

# Legislative Analysis of Murder (Abolition of Death Penalty) Act, 1965

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**Abstract:** No substantial steps have been made to reform our law enforcement agencies despite their rising responsibilities and challenges. Undoubtedly and immediately, police organisations require swift reforms to overcome their many problems. Reducing police stress will make police organisations more effective, reducing crime as their stress levels impact society.

**Keywords:** United Kingdom, Police Stress, Challenges, Law Enforcement, Death Penalty

## I. INTRODUCTION

The purpose of this study is to investigate the history of the death penalty in the United Kingdom and, more specifically, the chain of events that led to its abolition under the Murder [Abolition of Death Penalty] Act, 1965 (hereinafter referred to as "The Act"), as well as to examine the development of the death penalty in the United Kingdom in comparison to the context of India.

## II. BACKGROUND

In the 1950s, there were three notorious killings that sparked a campaign in the United Kingdom to abolish the death penalty.

- One of these deaths was that of Timothy Evans, who was executed for the unjustified murder of his wife and small child. His neighbor, Mr. John Christie, who testified against Evans and eventually confessed to murdering Evans, was later found guilty of six further murders and admitted to killing Evans. Christie testified against Evans. A posthumous royal pardon was eventually bestowed to Timothy after his death.
- Derek Bentley was put to death in 1953 for the heinous crime of killing a police officer during the commission of a robbery. Despite the fact that the real offender was a juvenile who was unable to receive the death penalty and that Bentley was an accomplice in the crime, the offender received the death penalty. After Bentley's death, he was granted a posthumous pardon.
- Ruth Ellis was finally executed for the murder of her abusive boyfriend in 1955, when she was hung. The public's reaction to her death was widespread, and more than 50,000 individuals petitioned for Ellis to be granted a stay of execution.

In his speech before the House of Commons on the subject of capital punishment in the year 1810, Sir Samuel Romilly said that "there is no nation on the face of the planet in which there have been so many separate offenses according to law to be punished with death as in England." At its worst, the criminal law had approximately 220 offenses for which the death penalty was prescribed. These offenses included "being in the company of Gypsies for one month," "strong evidence of malice in a child aged 7-14 years of age," and "blacking the face or using a disguise while committing a crime." The term "Bloody Code" was given to describe the law when it was at its worst. The Whig Oligarchy, which came to power during the first half of the 18th century, was responsible for the creation of many of these crimes in order to protect the estates

of the bourgeoisie. One noteworthy piece of legislation was the Black Act of 1723, which enumerated fifty different crimes that could result in the death penalty. These crimes included theft and poaching, among others. This Act replaced the Homicide Act of 1957, which had already reduced the number of executions by hanging to four or fewer on an annual basis.

## III. PURPOSE OF THE LEGISLATION

In the event that a person is found guilty of murder in the United Kingdom or convicted of murder or a similar offense by a court-martial, this Act seeks to abolish the death penalty and, as a result, reduce the sentence to life in prison.

## IV. SALIENT FEATURES

It gives judges the discretion to lay down a minimum period of time which such guilty person should spend in jail before being released under the Prisons Act. It converts the sentences of those who had been sentenced to death at the commencement of the act to life imprisonment, stretching its application retrospectively. It gives judges the discretion to lay down a minimum period of time which such guilty person should spend in jail before being released under the Prisons Act.

- It amends Sections 70 of the Army Act, 1955 and the Air Force Act, 1955 along with section 42 of the Naval Discipline Act 1957 to change the penalty for murder from the death penalty to life in prison. This is accomplished by adding a new paragraph (aa) that states, "if the corresponding civil offence is murder, be liable to imprisonment for life." This provision is intended to reduce the severity of the punishment for murder from the death penalty to life in prison.
- Makes it necessary for the secretary of state to consult with the Lord Chief Justice or the Lord Justice General before releasing any such person whose death sentence is commuted to life imprisonment or who was originally sentenced for life. This applies to people whose sentences were originally for life.
- Gives effect to the provisions of the Act by repealing various sections of other laws, such as The Offences within the Court Act 1541, The Murder Act 1751, The Judgment of Death Act 1823, The Offences against the Person Act 1861, The Capital Punishment Amendment Act 1868, The Criminal Procedure (Scotland) Act 1887, The Army Act 1955, The Air Force Act 1955, The Homicide Act 1957, and The Naval Discipline Act 1957.

#### V. LEARNING LESSON

A man named William Harrison went missing in the area of Charingworth, which is located in Gloucestershire, during a sequence of occurrences known as the Campden Wonder. His bloodied and tattered clothing was discovered on the side of the road. The investigators questioned John Perry, who worked as a domestic helper for Harrison. Eventually, John Perry revealed that his mother and brother had committed the murder of Harrison in exchange for charity. It was decided that Perry, his mother, and his brother should all be put to death. After a few years had passed, Harrison reappeared, and he related an amazing tale of how he had been abducted by three thugs and sold into slavery in the Ottoman Empire. Harrison said that he had been held captive for many years. The Perry family is not responsible for his death, despite the fact that what he said was difficult to believe.

In 1950, a man named George Kelly was executed by hanging for the murders he committed in 1949 of the executive of one Cameo Cinema in Liverpool, UK and his subordinate during the course of a robbery that did not go according to plan. In 2003, Kelly's conviction and sentence of execution were overturned. Donald Johnson, a total stranger, confessed to being responsible for the murders; however, the investigation into Johnson's case was botched by the police, and their findings were excluded from Kelly's trial.

In 1952, a man called Mahmood Hussein Mattan was executed by hanging for the murder of a woman named Lily Volpert. In 1998, the appeal court reached the conclusion that the first case had been "completely and totally erroneously determined," using the words of Lord Justice Rose. As compensation, the family was given a total of 725,000 pounds. It was the first time that financial compensation had been offered to the family of a person who had been executed in error.

#### VI. LESSON LEARNT

The respective resolutions needed to make the Act permanent were brought up and approved by the House of Lords and the House of Commons respectively. In England, Scotland, and Wales, the death penalty for murder has been abolished with the passing of the Act; nevertheless, any provision of the Act may be repealed in the future. The provisions of the Homicide Act, 1957 and other relevant statutes pertaining to the use of the death penalty were nullified by virtue of Section 3(2) and the Act's Schedule. Treason, incendiarism in the Royal Dockyards, and other offenses that were planned under martial rule were still punishable by death. However, the death penalty was no longer used for other crimes. The Criminal Damage Act of 1971 put a stop to the use of the death penalty for anyone convicted of arson at the Royal Dockyards. With the passing of the Crime and Disorder Act 1998, Section 36, and the Human Rights Act 1998, Section 21, the United Kingdom finally abolished the use of the death penalty in 1998. This marked the beginning of the end for the practice of capital punishment in the country. The ratification by the United Kingdom of international treaties and covenants that ban the use of the death penalty was the primary factor that led to the passage of these laws.

#### International Obligations

Even the few of Members of Parliament who supported reinstating the death penalty in the United Kingdom recognized that the time had long since passed for such a move

to become politically impossible. This is especially noteworthy considering the international responsibilities that the United Kingdom has as a result of its membership in the Council of Europe. The United Kingdom must withdraw from these groups and renounce its membership in the European Convention on Human Rights before the death penalty may be reinstated in the country. The United Kingdom is now a signatory to this convention. It is inconceivable that this would be considered a reasonable "quid pro quo" in order to bring back the death penalty onto the law books, despite the fact that it may be popular with members of the Conservative Party. Protocol No. 13 to the European Convention on Human Rights is the single most important international agreement to which the United Kingdom is a party, and it is the instrument that makes it impossible to restore the death penalty. It is the follow-up to Protocol No. 6, which made it obligatory for the United Kingdom to abolish the use of the death penalty in 1998 for those civil wrongs for which it had been preserved as a form of punishment. Later on, in 1957, Congress passed the Naval Discipline Act, limiting the scope of those subject to the death penalty for espionage from "all spies for the enemy" to spies operating aboard naval ships or at naval stations. After that, in 1981, the Armed Forces Act removed the possibility of receiving the death penalty for espionage.

In 1973, the practice of executing treasonous criminals by beheading them was officially abolished. However, the practice of hanging people continued until September 30, 1998. On that date, as a result of an amendment to the Crime and Disorder Act, 1998 that was proposed by Lord Archer of Sandwell, the death penalty was abolished for the crimes of treason and piracy with violence. In its place, a discretionary maximum sentence of life imprisonment was introduced. This signaled the end of civil offenses that may result in the death penalty for the offender.

In a vote that took place on May 20, 1998, the lower house of parliament approved the 6th Protocol to the European Convention on Human Rights, which prohibits the use of the death sentence save "in times of war or immediate danger of war." The remaining provisions of the law that provided for the death penalty to be carried out under military authority were repealed on November 9, 1998, when Section 21(5) of the Human Rights Act of 1998 went into force. On October 10, 2003, the United Kingdom officially acceded to the 13th Protocol, which prohibits the use of the death penalty under any and all circumstances. This prohibition took effect on February 1, 2004.

#### VII. INDIAN SCENARIO

To err is human nature. The judicial system does not constitute an exception to the adage in any way. The judiciary is nothing more than a collection of judges, all of whom are human like everyone else and are thus susceptible to the subjectivity that the human mind is capable of. In the same way that there are some judges who are more likely to impose the death penalty than others, there is room for subjectivity in factors which determine if a sentence will be commuted, and there is a fear that is well founded that undeserving people may be sent to the gallows, there are sometimes errors made when passing judgments. In the same way that there are some judges who are more likely to impose the death penalty than others, there is room for subjectivity in factors which determine if a And

this causes concern not just among human rights activists who are opposed to the death penalty but also among their lordships themselves.

14 retired judges submitted a letter to the President in 2012, drawing his attention to the fact that since 1996, the Supreme Court has incorrectly granted the death penalty to a total of 15 individuals, of whom two were put to death as a result of the

error. The Supreme Court acknowledged in 2009 that it had incorrectly handed down death sentences for 15 individuals over a period of 15 years. Since the year 2000, a total of sixty people have been sentenced to death by it.

The following are the types of crimes for which the Indian Penal Code calls for the death penalty:

Section under IPC/ other Acts	Offense
120B	Criminal conspiracy to commit a capital offence
121	Waging, or attempting to wage war, or abetting waging of war, against the Government of India
132	Abetting a mutiny in the armed forces (if a mutiny occurs as a result), engaging in mutiny
194	Giving or fabricating false evidence with intent of procuring a conviction of a capital offence
302, 303	Murder
305	Abetting the suicide of a minor
364A	Kidnapping, in the course of which the victim was held for ransom or other coercive purposes
376A, Criminal law amendment act, 2013	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
396	Banditry with murder – in cases where a group of five or more individuals commit banditry and one of them commits murder in the course of that crime, all members of the group are liable for the death penalty.
Part II, Section 4 of Prevention of Sati Act, 1829.	Aiding or abetting the act of Sati
31A of the Narcotic Drugs and Psychotropic Substances Act, 1985.	Drug trafficking in case of repeat offenders

### VIII. SUGGESTIONS

#### Need To Accede To International Laws Relating To Abolishment of Capital Punishment

As recently as one month ago, a total of 120 member states of the United Nations voted in favor of a resolution in the Third Committee of the United Nations General Assembly that emphasized the need of placing a moratorium on the execution of capital punishment. This is a step toward accomplishing one of the goals of the International Covenant on Civil and Political Rights, which is to have all member nations finally put an end to the use of the death penalty in all of their legal systems. Even though India is a party to the treaty, it has chosen to give a broad interpretation to Article 6, which provides an exemption for the use of the death penalty in certain circumstances. In light of this and the other cases mentioned above, it is preferable that India change its vote against the resolution to one in favor of it, as opposed to the

current position of voting against it, and ratify the treaty in essence by amending domestic laws to do away with the use of the death penalty.

#### Scope for Procedural Elimination Of Capital Punishment (Judicial Discretion)

In spite of the fact that India's substantial legislation still mandates the death penalty, it is ultimately up to the country's judges to determine whether or not the sentence should be carried out. There are several exceptional decisions that are worthy of being repeated:

#### MITHU v. STATE OF PUNJAB

It was determined that Section 303 of the Indian Penal Code exceeded the authority granted to it by Articles 21 and 14 of the Constitution of India. This was due to the fact that Section 303 of the IPC prescribed an automatic death sentence and stripped the judiciary of its ability to exercise its discretion, which resulted in an absence of fair, just, and reasonable

procedure in situations where a person's life or death was at stake.

#### JAGMOHAN SINGH v. STATE OF UTTAR PRADESH

The decision essentially established the principle that the judge has the authority to determine the appropriate sentence for a crime after weighing the impact of all the aggravating and mitigating factors associated with the offense. The judges put a significant amount of weight on reiterating that discretion rests with them and that they are free to use it depending on the specific facts and circumstances of each case.

It is anticipated that the judicial acumen would triumph in situations involving the application of the death penalty unless significant changes are made to the legislation that governs the country. Up until that point, all we can do is hope that the accused won't have to deal with the subjectivity of a judge on a particular day, especially if it's something he shouldn't have to or that he wouldn't have had to deal with if it weren't for a certain judge.

#### IX. CONCLUSION

When a wrongdoer is given the death penalty, we are not just meting out retribution; rather, we are taking a life in the sake of doing what is right. Apathy and disregard for human life are shown by the act of putting an individual to death, which is unethical. A person's opposition to the death penalty does not always suggest that they support or condone criminal activity. The main reason why democracies all over the world are advocating the reformatory theory of punishment and turning a blind eye towards the deterrent theory is because when the death penalty is imposed, any potential for improvement that could have transformed the life of a living individual is eliminated.

It is a fact that a criminal offender need to be held accountable for the crimes for which he or she is liable; but, we, as a civilized society, ought to focus on eliminating the offense rather than the criminal. This is the main distinction between ourselves and other creatures. Being able to say "we are humans" is a blessing, and the fact that murdering another human being defeats the whole purpose of being a human being in and of itself.

We take great satisfaction in the fact that we live in a "civilized society," despite the fact that we are responsible for creating the laws that lead to the deaths of other human beings. The theory of deterrence, on which the practice of capital punishment is based, holds that setting an example for others and instilling fear in their minds is the most effective way to deter future criminal behavior. However, there are other approaches that can be taken to accomplish the same goal, such as adopting the reformatory theory. If the deterrence theory were successful, there would be no repeat offenders, and our nation would be a crime-free utopian state. In the end, human life is too valuable to be offered up on the altar of chance, and if that theory were successful, there would be no repeat offenders.

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