonesia) are among those that continue to use it.³ As of early 2016, 65 nations still had a death penalty statute on the books, while 103 had abolished the practise altogether. Meanwhile, 6 had abolished it for all but the most heinous of crimes, and 30 retained it but seldom or never used it.

But the death penalty isn't used to protect people from imminent danger. It's when a prisoner is killed on purpose for punishment, even when there are alternative options. Torture is obviously very harsh. In the same way that torture breaks a person down to their very core, an execution is a brutal attack on a person who has already been made defenceless by the state. The brutality of the death penalty is not only on display at the actual execution, but also in the years leading up to it, when the condemned individual must live with the knowledge that he or she will soon be killed by the state. No matter how heinous the act for which the prisoner has been condemned, this level of brutality is unacceptable and cannot be justified. How can it be acceptable for public authorities to assault not only the body or the intellect, but the very life, of a prisoner, if it is forbidden to expose the prisoner to electric shocks and mock executions? One of the most terrifying types of torture is the threat of death.⁴ They forbid it because it constitutes torture. How is it legal for a prisoner to face the same danger in the form of a death sentence, which has been issued by a court and must be carried out by the prison authorities? The death sentence is terrible not just to the person on death row, but also to his or her loved ones, the prison staff, and the government personnel responsible for carrying out the execution.

The duty of an executioner may be very upsetting, even horrific, as shown by reports from all across the globe. The death sentence may provide challenging moral challenges for judges, prosecutors, and other authorities if their positions in carrying it out are at odds with their own ethical beliefs. Most arguments against capital punishment centre on two human rights: the right to life and the right to be free from harsh, inhuman, or degrading treatment. However, the death

penalty violates other civil liberties as well. One of the most fundamental foundations of human rights legislation is that nations must acknowledge the right to life, and the death sentence is a direct violation of this principle. Human rights groups and the United Nations General Assembly have both urged for an end to the death sentence on the grounds that it violates internationally recognised human rights.⁵ "The convention is rapidly heading toward a stance in favour of global abolition." An examination grounded in human rights must always begin and finish with the premise that capital punishment violates universally accepted standards of decency. Its implementation often violates other fundamental rights in addition to the right to life. There is a growing agreement that the 'death row phenomenon' is a violation of the ban against torture under international human rights law, and that the death sentences itself is a violation of the prohibition against cruel, inhuman, or degrading treatment. More importantly, the principle of non-discrimination is often violated when the death sentence is imposed in a biased manner. The death sentence is widely seen as an abuse of human rights in many regions of the globe today. This realisation has helped accelerate the global movement to abolish the death penalty; 35 years ago, only 16 nations had abolished the death sentence for all crimes; now, that number stands at 104. In addition, 35 of the remaining states have abolitionist legislation in place, meaning they have not carried out an execution in at least ten years. The number of nations with confirmed executions in 2010 was rather small, at only 23. Several nations are responsible for the vast majority of global executions each year, and the United States is one of them. It is estimated that 220 individuals were executed in the United States between 2007 and 2011. Only Saudi Arabia, Yemen, North Korea, Iran, and China execute more often than the United States.

7. CRITICAL ANALYSIS: DEATH PENALTY VS HUMAN RIGHTS LAW

International human rights law plays a significant role in the process of abolishing the death penalty in the United Nations. The attitude of international human rights law to the death penalty has gone from laissez-faire to limit, and finally to abolition. The purpose of the Universal Declaration of Human Rights is to appeal for peace, freedom and human rights, there is no direct concern about the death penalty. However, it is a start to concern the field of protecting the right of life, it provides that 'Everyone has the right to life, liberty and security of person'. In addition, Article 5 provides that 'no person shall be subjected to torture or to cruel, inhuman or insulting treatment or punishment'. At that time, only 14 countries in the world abolished the death penalty,

the concept of abolishing the death penalty has not been widely disseminated and focused. In 1996, the United Nations adopted the International Convention on Civil and Political Rights, which marks the attitude of the international human rights movement to the death penalty from tolerance to restrictions. The Convention defines the right to life and imposes restrictive provisions on the use of the death penalty in countries around the world. Article 6 provides that the right to life of each person should be protected by law and cannot be arbitrarily deprived. But also made a provision to the countries which still exit the death penalty, the death penalty can only be sentenced to the most serious punishment. Furthermore, the Second Protocol to the International Covenant on Civil and Political Rights has made an important complement to the ICCPR and has added more obligations to States parties. Its clear orientation is the abolition of the death penalty in the world. In some ways, the process of improving the international human rights law can also be seen as the process of abolishing the death penalty. Before explores of the revolution of the death penalty in the United Nations by international human rights law, the relationship between the death penalty and the human rights protection should be clear. For the reason that the death penalty is abolished mostly through the international human rights law in the United Nations. Understanding the concept of human rights is a logical starting point for recognizing the relationship between the death penalty and human rights law. Although human rights seem simple, it is defined differently by different scholars. Some scholars believe that human rights is an effective moral requirement, it is derived from the subjective needs of mankind. There are also scholars who believe that human rights are exclusively human beings and the owner can only be human, so that everyone has human rights. Therefore, most scholars hold the point of view that human rights are inherent with the natural characteristics, it is a moral level right. In addition, based on the Universal Declaration of Human Rights in 1948, life is always free, equal and everyone can enjoy life, freedom and personal safety. Although there are different definitions of human rights, the most important content of human rights is the right to life. It is precisely because of the existence of the right to life, the problem of the abolition or retention of the death penalty has become the opposite of human rights protection. In the process of the abolition of the death penalty in the United Nations, there are two different views on the death penalty, which makes the process of abolition of the death penalty is long and bumpy in the United Nations. In fact, each type of punishment has its own existence value based on different social background and demand. The existence of the death penalty is also based on a certain demand. Whether it is the death

penalty abolitionists or the death penalty retainers can be based on the value of the death penalty to find a basis for their view. The relationship between the death penalty and the human rights law from the perspective of value is not only the key to understanding the arguments of the death penalty, but also can help to understand the difficult choice of international human rights law made based on the protection of human rights in the process of promoting the abolition of the death penalty. The focus of discussion on the value of a penalty is whether the penalty is conducive to the maintenance of social order, whether it contributes to social equity and the realization of individual freedom, as well as the value analysis of the death penalty. Firstly, the supporters deny the significant role played by death penalty for the social order and crime prevention. They believe that the death penalty deprives the criminal's lives, and it cannot be retrieved. It can stop the crime made by a 14 Liang, L. Journal of Theory and Practice in Humanities and Social Sciences, 1(1), 13–

23. Special person, but there are still others can make the same crime. Some scholars compare the crime rate between different countries which include the countries abolished the death penalty and retained the death penalty, they found that the effective of the death penalty in the area of controlling crime rate is unobvious. In addition, they also found that the crime rate is no obviously reduced in the different periods of the retention and abolition of the death penalty. Moreover, through a series of studies, researchers found that countries which retain the death penalty still have high crime rate, such as India. However, the crime rate of some countries which exist the death penalty reduced in recent years, such as China. But the real cause of crime reduction is the improvement of education and social progress, the death penalty did not effectively reduce that. In addition, execution do not mean the termination of crime, it cannot stop crimes through the root of problem. On the other hand, the Retentionist demonstrated the important role of the death penalty in the aspect of maintaining social order, achieving social equity and personal freedom from the same value perspective. They argue that the death penalty is thorough in pre-venting the perpetrators of recidivism, and the death penalty has the greatest deterrent in the social sphere, the existence of the death penalty is significance to the maintenance of the legal order. Secondly, the death penalty is mainly aimed at the sinful people, it reflects the revenge to the criminals and the equivalence of life, which is an important means to protect social justice. Moreover, the freedom of human should be limited in society, each person has the obligation in society, the realization of a person's rights and interests must be based on respect for others and does not hinder

the interests of others. The death penalty as a means of punishment for offenders under certain conditions does not constitute aggression upon one's right, but rather the respect and protection of citizens' right to life in another way, it is also conducive to the real realization of human freedom. Thus, there is an interesting phenomenon in the controversy over the abolition of the death penalty: the death penalty abolitionists and the death penalty retainers get very different contradictory conclusions from the same point of view in order, fairness and personal freedom with the different relevant evidence. It can be said that if only from these points of view, it is difficult to absolutely say that the death penalty should be retained or completely abolished. From analysis of these view, we can find that the theoretical basis between the two factions often coincides with the phenomenon, but the analysis is different. The death penalty abolitionists are choosing the most reliable and most favorable human rights theory to support the point of view base on the situation. The theory of human rights advocates respect for life, which shows that deprivation of life is a violation of human rights and humanitarianism in all respects. With the popularization of human rights theory and the penetration of human rights concept, the protection of human rights began to become the development direction of modern criminal law, criminalization of punishment has become one of the values of modern criminal law. Therefore, in the debate on the abolition of the death penalty, only the adherence to human rights theory can make the death penalty abolitionist argument more convincing. To sum up, in the debate on the abolition of the death penalty, the analysis of the value of death penalty around the discussion is the focus of debate between the two sides, but also the starting point for the study of this argument. In the continuous development of controversy, the human rights theory as a debate basis is the advantage of death penalty abolitionists. The point of protection of human rights is the main force to shake the status of death in the penalty system, it is also the point of convergence between the international human rights law and the death penalty. In addition, the controversy over the abolition of the death penalty is clearly reflected in the development of international human rights law. Although the death penalty presents different characteristics with social progress at different stages of human development, the value of human rights protection leads the death penalty to the direction of complete abolition. But there is a same characteristic reflected in different periods and different societies, which is the inhuman behaviour, and there is also a direct contradiction between the existence of the death penalty and human rights protection. This contradiction makes the international community always pay attention to the issue of the death penalty after the end of Second World War. It also

led to the birth of a new international law department, namely international human rights law, afterwards, human rights protection get the legal support. The development of things is always long and tortuous, as the process of the international human rights law. In 1945, the Charter of the United Nations raised the issue of fundamental human rights protection into the purposes and beliefs of the United Nations, and established the Commission on Human Rights. Since then, the United Nations has adopted a number of declarations, treaties, resolutions and other human rights protection documents. One of the common features of international human rights law promulgated by the United Nations is the first place in protecting the right to life, and the issue of death penalty has received increasing attention as a result of these documents. It can be said that the link of the death penalty and international human rights law is a huge thrust of the development of human rights. In international human rights law, the recognition of the right to life in the Universal Declaration of Human Rights 15 Liang, L. *Journal of Theory and Practice in Humanities and Social Sciences*, 1(1), 13–23.

has greatly contributed to the development of international human rights law and the modern abolition of the death penalty movement. Therefore, the International Covenant on Civil and Political Rights, which was formally in force in 1976, defined the idea of abolishing the death penalty, which practiced the spirit of the abolition of the death penalty conveyed in the Universal Declaration of Human Rights. In addition, the Second Optional Protocol of the International Covenant on Civil and Political Rights considers that the abolition of the death penalty contributes to the improvement of human dignity and the promotion of the sustainable development of human rights, and it does not disguise the strong desire to abolish the death penalty roundly in the United Nations. International human rights law and the United Nations attitude towards the death penalty is going to be increasingly rational and resolute. The United Nations has demonstrated the development of human rights and the death penalty to the international community through various treaties and resolutions. In the latter part of the article, the more detailed and comprehensive analysis and summary of the most representative and influential legal provisions of the United Nations in the area of international human rights law will be represented

8. CONCLUSION

It is still the case that certain legal systems lack objectivity and, at times, fail to provide a fair trial. In order to get confessions from the accused, torture may be utilised. There are also inequalities

between the accused, particularly when it comes to obtaining legal representation; for instance, some accused may be wealthy and may have senior lawyers experienced in defending them in serious cases, which may result in a failure to prove the charge and a consequent lack of a death sentence. Sometimes the opposite party can't afford to do this. Unbalanced distribution of power in the court system. Military and state security courts, which operate outside of the normal judicial system, have their own processes and are known for their efficiency. If the accused or his counsel doesn't have enough time to defend and establish his innocence, the State's safety and security might be compromised. For crimes that aren't considered to be "very severe" or 'politically motivated,' the death penalty has been extended in a number of nations. For those who disagree with authority, the death penalty has become a safe haven.²⁵ Executions should be carried out in secrecy, not in public view, and with as little agony and suffering as possible for the condemned. The death sentence is often the subject of nationalistic controversy. It's important to factor in the global context. As such, nations may benefit by studying the practises of others. The public's and society's views on torture have changed throughout time. The thumbscrews and rack have been abolished as constitutionally sanctioned interrogation and punishment tools. The guillotine, the garrotte, and the noose have joined other mediaeval tools of torture at the museum as attitudes regarding the death sentence shift. Abolition can only happen with the support of political leaders with the guts to stand up for human rights. The elimination of the death penalty is a necessary condition of respect for human rights. One cannot have a government that upholds human rights while still keeping the death penalty in place. The thought that 'No one has right to take away one's life' should be kept in the back of everyone's mind, except in cases when it is mandated by law. The inability to adequately investigate the roots of crime in the modern era has led to a number of problems with the death sentence in the present day. Death penalty use is being questioned nowadays. The death sentence has been abolished in the vast majority of nations, yet it bears repeating that in today's society, where each man is responsible for his own actions, it remains an absolute need. We need severe penalties to deter would-be criminals so that society's safety and tranquilly are not jeopardised or disrupted. "Hundreds of thousands of innocent people cannot be risked for the sake of one criminal who has no place in a civilised society." Therefore, the State cannot allow him or her to live. Therefore, the use of the death penalty must be maintained.

References

1. Anoushka Saha, "Death Penalty In India- Analysing Its Effects And Ethical Considerations In India", Volume-12 International journal of creative Research Thoughts (IJRCT), Page 384, 2024
2. Lu Liang, "The evolution of abolition of death penalty by international human rights law in the United States", Volume-1, Journal of theory and practice in humanities and social sciences, page 13-23, 2024
3. Tusharika Narwal, "Perspective Of Death Penalty And Human Rights Law In India And Around The World", volume-20, Business, Management and Economics Engineering, page-1498, 2022
4. N.D.Sergievskiy, "In The History Of The Ancient World, The Death Penalty", Volume-6, NOVATEUR PUBLICATIONS JournalNX- A Multidisciplinary Peer Reviewed Journal, Page 100, 2020

