
AN OVERVIEW OF CAPITAL PUNISHMENT IN INDIA

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ABSTRACT

The death sentence is regarded as a violation of a person's right to life as well as the right not to suffer cruel, inhumane, or degrading punishment. It has been described as the "ultimate denial of civil liberties," and it can be forced on innocent, less fortunate, with less education, and more marginalised people. Nonetheless, the death penalty is still used in India, and it is a severe blot on the country's human rights record. This chapter examines the related jurisprudence as well as the scope and application of the capital punishment in India. It first examines government statistics on the death penalty in the nation before discussing the death penalty in the Constitution and legislation. It also considers the method of execution, judicial discretion in imposing the death sentence, the "rarest of rare" doctrine, and the death penalty in international law.

INTRODUCTION

The death penalty, also known as capital punishment, raises some troubling issues, such as whether capital punishment effectively eliminates criminals and crime from society. Is it even an imaginable occurrence in this society? It is unimaginable for someone who cares deeply about human character. It can only be done if criminals rehabilitate themselves and alter their attitudes towards a better future. There has been a worldwide trend towards the abolition of the death penalty; however, India has not taken this stance. This type of punishment different from the others, because of the obvious element of irreversibility attached to it. An individual who has been executed for a crime cannot be brought back to life. As a result, if an error occurs while making a decision, it cannot be corrected afterward. As previously stated, the death sentence has existed since antiquity, beginning as early as 1750 B.C. It has also been enumerated and its presence is noteworthy in all ancient scriptures such as the Code of Hammurabi, the Bible, and others. Even great thinkers like Plato, John Locke, and Thomas Hobbes, who advocated for the social contract theory, supported and favoured this form of punishment for serious crimes. Where this was the case, then the concept of punishment changed in the society, leading to the abolition of the death penalty or capital punishment, which became a debatable issue by one of the great criminologists named Cessare Beccaria, who convinced many people that the death penalty should be abolished because it is inhumane, useless, and technically speaking, a public assassination. Michigan was the first state to eliminate the death penalty in 1846, followed by Portugal and Venezuela in 1867. The United Nations also backed the abolition of the death penalty during the 1948 drafting of the Universal Declaration of Human Rights.

OPINION ON DEATH PENALTY

There are two types of people: those who think that the individual who committed the crime deserves to die and those who do not. The second is the belief that the perpetrator of the crime should be given a second chance; it is not our place to determine who lives and who dies. The most persistent argument for the continuation of capital punishment is that it is essential to stop the act of murder in any event the killer would walk courageously. India is a developing nation, and at the same time, crime is on the rise.

There are numerous laws in place to prevent crime, but despite these laws, crime is on the rise because the penalties are insufficient. Given that India has seen a rise in both rape and murder

cases recently, strict action should be taken against the accused, and life imprisonment makes no sense. If the death penalty exists, individuals are more likely to follow the rule and maintain order in the general population. It is also called social vengeance, and the state has complete authority to execute the most heinous criminal.

Life imprisonment until death implies that the guilty will suffer from mental illness. It has a significant impact on mental wellness. According to research, while it differs from person to person, incarceration is associated with mood disorders such as major depressive disorder and bipolar disorder. They are depressed in life imprisonment because they have entered a world with no sunshine, no family, no happiness, and only a negative atmosphere.

Ediga Anamma v. State Of Andhra Pradesh.¹ It was decided that life imprisonment for murder is the norm, with the death penalty an exception in certain cases. The death sentence was imposed because life imprisonment seemed inadequate considering the pertinent circumstances of the crime and the inhuman torture committed on the victim which brought about her death of a son too.

Positive element in favour of the death penalty - Death penalty supporters believe that the death penalty exists not only in India, but throughout the world. By referring to a civilised nation, the death penalty cannot be abolished. The death sentence is justified in serious instances such as murder and rape. Criminals who have a sense of remorse in their minds can also be killed using this method. They are requesting stones in favour of the death penalty. The individual who has committed such a serious crime does not have the right to live, so it is only right to put them to death. It will also provide justice to the sufferer, and its impact will be felt throughout society.

Negative aspects of the death sentence - It is frequently noted that we have a flawed justice system and right to justice as a result of which innocent people are killed. Show that this innocent individual is guilty because of the arrangement of becomes, and that he is innocent because he didn't know how to cut. Whose fault is it that he is sentenced to death? It is permissible to kill someone or to sentence a murderer to execution as punishment. Some parties think that this was a murderous act. As a result, many nations have advocated for the abolition of the death penalty. Some argue that criminals should be allowed another opportunity to live

¹ 1974 AIR 799

and improve their lives. Giving criminals a chance will make them realise their wrongdoing, and keeping them in prison will allow them to repent of their wrongdoing.

HISTORY OF CAPITAL PUNISHMENT IN INDIA

India retained the 1861 Penal Code, which imposed the death sentence for murder, at the time of independence in 1947. While the Indian Constitution was being drafted between 1947 and 1949, several members of the Constituent Assembly voiced their support for the band Death Penalty.

In the Bachan Singh case from 1980, the Supreme Court declared that the death penalty should only be used in the "rarest of rare situations." Several people were sentenced to execution and executed between the 1980s and the 1990s. It's possible that two or more individuals were hanged.

Nations with a lower amount of people sentenced to death for murder in comparison to nations that use the death penalty. The death sentence has now been abolished in all major societies, religions, and regions.

The worldwide acceptance of the country that the death penalty is an inhumane, cruel, and humiliating punishment has grown.

According to United Nations statistics, more than 150 nations have stopped using it or have abolished it. With the passage of time, even Britain began to refrain from imposing the execution penalty.

The constitutionality of the death penalty has been brought into question in a number of instances.

In *Jagmohan Singh vs. State of Uttar Pradesh*, a five-judge Supreme Court bench unanimously upheld the constitutionality of the death sentence. Articles 14, 19, and 21 were not violated by the penalty. In this case, the validity of the death penalty was challenged on the grounds that it violated Articles 19 and 21 because no procedure was given. It was argued that the process outlined in the Cr. P.C. was limited to finding guilt and not awarding the death penalty. The Supreme Court ruled that the option of death sentence, when exercised, follows the legal process.

In *Rajendra Prasad vs. State of Uttar Pradesh*, Justice Krishna Iyer ruled. Articles 14, 19, and 21 were highlighted as violative. He also stipulated two criteria for imposing the death penalty:

- The special cause for imposing the death penalty in a case should be documented.
- Only in exceptional situations should the death penalty be applied.

In *Bachan Singh vs. State of Punjab*, the Supreme Court overruled its previous ruling in the *Rajendra Prasad* case by a 4-1 majority. It stated that the death sentence for murder is not unreasonable and does not violate Articles 14, 19, and 21 of the Indian Constitution. It was in this case that the principle of imposing the execution penalty only in the "rarest of rare cases" was advanced. In his dissenting opinion, Justice Bhagwati stated that "the death penalty is not only unconstitutional because it violates Articles 14 and 21, but it is also undesirable from several perspectives."

Furthermore, in *Machhi Singh vs. State of Punjab*, the Supreme Court established the wide contours of what constitutes a "rarest of rare cases deserving extreme penalty." They are as follows:

- Manner of murder - When the murder is committed in such a brutal manner as to arouse intense and extreme indignation in the community, such as when the victim's house is set on fire to roast him alive, when the body is cut to pieces, or the victim is subjected to inhuman torture.
- Motive - When a murder is committed for a reason that demonstrates depravity and meanness, such as a paid assassin, a cold-blooded murder to inherit or gain control over a ward's property, or a murder done for betrayal of the motherland.
- The crime's anti-social or socially abhorrent character - where a scheduled caste or minority community member is murdered in conditions that arouse social wrath; or bride burning for dowry or remarriage.
- Crimes of enormous proportions, such as numerous murders of a family or members of a specific caste, community, or locality.
- The personality of the crime victim.²

² <https://www.indianbarassociation.org/constitutionality-of-death-penalty/>

LAW COMMISSION OF INDIA'S REPORT ON THE DEATH PENALTY

The Law Commission's 262nd report, titled "The Death Penalty," recommended the abolition of the death penalty in the nation. A 272-page draught report circulated among members of the Law Commission advocated for the removal of the death penalty from the statute books as soon as possible, except in cases where the accused is convicted of involvement in a terror-related offence and waging war against the country, as practised in countries such as the United Kingdom.

The Supreme Court referred the Law Commission of India to study the issue of the death penalty in India in *Santosh Kumar Satishbhusan Bariyar v. Maharashtra* [(2009) 6 SCC 498] and *Shankar Kisanrao Khade v. Maharashtra* [(2013) 5 SCC 546] to "allow for an up-to-date and informed discussion and debate on the subject." The Supreme Court charged the Commission with researching and reporting on the death sentence last year.

The Commission conducted extensive consultations on the topic, and the majority of participants, including representatives from some political parties, supported the abolition of the death penalty. The Law Commission has previously been requested to investigate the death penalty.

The 35th report on "capital punishment" is particularly important in this respect. In its 35th report, the Law Commission of India recommended the retention of the death sentence in India in 1962. It is critical to note that as of the end of 2014, 98 countries were abolitionists for all crimes, seven countries were abolitionists for ordinary crimes only, and 35 were abolitionists in fact, bringing the total number of abolitionist countries to 140. Suriname, Madagascar, and Fiji are among the 140 countries that officially abolished the death penalty in 2015.³

CONSTITUTIONALITY OF CAPITAL PUNISHMENT.

Every type of consequence, including punishment, is based on the idea that transgression warrants retaliation. Individuals are taught in every society and religion on the planet that transgression will always result in retribution. Deterrence and fairness are important considerations when determining the appropriate level of punishment for criminals. The motivation for the death penalty is similar to that of other kinds of punishment. Capital punishment has sparked more debate than any other type of penalty due to its brutality and

³ Sanjeev Sirohi, Retain death penalty only for terror cases: Law Commission,

permanence. Those in favour of the execution penalty believe it deters crime. The death penalty is widely endorsed as a deterrent or retributive measure for criminal behaviour. They believe that the victim of an especially heinous crime would benefit the most from the death penalty.

The use of the death penalty goes back to the dawn of human history. The reasons for and against the case have not changed significantly over time. Criminal behaviour and the legal response to it reflect the values and social structure of the community in issue. As the debate over whether to abolish the death penalty continues, it seems like a good time to reflect on previous legislative and judicial responses to this sensitive subject. Many people have expressed their opinions on this contentious issue. Another issue is the extent to which judges can exercise their judgement.⁴

TYPES OF CAPITAL PUNISHMENT

The vast variety of criminal sanctioning practises practised by nations. But, before we get there, it's essential to consider the history of the death penalty. Prior to that, capital punishment was more similar to torture than actual execution. They used to torture the offender until he or she collapsed, expecting that the mental anguish of being subjected to such agony would be fatal. Furthermore, the new techniques are less time-consuming and unpleasant than the previous ones.⁵

1. **Electrocution**- In this method, a high voltage current that can rapidly kill a man is passed through the body while the perpetrator is strapped to a chair. It also causes organ dysfunction. (Especially heart). In 2015, the United States' states of Alabama, Florida, and others are the only ones in the world that still use the electric chair as a method of punishment.
2. **Tranquillisation**- In this method, the offender dies gradually but painlessly as the poison is slowly absorbed into his body over the period of several hours.
3. **Beheading**- This method is extensively used in Arab and Gulf countries. Locations where death punishment is administered based on the gravity of the offender's crime. Furthermore, in this method, the head is separated from the body via a straightforward incision.

⁴ The execution of pbs, "the history of death penalty", <https://www.pbs.org/wgbh/frontline/article/history-of-the-death-penalty/>, 5th january, 2020

⁵ Janhavi Arakeri, Capital Punishment in India, May 27, 2019, <https://blog.ipleaders.in/capital-punishment-in-india/> 6 548 U.S. 163 (2006)

4. **Stoning**- The offender is stoned until he or she dies. It is also the cruellest form of capital retribution. UAE, Iraq, Qatar, Saudi Arabia, Somalia, Sudan, and other countries. These countries employ this form of execution.
5. **Shooting**- In this case, the perpetrator is shot in the head or torso. In Myanmar, this method is used as a type of capital punishment.⁶

PROCESS OF DEATH PENALTY

Trial Court

- The judge issues the verdict following the procedures outlined in the Code of Criminal Procedure.

High Court

- Following the Session Court's ruling, a high court must confirm the death sentence.
- The high court may uphold the death penalty, impose a different sentence, or overturn the verdict.
- The High Court also has the authority to withdraw a case from a subordinate court, perform the trial, and impose the execution penalty.

Special leave petition

- After the High Court confirms the death sentence, a Special Leave Petition under Article 136 of the Constitution may be submitted with the Supreme Court.
- Pursuant to Article 136, the Supreme Court determines whether the special leave petition merits hearing as an appeal.

Curative petition

- If it is proven that there was a violation of natural justice principles or suspicion of bias in the position of a judge, the Supreme Court may grant a curative petition to reconsider its judgement or order.
- The curative appeal would be heard by the same bench that heard the review petition.

⁶ Bachan Singh v. State of Punjab, AIR 1980 SC 898, 1980 CriLJ 636, 1982 (1) SCALE 713, (1980) 2 SCC 684, 1983 1 SCR 145.

Mercy Petition

- Articles 72 and 161 of the Constitution grant the President of India and the Governor the authority to grant pardons and postpone, remit, or commute sentences in certain circumstances.
- The president or governor may review the convict's case and commute the execution sentence.

Death warrant

- In instances where the death penalty is imposed, the convict should be permitted to exercise all available legal remedies, including appeal, review, and mercy petitions.
- Before issuing the death warrant, the Supreme Court rules must be observed.

Execution

- A death sentence or death penalty is a sanctioned punishment for perpetrating an offence.
- An execution is the process of carrying out a death sentence.

DEATH PENALTY IS PRESCRIBED UNDER THE IPC.

Section 354(3) of the Code of Criminal Procedure, 1973 states that “When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.”

Offences under the Indian Penal Code, 1860 that awards the death penalty sentences.

1. Section 120B Being a party to criminal conspiracy to commit a capital offence.
2. Section 121 Treason, for waging war against the Government of India
3. Section 132 Abetment of mutiny actually committed.
4. Section 194 Perjury resulting in the conviction and death of an innocent person.
5. Section 195A Threatening or inducing any person to false.
6. Section 302 Murder
7. Section 305 Abetment of suicide by a minor, insane person, or intoxicated person
8. Section 307(A) Attempted murder by serving life convict.

9. Section 364A Kidnapping, in the course of which the victim was held for coercive purposes or ransom.
10. Section 376A, Criminal Law Amendment Act, 2013 Rape if the perpetrator imposes injuries that result in the victim's death or incapacitation in a persistent vegetative state or is a repeat offender.
11. Section 376 AB Rape of a child below 12 years of age
12. Section 376 DB Gang Rape of a child below 12 years of age
13. Section E Certain repeat offences in the context of rape
14. Section 396 Dacoity with Murder- in cases where a group of five or more individuals commits dacoity and one of them commits murder in the course of that crime, all members of the group are liable for the death penalty.
15. Part II, Section 4 of Prevention of Sati Act- Aiding or Abetting an act of Sati.
16. 31A of the Narcotic Drugs and Psychotropic Substances Act- Drug trafficking in cases of repeat offences.

RAREST OF RARE DOCTRINE

This principle was founded on Gandhian theory, which asserts that crime, not the criminal, should be despised. Only after the decision in *Bachan Singh v. State of Punjab* did the judiciary see the need to develop such a doctrine that would apply only in exceptional situations. It states that the execution of an offender is only permitted if it is absolutely necessary for society to operate in an orderly way.

There is no fixed or exhaustive statutory meaning for the phrase "rarest of rare."^{xvi} The manner, purpose, and gravity of the offence must all be considered during the criminal trial in order to determine an appropriate punishment. For the death penalty to be invoked, extraordinary grounds must exist that compel the judge to carry out the execution. Any court must only sentence someone to death as a last option.

The concept of the rarest of the rare is divided into two parts: aggravating and mitigating circumstances. The primary distinction between the two is that in the former, the judge is free to impose the death penalty at his discretion, whereas in the latter, such a punishment cannot be imposed by the bench even if the doctrine is applied.

CASE LAWS

*JAGMOHAN SINGH VS. ST. OF U.P.*⁷

This was the first time the court was asked to rule on the constitutionality of the death penalty. The Apex Court's 5-judge bench issued a decision declaring the death sentence legally valid and not violating any of the Constitution's Articles. According to the Judges, the death sentence was given in accordance with the legal process and not otherwise. Furthermore, the death penalty should be reserved for the most heinous offences for which no other punishment is adequate.

*RAJENDRA PRASAD VS. ST. OF U.P.*⁸

In this case, Justice Krishna Iyer, a former Kerala High Court judge and later Supreme Court justice who was also a member of the Law Commission, stated that the "death penalty was a clear violation of certain Articles provided by our Constitution." Only in this instance were two criteria emphasised for awarding the Death Penalty to any offender. First, the special cause or condition for which such punishment was imposed on the offender, and second, it must be imposed only in exceptional or rare instances.

*MITHU VS. ST. OF PUNJAB*⁹

Section 303 of the IPC says that if a person who has already been sentenced to life imprisonment commits murder, he or she must face the death penalty. This Section was based on the idea that an offender who has already committed a heinous enough crime to warrant life in prison, commits murder, cannot be changed, and is a continuous danger to society, which is why he must be given the death sentence. The Court ruled that the mandatory imposition of a death sentence under Section 303 of the IPC was essentially incorrect. As a result, it was removed from the IPC.

*MACCHI SINGH VS. ST. OF PUNJAB*¹⁰

The 'rarest of the rare' doctrine was expanded as a result of this decision. It essentially enumerated various criteria to be considered before imposing a death sentence. The magnitude

⁷ AIR 1973 SC 947

⁸ 1979 AIR 916

⁹ 1983 SCC (2) 277

¹⁰ AIR 1983 SC 1957

of the crime, the manner in which it was committed, the character of the victim and offender, and the motive behind the commission of the crime, according to the judge, were various standards other than brutality that must be considered before awarding the Death Penalty to an offender.

ALLAUDIN VS. ST. OF BIHAR ¹¹

This case established the principle that a judge must state the basis or circumstances that compelled him to inflict the harshest punishment when imposing the death penalty. There must be compelling reasons to support the punishment meted out for the crime. If the Judge is unable to provide reasons compelling enough to support the imposition of the death penalty, the punishment is not justified and should not be imposed.

KEHAR SINGH VS. UNION OF INDIA

Kehar Singh was a key conspirator in the murder of Indira Gandhi, the then-Indian Prime Minister. Death sentence was given to all convicted assassins. However, because it was an exceedingly rare scenario, the court felt compelled to punish the conspirators as well. As a result, the defendant was sentenced to death for plotting Indira Gandhi's murder.

LAXMAN NAIK VS. ST. OF ORISSA ¹²

In this instance, the accused, Laxman Naik, was sentenced to death for raping and then murdering his own niece. The rape and murder were carried out with extreme brutality, as evidenced by the evidence collected and the injuries sustained by the victim. The judge deemed such brutality to be both unacceptable and exceedingly rare. For the same rationale, it sentenced the defendant to death.

PANCHHI VS. ST. OF U.P. ¹³

This was the case in which it was stated that there are criteria other than the brutality with which the murder or other crime was committed that must be considered when imposing the death penalty. As a result, any court contemplating the death sentence as a punishment for a crime must consider criteria other than brutality when judging the case.

¹¹ 1989 SCR (2) 498

¹² (1994) 3 SCC 381

¹³ AIR 1998 SC 2726

*SANTOSH K. BARIYAR VS. ST. OF MAHARASHTRA*¹⁴

This case is regarded as a significant step towards the abolition of the death penalty in India. In this instance, the four accused kidnapped someone and demanded a ransom from the victim's family. They murdered the victim later by severing his corpse into several pieces. Even after such brutality, the court did not impose the death penalty because the Judge believed that the crime was done for the purpose of making money and that the accused could be reformed. As a result, the four individuals charged with the crime were sentenced to life in prison rather than the execution penalty.

CONCLUSION

The most important truth in this debate on whether the death penalty should be used as a punishment in India's legal system is that the emphasis should not only be on eliminating the criminal but also on eliminating the crime. The goal of punishment in criminal law is to achieve the goals of a peaceful community, and the primary question is whether this is accomplished through capital punishment. The answer to this question is an important one and hence the issue itself deserves great importance. The current need of the hour is for debate and discussion on the issue of the death penalty, as well as recognition of the importance of the topic. The response is extremely important and thus necessitates deliberation and in-depth analysis of options in order to find the best solution that fits the current socio-cultural conditions while also respecting the legal authorities and morals of the past.

¹⁴ (2009) 6 SCC 498