

# Retributive Justice and the Death Penalty: A Philosophical and Legal Debate

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**Abstract**—The death penalty remains one of the most polarizing issues in criminal justice, straddling the domains of moral philosophy, legal theory, and human rights. This paper examines capital punishment through the lens of retributive justice, a theory often mischaracterized as synonymous with vengeance but which, in its Kantian formulation, emphasizes proportionality, guilt, and moral desert. Drawing on the foundational works of Immanuel Kant and contemporary critiques of utilitarianism, the paper interrogates whether the death penalty aligns with the core tenets of retributivism.

Kant's retributive theory, rooted in the categorical imperative, posits that punishment must be proportionate to the crime and grounded in the offender's moral desert. He famously argued that even if society were to dissolve, the last murderer must be executed to uphold justice.<sup>1</sup> However, this paper challenges the assumption that retributive justice inherently justifies executions. By deconstructing the misunderstandings of retributivism—such as its conflation with vengeance or the literal application of *jus talionis* ("an eye for an eye")—the paper argues that modern retributive theory, emphasizing human dignity and proportionality, often contradicts the practice of capital punishment.

The analysis extends to constitutional law and international human rights standards, where the death penalty is increasingly viewed as a violation of human dignity. The paper also explores the fallibility of justice

systems, where wrongful executions—punishing the innocent—are conceptually irreconcilable with retributive principles.<sup>2</sup> Ultimately, the paper concludes that while retributive justice historically supported the death penalty, contemporary interpretations rooted in just deserts and respect for human dignity challenge its legitimacy.

## I. INTRODUCTION

The death penalty stands as one of the most polarizing institutions in criminal justice, straddling the contested terrain of morality, law, and human rights. Its justification has long been tethered to retributive justice—a theory historically associated with philosophers like Immanuel Kant, who framed punishment as a moral duty to restore balance through proportional suffering.<sup>3</sup> Yet, as the original document critiques, retributive theory is often mischaracterized as a relic of "primitive vengeance" or conflated with utilitarian notions of deterrence.<sup>4</sup> This paper interrogates whether the death penalty aligns with the *core principles* of retributive justice, particularly its Kantian articulation, or whether capital punishment violates the very ideals of proportionality, dignity, and moral desert that retributivism seeks to uphold.

Retributive justice, at its foundation, asserts that punishment is justified only when it

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<sup>1</sup> Kant's Defence of the Death Penalty: Immanuel Kant, *Metaphysical Elements of Justice* (1965), p. 132. Kant argues that sparing a murderer undermines the moral foundation of justice, as it fails to uphold the principle of proportionality and desert.

<sup>2</sup> Fallibility and Wrongful Executions: Hugo Bedau, *The Case Against the Death Penalty* (1997), p. 45. Bedau highlights numerous cases where innocent individuals were wrongfully executed, emphasizing the irreversibility of capital punishment and its incompatibility with retributive justice, which assumes guilt as a precondition for punishment.

<sup>3</sup> Immanuel Kant, *Metaphysical Elements of Justice* (1965), p. 132. Kant argues that punishment is a categorical imperative: "Judicial punishment can never be used merely as a means to promote some other good... it must in all cases be imposed on a person solely on the ground that he has committed a crime."

<sup>4</sup> Amit Bindal, "Rethinking Theoretical Foundations of Retributive Theory of Punishment," *Journal of the Indian Law Institute* (2009), pp. 307-309. Bindal critiques Indian jurists for equating retributivism with "pre-classical vengeance" and "folklore jurisprudence."

is deserved, proportionate, and grounded in guilt.<sup>5</sup> Kant's formulation—often misrepresented as a rigid endorsement of *jus talionis* ("an eye for an eye")—emphasizes that punishment must reflect the *moral gravity* of the crime while respecting the offender's humanity.<sup>4</sup> However, the original document critiques Indian jurists like Paranjape and Lakshminath for reducing retributivism to "vindictive animal instinct," a reductionism that obscures its nuanced ethical framework. Similarly, contemporary debates about the death penalty often conflate retributive justice with societal revenge, ignoring Kant's insistence on institutionalizing punishment to *prevent* private vendettas.

This paper argues that while Kant defended the death penalty as a categorical imperative, modern retributive theory—informed by evolving understandings of human dignity and systemic fallibility—challenges its legitimacy. The tension lies in reconciling Kant's absolutism ("the last murderer must be executed") with his simultaneous injunction against degrading punishments that strip offenders of their personhood. For instance, India's "rarest of rare" doctrine (*Bachan Singh v. State of Punjab*), while ostensibly retributive, has been criticized for judicial subjectivity and disproportionate sentencing influenced by public outrage rather than objective desert.<sup>6</sup>

## II. Retributive Justice: Foundations and Misconceptions

### A. Kantian Retributivism and the *Jus Talionis*

At the heart of Immanuel Kant's retributive theory lies the principle that punishment must be proportionate to the crime and grounded in moral desert. Kant's philosophy of punishment is deeply rooted in his broader ethical framework, particularly the categorical imperative, which demands that individuals act according to universalizable maxims and treat

humanity as an end in itself, never merely as a means.<sup>7</sup> In the context of punishment, this translates to the idea that offenders must be held accountable for their actions in a manner that respects their moral agency while restoring the balance of justice.

Kant famously argued:

*"If justice perishes, there is no further point in men living on earth."*<sup>8</sup>

This statement underscores the centrality of justice in Kant's moral philosophy. For Kant, justice is not merely a social construct but a moral necessity. Punishment, therefore, is not about deterrence or rehabilitation (though these may be secondary effects) but about upholding the moral order. He believed that failing to punish a crime proportionately would undermine the very fabric of justice, rendering society morally incoherent.

### The *Jus Talionis* and Proportionality

Kant's retributive theory is often associated with the principle of *jus talionis*—commonly summarized as "an eye for an eye." This principle suggests that the punishment should mirror the crime in both kind and degree. Kant endorsed this principle in the context of capital punishment, arguing that murderers forfeit their right to life by violating another's autonomy. He wrote:

*"Whoever has committed murder must die. There is no substitute that will satisfy justice."*<sup>9</sup>

However, as highlighted in the original document, Kant's endorsement of *jus talionis* is often misunderstood. He did not advocate for a literal application of the principle, which would lead to absurd or morally repugnant outcomes. For example, Kant explicitly rejected the idea of punishing a rapist by subjecting them to rape, calling such a punishment "immoral" and "impossible."<sup>4</sup> Instead, Kant's focus was on achieving moral balance—ensuring that the punishment reflects the moral gravity

<sup>5</sup> J.G. Murphy, *Retribution, Justice, and Therapy* (1979), p. 84. Murphy emphasizes that retributive punishment must "fit" the crime's objective seriousness, not societal outrage.

<sup>6</sup> *Bachan Singh v. State of Punjab*, AIR 1980 SC 898. The Supreme Court's "rarest of rare" standard has been inconsistently applied, often reflecting societal biases rather than retributive proportionality.

<sup>7</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals* (1785), p. 429. Kant's ethical framework

emphasizes treating individuals as ends in themselves, not merely as means to an end.

<sup>8</sup> Immanuel Kant, *Metaphysical Elements of Justice* (1965), p. 132. Kant's assertion that justice is indispensable to human existence underscores the moral necessity of punishment.

<sup>9</sup> Kant, *Metaphysical Elements of Justice*, p. 132. Kant's defense of capital punishment is rooted in the idea that murderers forfeit their right to life by violating another's autonomy.

of the crime without degrading the offender's humanity.

#### Moral Balance vs. Physical Replication

Kant's emphasis on moral balance rather than physical replication is a critical distinction often overlooked by critics of retributivism. While *jus talionis* provides a symbolic framework for proportionality, Kant recognized that literal reciprocity is neither feasible nor desirable in many cases. For instance, in cases of theft, it would be impractical to demand that the thief return the exact item stolen, especially if it no longer exists. Instead, Kant advocated for punishments that symbolically restore the moral equilibrium disrupted by the crime.

This nuanced understanding of *jus talionis* aligns with Kant's broader ethical commitments. He believed that punishment must respect the offender's inherent dignity as a rational being, even while holding them accountable for their actions. This is why Kant rejected punishments that degrade or dehumanize the offender, such as torture or mutilation, even if they might appear proportionate in a literal sense.

#### The Death Penalty as a Categorical Imperative

Kant's defense of the death penalty for murder is grounded in his belief that justice demands proportional retribution. He argued that sparing a murderer would amount to a failure of justice, as it would allow the offender to escape the moral consequences of their actions. In his view, the death penalty is not merely a practical tool for maintaining social order but a moral duty imposed by the categorical imperative.

However, Kant's absolutism on this issue has been challenged by modern retributivists, who argue that his insistence on executing murderers conflicts with his own injunction against degrading punishments. The irreversible and inherently violent nature of the death penalty raises questions about whether it can truly respect the offender's humanity, even while fulfilling the demands of proportionality.<sup>10</sup>

<sup>10</sup> Hugo Bedau, *The Case Against the Death Penalty* (1997), p. 45. Bedau argues that Kant's defense of the death penalty conflicts with his emphasis on human dignity and moral agency.

<sup>11</sup> Amit Bindal, "Rethinking Theoretical Foundations of Retributive Theory of Punishment," *Journal of the Indian Law Institute* (2009), pp. 307-309. Bindal

## II. Retributive Justice: Foundations and Misconceptions

### B. Retribution ≠ Vengeance

One of the most persistent misconceptions about retributive justice is the conflation of retribution with vengeance. Critics often portray retributivism as a primitive or barbaric theory that seeks to satisfy the victim's desire for revenge. However, as the original document emphasizes, retributive theory is fundamentally distinct from vengeance.<sup>11</sup> Retribution is not about satisfying personal or emotional desires for retaliation; rather, it is about institutionalizing punishment to uphold justice, maintain social order, and prevent the chaos of private revenge.

#### The Institutionalization of Punishment

Retributive justice operates through the state, which acts as a neutral arbiter in administering punishment. This institutional framework ensures that penalties are proportionate to the crime and respect the human dignity of both the offender and the victim. By taking punishment out of the hands of individuals and placing it within a structured legal system, retributive theory seeks to prevent the cycle of violence and vendettas that characterize private revenge.<sup>12</sup>

For example, in cases of murder, the victim's family might feel a natural desire for revenge. However, allowing private individuals to exact vengeance would lead to a breakdown of social order, as each act of revenge could provoke further retaliation. Retributive justice, by contrast, channels these impulses into a formal legal process, ensuring that punishment is administered fairly and impartially. This institutionalization of punishment is a cornerstone of modern legal systems and a key distinction between retribution and vengeance.

#### Proportionality and Objective Seriousness

A central tenet of retributive justice is that punishment must "fit" the crime in terms of its objective seriousness, not the subjective emotions of the victim or society. As J.G. Murphy argues, retributivism

critiques the reduction of retributivism to "vindictive animal instinct."

<sup>12</sup> J.G. Murphy, *Retribution, Justice, and Therapy* (1979), p. 84. Murphy explains how retributive justice channels private revenge into a formal legal process.

demands that the severity of punishment be calibrated to the moral gravity of the offense, rather than being driven by societal outrage or the desire for retribution.<sup>13</sup>

This principle of proportionality is crucial for distinguishing retribution from vengeance. Vengeance is often driven by emotions such as anger, hatred, or a desire for personal satisfaction, which can lead to excessive or disproportionate punishments. Retribution, on the other hand, is guided by rational principles of justice, ensuring that the punishment is neither too lenient nor too harsh. For instance, while a vengeful individual might advocate for torturing a murderer, retributive justice would limit the punishment to what is proportionate—such as life imprisonment or, in some cases, the death penalty—while respecting the offender's humanity.

#### Respect for Human Dignity

Another key distinction between retribution and vengeance is the emphasis on human dignity. Retributive justice, particularly in its Kantian formulation, insists that punishment must respect the offender's inherent dignity as a rational being. This means that punishments that degrade or dehumanize the offender—such as torture, mutilation, or public humiliation—are incompatible with retributive principles, even if they might satisfy a desire for vengeance.

For example, Kant explicitly rejected punishments that treat offenders as mere objects or animals, arguing that such practices undermine the moral foundation of justice.<sup>14</sup> This respect for human dignity is a defining feature of retributive justice and sets it apart from the unrestrained brutality often associated with vengeance.

#### The Role of the Victim

While retributive justice seeks to uphold the rights of victims by ensuring that offenders are held accountable, it does not prioritize the victim's emotional desires over the principles of justice. This is another important distinction between retribution and

vengeance. Vengeance is often driven by the victim's personal feelings, which can lead to biased or excessive punishments. Retribution, by contrast, is guided by objective standards of justice, ensuring that punishment is administered fairly and impartially.<sup>15</sup> For instance, in cases of sexual assault, a vengeful approach might advocate for harsh and degrading punishments that mirror the harm inflicted on the victim. Retributive justice, however, would focus on ensuring that the punishment is proportionate to the crime while respecting the offender's humanity. This approach not only upholds the principles of justice but also prevents the legal system from being swayed by emotional or vindictive impulses.

### III. The Death Penalty in Retributive Theory: A Contested Legacy

The death penalty occupies a paradoxical position within retributive theory. While philosophers like Kant defended it as a moral imperative, modern retributivists increasingly question its compatibility with principles of proportionality, human dignity, and justice. This section examines this contested legacy, tracing the evolution of retributive thought from Kant's absolutism to contemporary critiques.

#### A. The Kantian Argument for Capital Punishment

Kant's defense of the death penalty is rooted in his deontological ethics, which prioritize moral duty over consequences. For Kant, punishment is a categorical imperative: it must be inflicted solely because the offender *deserves* it, irrespective of social utility.<sup>16</sup> In the case of murder, he argued that the death penalty is the only proportionate response to the crime's moral gravity:

*"If [the criminal] has committed murder, he must die. There is no substitute that will satisfy justice. There is no equality of kind between death and remaining alive even under the most miserable conditions."*<sup>17</sup>

Kant's reasoning hinges on the principle of *jus talionis*—not as literal reciprocity (e.g., "eye for an eye") but as moral equivalence. By violating another's

<sup>13</sup> Murphy, p. 84. Retributivism demands that punishment reflect the moral gravity of the offense, not societal outrage.

<sup>14</sup> Immanuel Kant, *Metaphysical Elements of Justice* (1965), p. 100. Kant warns against punishments that degrade the offender's humanity.

<sup>15</sup> Kant, p. 100. Kant rejects punishments that treat offenders as mere objects or animals.

<sup>16</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals* (1785), p. 428. Kant's categorical imperative demands acting from duty, not consequences.

<sup>17</sup> Kant, *Metaphysical Elements of Justice* (1965), p. 132.

right to life, the murderer forfeits their own right, and the state is morally obligated to execute them to restore the balance of justice.<sup>18</sup>

#### Limitations of Kant's Absolutism

However, Kant's defense of capital punishment clashes with his own injunction against degrading punishments. He warned that punishments must never reduce offenders to "mere things" or violate their innate dignity. This tension is evident in his admission that *jus talionis* cannot be applied literally (e.g., raping a rapist), yet he insisted on executing murderers without exception. Critics argue that execution itself—irreversible and inherently violent—risks degrading the offender's humanity, contradicting Kant's ethical framework.

B. Modern Retributivist Critiques of the Death Penalty  
Contemporary scholars, drawing on Kantian principles, challenge the death penalty's compatibility with retributive justice:

##### 1. Human Dignity and Degrading Punishment

Modern retributivists like Jeffrie Murphy argue that the death penalty violates Kant's imperative to respect human dignity. Execution, as a "radical evil," reduces the offender to a mere object of state power, negating their moral agency. This critique aligns with international human rights norms, such as Article 5 of the *Universal Declaration of Human Rights*, which prohibits "cruel, inhuman, or degrading treatment or punishment."<sup>19</sup>

##### 2. Proportionality and the "Just Deserts" Doctrine

While Kant emphasized proportionality, modern retributivism interprets this as requiring punishments that are *humanely proportional*. Life imprisonment, for example, can achieve moral balance without resorting to death. Hugo Bedau notes that the death penalty's irrevocability makes it inherently disproportionate, as errors in justice cannot be rectified.

##### 3. Fallibility of Justice Systems

Retributive justice assumes the offender's guilt as a precondition for punishment. However, wrongful convictions—such as the exoneration of 186 death row inmates in the U.S. since 1973—expose the fallacy of

this assumption. Punishing the innocent is a *conceptual impossibility* in retributivism, yet systemic flaws (e.g., biased evidence, coerced confessions) render the death penalty irreconcilable with its principles.

#### C. The Indian Context: Retribution vs. Judicial Subjectivity

India's retention of the death penalty under the "rarest of rare" doctrine (*Bachan Singh v. State of Punjab*, 1980) ostensibly aligns with retributive proportionality. However, judicial inconsistency in applying this standard—often influenced by public outrage or moral bias—undermines its retributive legitimacy. For instance:

- In *Machhi Singh v. State of Punjab* (1983), the Supreme Court upheld executions based on "collective conscience" rather than objective desert.
- The 262nd Law Commission Report (2015) recommended abolishing the death penalty for all crimes except terrorism, citing its arbitrary application and failure to deter crime.<sup>20</sup>

#### IV. Utilitarianism vs. Retributivism: Divergent Paths on the Death Penalty

The debate over the death penalty is often framed as a clash between utilitarianism and retributivism, two of the most influential philosophical theories of punishment. While retributivism focuses on moral desert and proportionality, utilitarianism evaluates punishment based on its consequences for society. This section explores how these theories diverge in their justifications for—and critiques of—capital punishment, highlighting their ethical and practical implications.

##### A. Utilitarian Justifications for the Death Penalty

Utilitarianism, as articulated by Jeremy Bentham and John Stuart Mill, evaluates actions based on their ability to maximize overall happiness or minimize suffering.<sup>21</sup> In the context of punishment, utilitarians justify the death penalty if it serves as an effective deterrent, prevents recidivism, or provides societal benefits such as public safety.

<sup>18</sup> J.G. Murphy, *Retribution, Justice, and Therapy* (1979), p. 84.

<sup>19</sup> UN General Assembly, *UDHR* (1948), Art. 5.

<sup>20</sup> Law Commission Report No. 262 (2015), para. 12.5.

<sup>21</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789), p. 205. Bentham argues that punishment is justified only if it prevents greater harm.

### 1. Deterrence

The primary utilitarian argument for the death penalty is its potential to deter serious crimes. Proponents claim that the threat of execution discourages individuals from committing murder or other capital offenses.<sup>22</sup> For example, Isaac Ehrlich's controversial 1975 study suggested that each execution in the U.S. prevented eight murders, though this finding has been widely disputed.

### 2. Incapacitation

Utilitarians also argue that the death penalty permanently removes dangerous offenders from society, preventing them from committing further crimes.<sup>4</sup> This rationale is particularly compelling in cases involving serial killers or terrorists, where the risk of recidivism is high.

### 3. Social Utility

From a utilitarian perspective, the death penalty may also serve broader social goals, such as satisfying public demand for justice or reducing the financial burden of long-term imprisonment.<sup>23</sup> However, these arguments often overlook the moral and practical costs of executions, such as the risk of wrongful convictions and the psychological toll on those involved in the process.

## B. Retributive Critiques of Utilitarian Justifications

Retributivists reject utilitarian justifications for the death penalty, arguing that they reduce punishment to a tool for social engineering rather than a moral imperative. Kant, for instance, famously criticized utilitarianism for treating individuals as mere means to an end, rather than as ends in themselves.

### 1. Moral Absolutism vs. Consequentialism

Retributivism's core principle is that punishment must be deserved, regardless of its social utility. Kant argued that even if executing a criminal would benefit society, the state has a moral duty to punish them solely because they deserve it. This absolutist stance contrasts sharply with utilitarianism's consequentialist approach, which permits punishing the innocent if it maximizes overall happiness.<sup>8</sup>

<sup>22</sup> Isaac Ehrlich, "The Deterrent Effect of Capital Punishment," *American Economic Review* (1975), pp. 397-417.

<sup>23</sup> John Stuart Mill, *Utilitarianism* (1863), p. 67. Mill argues that punishment should serve the greater good.

### 2. The Problem of Wrongful Executions

Retributivists emphasize that the death penalty's irrevocability makes it incompatible with justice. Unlike utilitarians, who might tolerate wrongful executions as a necessary cost for greater social good, retributivists view punishing the innocent as a fundamental violation of moral principles.<sup>24</sup> The exoneration of numerous death row inmates—such as the 186 individuals exonerated in the U.S. since 1973—underscores this concern.

### 3. Degrading Punishment and Human Dignity

Retributivism also critiques the death penalty for its potential to degrade the offender's humanity. Kant warned against punishments that reduce individuals to "mere things," arguing that even the guilty retain their inherent dignity. This principle aligns with modern human rights norms, such as Article 5 of the *Universal Declaration of Human Rights*, which prohibits "cruel, inhuman, or degrading treatment or punishment."

## C. The Indian Context: Utilitarianism vs. Retributivism in Practice

India's retention of the death penalty under the "rarest of rare" doctrine (*Bachan Singh v. State of Punjab*, 1980)<sup>25</sup> reflects a blend of utilitarian and retributive reasoning. However, judicial inconsistency and reliance on public opinion often tilt the balance toward utilitarian considerations.

### 1. Deterrence and Public Opinion

Indian courts have occasionally justified the death penalty on utilitarian grounds, citing its deterrent effect and the need to satisfy "public conscience."<sup>14</sup> For example, in *Machhi Singh v. State of Punjab* (1983)<sup>26</sup>, the Supreme Court upheld executions based on the "collective conscience of society," a rationale more aligned with utilitarianism than retributive justice.

### 2. Retributive Proportionality

In contrast, retributive principles emphasize proportionality and moral desert. The 262nd Law Commission Report (2015) criticized the death penalty's arbitrary application, noting that it often

<sup>24</sup> Death Penalty Information Center, *Innocence Database* (2023).

<sup>25</sup> AIR 1980 SC 898.

<sup>26</sup> *Machhi Singh v. State of Punjab*, AIR 1983 SC 957.

reflects societal vengeance rather than objective desert.<sup>16</sup> This critique aligns with retributivism's insistence on punishment that "fits" the crime's moral gravity, not public outrage.

#### V. Legal and Constitutional Challenges

The death penalty faces significant scrutiny under constitutional and international human rights law, particularly for its alleged violations of principles like dignity, equality, and proportionality. This section examines these challenges, focusing on India's constitutional framework, international law, and systemic flaws in capital sentencing.

##### A. The Indian Constitutional Framework

###### 1. Article 21 and the Right to Human Dignity

Article 21 of the Indian Constitution guarantees the right to life and personal liberty, interpreted by the Supreme Court to include the right to live with human dignity.<sup>27</sup> In *Bachan Singh v. State of Punjab* (1980), the Court upheld the death penalty under the "rarest of rare" doctrine but emphasized that it must align with "the dignity of the individual." However, critics argue that executions inherently degrade human dignity, violating Article 21.

###### 2. Arbitrariness and Article 14

Article 14 prohibits arbitrary state action, yet the "rarest of rare" standard has led to inconsistent sentencing. In *Mithu v. State of Punjab* (1983), the Court struck down mandatory death sentences as arbitrary,<sup>28</sup> but subjectivity persists. For instance, in *Sangeet v. State of Haryana* (2013)<sup>29</sup>, the Court noted that judges often rely on personal moral biases rather than objective criteria.<sup>30</sup> The 262nd Law Commission Report (2015) found that socio-economic factors and judicial discretion result in disproportionate outcomes, undermining equality before the law.

###### 3. Public Opinion vs. Constitutional Morality

Indian courts have occasionally prioritized "public conscience" over constitutional principles. In *Machhi Singh v. State of Punjab* (1983), the Supreme Court justified executions based on society's "collective

conscience," a utilitarian rationale criticized for conflating retributive justice with mob vengeance.<sup>31</sup>

##### B. International Human Rights Law

###### 1. Violation of the Right to Life

The *International Covenant on Civil and Political Rights* (ICCPR, 1966) recognizes the right to life (Article 6) and restricts the death penalty to the "most serious crimes."<sup>9</sup> However, the UN Human Rights Committee has urged abolition, stating that capital punishment violates the inherent dignity of the person.

###### 2. Prohibition of Cruel, Inhuman, or Degrading Treatment

The *Second Optional Protocol to the ICCPR* (1989) advocates for abolition, framing the death penalty as a violation of Article 7 (prohibition of torture).<sup>11</sup> India, while retaining the death penalty, faces criticism for methods like prolonged solitary confinement and hanging, which the UN Special Rapporteur has termed "cruel."

##### C. Systemic Flaws and Wrongful Convictions

###### 1. Fallibility of the Justice System

Retributive justice assumes guilt, but wrongful executions expose systemic failures. The Death Penalty India Report (2016) found that 74% of death row prisoners were economically vulnerable and lacked adequate legal representation. Cases like *Ankush Maruti Shinde v. State of Maharashtra* (2009), where six individuals were wrongfully sentenced to death, highlight the irreversibility of judicial errors.<sup>32</sup>

###### 2. Public Opinion and Populist Punishment

Political and public pressure often influences sentencing, as seen in the 2012 Delhi gang-rape case (*Mukesh & Anr v. State of NCT of Delhi*), where executions were expedited to satisfy public outrage.<sup>33</sup> This undermines retributive proportionality and reduces punishment to a tool of political expediency.

#### CONCLUSION

The death penalty has long been justified under the banner of retributive justice, with philosophers like

<sup>27</sup> Article 21 and Dignity: *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>28</sup> AIR 1983 SC 473.

<sup>29</sup> AIR 1983 SC 957, p 38.

<sup>30</sup> *Sangeet v. State of Haryana*, (2013) 2 SCC 452, p22.

<sup>31</sup> Critique of Public Conscience: Upendra Baxi, *The Crisis of the Indian Legal System* (1982), p. 147.

<sup>32</sup> (2009) 6 SCC 667.

<sup>33</sup> (2017) 6 SCC 1.

Immanuel Kant arguing that it is a moral imperative to execute murderers to uphold justice and restore moral balance. However, as this paper has demonstrated, retributive theory, when properly understood, does not inherently mandate the death penalty. Instead, it demands a system of punishment that reflects guilt, proportionality, and respect for human dignity. Kant's defense of capital punishment, rooted in an absolutist interpretation of *jus talionis* ("an eye for an eye"), is increasingly seen as outdated and incompatible with modern ethical and legal standards. Modern retributivism, emphasizing the concept of just deserts, challenges the notion that the death penalty is a necessary or just form of punishment. While retributive justice requires that offenders be held accountable for their actions, it also insists that punishment must respect the offender's inherent dignity as a human being. Execution, as an irreversible and inherently violent act, risks degrading the offender's humanity and violating the very principles of proportionality and moral desert that retributivism seeks to uphold. Moreover, the fallibility of justice systems—evidenced by wrongful convictions and systemic biases—further undermines the legitimacy of the death penalty within a retributive framework.

As societies around the world evolve toward abolition—with 112 countries having abolished the death penalty as of 2023—retributive justice must also adapt. The focus should shift from state-sanctioned killing to humane and proportional alternatives, such as life imprisonment, which can achieve the moral balance demanded by retributive theory without resorting to executions. Life imprisonment, when implemented fairly and transparently, ensures that offenders are held accountable for their crimes while respecting their dignity and the possibility of redemption.

Furthermore, retributive justice must integrate restorative measures that honor the needs of both victims and offenders. While retribution emphasizes accountability, restorative justice seeks to repair the harm caused by crime through dialogue, reconciliation, and rehabilitation. By combining these approaches, legal systems can address the moral and emotional dimensions of crime without perpetuating cycles of violence and vengeance.

In conclusion, retributive justice, far from being a rigid or archaic theory, offers a nuanced framework for evaluating punishment. Its emphasis on

proportionality, guilt, and human dignity provides a compelling basis for rejecting the death penalty in favor of more humane and just alternatives. As societies continue to grapple with the ethical and practical challenges of capital punishment, retributive justice must evolve to reflect contemporary values and the growing consensus that state-sanctioned killing has no place in a civilized legal system. By prioritizing life imprisonment and restorative measures, retributive justice can fulfill its moral mission while respecting the dignity of all individuals—victims, offenders, and society at large.