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## CONSTITUTIONAL VALIDITY OF DEATH SENTENCE

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Himani Kaushik, School of Law, Galgotias University

The constitutionality of the death penalty has been the subject of intense discussion over the years, and this issue still rages on in the present. The group or sect of individuals who argue or maintain that the death penalty should be abolished by asserting the argument that the death penalty has failed to achieve the constitutional goal for which it was intended, namely deterrence. Despite the existence of numerous sections in the relevant statutes that stipulate that the punishment for a number of offences is the death penalty<sup>1</sup>, it has frequently been asserted that the crime rate in the country is not declining. The primary cause of the decreasing effectiveness of deterrence can be explained by the fact that there have been so few executions that have actually taken place can be used as the primary justification for the diminished deterrent effect, along with the additional factor of the excessive delay in the execution of death sentences in India as a result of the absence of clear rules or principles for carrying out the death penalty there.

The Supreme Court has heard arguments questioning or raising doubts about the constitutionality of the death penalty several times by claiming that this provision or punishment clearly violates the values embodied in Articles 14, 19, and 21 of the Indian Constitution. The arguments raised against the legitimacy of the death penalty contend that the concept of the death penalty conflicts with the Constitutional provisions of India.

They contend that under Article 19 of the Constitution, several human freedoms are guaranteed fundamental rights. Fair restrictions on these freedoms can obviously be put in place based on other justifications in that Article. These arguments are based on the idea that restrictions on liberties must be just and beneficial to society as a whole. Two aspects of the issue may be taken into consideration while determining whether the death penalty is legal in India.

First and foremost, the question is whether the death penalty in its purest form is unconstitutional and cannot be imposed at all. In the end, the question is whether capital

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<sup>1</sup> Srishti Chawla, Critical Analysis of Death Penalty in India, Ipleaders (Apr. 20, 2019),

punishment can be imposed for any crime, by any method, under any circumstance.

It was argued in the case of *Jagmohan Singh v. State of Uttar Pradesh*<sup>2</sup> that the death sentence was unconstitutional since it contravened Articles 21 and 19 of the Indian Constitution. Additionally, it was claimed that the procedure outlined in Section 354(3) was arbitrary. However, a five-judge Supreme Court panel determined that following the law's processes frequently results in the process and power to impose the death penalty. Because judges inflict lethal penalty depending on the facts and circumstances of each case that are revealed during the trial of a particular case, the supreme court further found that the contended sentence does not violate Articles 14, 19, and 21 of the Indian Constitution. Then, the Supreme Court of India heard the case of *Rajendra Prasad v. State of Uttar Pradesh*<sup>3</sup>, in which it ruled against the findings of the *Jagmohan Singh* case and in favour of the death penalty should not be justified unless the convict or criminal presents a grave threat to society. The court continued by stating that giving a judge the authority to execute a prisoner by using "special reasons" in accordance with Section 354(3) of the CrPC would amount to arbitrariness and violate Article 14 of the Indian Constitution.

In *Jagmohan Singh v. State of Uttar Pradesh*, the Supreme Court maintained the legitimacy of the death penalty on the grounds that it not only serves as a deterrent but as a symbol of society's opposition to crime. In addition, the Supreme Court held that India should not take a chance on abolishing the death sentence. In *Jagmohan Singh v. State of Uttar Pradesh*, the Supreme Court ruled that the death penalty is constitutional, noting that it serves as both a deterrence and but as a symbol of society's opposition to crime. The Supreme Court additionally thought that India shouldn't take a chance on abolishing the death sentence. In *Bacchan Singh v. State of Punjab*, the Supreme Court overturned *Rajendra Prasad v. State of Uttar Pradesh*'s findings by a 4:1 margin, ruling that the application of the death penalty would not violate Article 21 of the Indian Constitution.

The supreme court continued by stating that the death penalty should only be applied in extremely rare cases, that judges' use of the phrase "special reasons" in Section 354(3) of the Criminal Procedure Code to justify death sentences does not infringe on Article 14 of the Indian Constitution, and that judges' special reasons should be sufficient to support the very rarest of extremely rare cases. The Indian Supreme Court's *Bachan Singh* ruling is only a quick and

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<sup>2</sup> AIR 1973 SC 947

<sup>3</sup> AIR 1979 SC 916.

practical reference to Article 21. The justification given in the ruling for the statute's power to deny anyone their life and liberty is not always clear-cut.

In *Santosh Kumar Bariyar v. State of Maharashtra*<sup>4</sup>, the Supreme Court decided that the principle that life imprisonment is the rule and the death sentence is the exception is defined by the rarest of rare dicta, which serves as a guideline in implementing Section 354(3). In the case of *Mithu v. State of Punjab*<sup>5</sup>, the Supreme Court declared that the mandatory death penalty is unconstitutional. The Supreme Court has not expressly found the death sentence unconstitutional, thus we must also take into account the crucial fact that later legislation for drug and violent offences mandates the death penalty. The death penalty has been the subject of repeated arguments that it should be abolished, and the supreme court has established a legal precedent by ruling repeatedly that it is constitutional in nature and does not conflict with Part III of the Indian Constitution.

The argument that the case of *Bacchan Singh* needs reconsideration in the case of *Allaudin Mian v. State of Bihar* was outright rejected by the Indian Supreme Court, which ruled that the argument did not need to be reconsidered. Constitutions neither create nor, in fact, even g In light of this, the constitutional provision has what would be considered evidence-based value. The right to life and liberty enjoys greater success security from constitutional demonstrations in some of the more developed nations than it does in countries where the right is explicitly guaranteed by the constitution. The degree of personal freedom that the average Indian has is not surprisingly not as high as that of a resident of a country with a parliamentary majority rule system. guarantee the right to life. This fundamental right is only recognised by the Constitution.

The judges must choose between execution and indefinite detention in cases covered by Section 302 of the Indian Penal Code, 1860. With that impact, they took great pleasure in an exceptional tactic, while the caution is not wholly insufficient. A designated authority is left in charge of deciding between life and death, leaving them vulnerable to their own preferences and errors of judgement.<sup>6</sup> The legitimacy of legislation that mandate the death penalty becomes questionable at this point.

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<sup>4</sup> (2009) 6 SCC 498.

<sup>5</sup> AIR 1983 SC 473.

<sup>6</sup> Ratanlal & Dhirajlal, *The Indian Penal Code* 345 (36<sup>th</sup> Edition, Lexis Nexis 2020).

It can also be argued that the death sentence in its current form violates the citizen's right to life because the Indian Constitution provides every person a fundamental right to life, subject to statutory deprivation. It can also be argued that the death sentence in its current form violates the citizen's right to life because the Indian Constitution provides every person a fundamental right to life, subject to statutory deprivation. The Indian Supreme Court has frequently determined that the death sentence under the I.P.C. is legal despite the death penalty's legislative legality having been contested in a number of cases in India. On the other hand, despite several rulings from the Supreme Court of India upholding the death penalty as lawful, the groupings of people who argue that it is unconstitutional have not been deterred.

The Doctrine of the Rarest of the Rare, which plays a significant role in the decision-making process when a death sentence is in dispute, is another crucial factor in the imposition of a death sentence. The Rarest of Rare doctrine was established in the case of *Bacchan v. State of Punjab*. To reduce judicial uncertainty over when to impose the toughest penalty possible, the Supreme Court attempted to eliminate a rule that only applied to crimes carrying a death sentence in this case. The application of the death penalty or the capital punishment could only be utilised in cases that constitute the rarest of rare conditions, according to the Supreme Court's 4-1 ruling that upheld the death penalty's legitimacy. However, it was unclear how far this expression went. According to the *Bacchan Singh* case's Ratio Decidendi, the death penalty is mandatory if it is suggested as a punishment for the crime of homicide and if the standard legal punishment for homicide is life in prison. This suggests that the most extreme and infrequent circumstances in which a decision can be avoided require the imposition of the death penalty.

After that, the court made an effort to address *Macchi Singh v. State of Punjab*.<sup>7</sup> After that, in *Macchi Singh v. State of Punjab*, the court made an effort to define criteria for determining whether a crime qualified as most uncommon of uncommon.

Due to *Santosh Kumar Bariyar v. State of Maharashtra*, the Supreme Court determined that the most unusual of unusual declarations serves as a rule in upholding Section 354(3) and establishes the rule that life detention is the norm and passing punishment is an exception. All guilty parties who received a daily existence sentence were required to get the death penalty, according to Section 303 of the Indian Penal Code.

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<sup>7</sup> AIR1983 SC 947

This section was declared unlawful and was therefore removed. In the case of Prajeet Kumar Singh v. State of Bihar<sup>8</sup>, which was heard in 2008, the court made explicit rulings regarding circumstances that could have established a highly exceptional or unusual case. The Court decided that where a homicide is committed in a way that is particularly violent, twisted, devilish, repulsive, or obnoxious in order to incite unusual and outrageous ire of the community, the death penalty should be applied<sup>9</sup>. Criticism today revolves on the definition of the rarest of the rare, just like it would around any other topic. Many detractors have said that this idea is extremely ambiguous and susceptible to various interpretations. Justice Bhagwati voiced worry in his dissenting judgement, stating that the use of such a criterion would increase subjectivity in decision-making and make it so that a person's survival or death would depend on the makeup of the Bench. He contends that the Fundamental Rights of the Indian Constitution, which are inscribed in Articles 14 and 21, are flagrantly violated when an offender's life is dependent on the judgments of a judge. Also claimed is the arbitrariness of the choices made in regards to this philosophy. For instance, the Supreme Court did not hesitate to describe a case as one of the rarest of rare cases enforcing death when a man believed his wife was having an affair and killed her by cutting off her head.

In this regard, the case of Amruta v. State of Maharashtra<sup>10</sup> is instructive since it involves a situation in which the court refused to impose the death punishment despite the fact that the circumstances were the same as those in the aforementioned case<sup>11</sup>. The planned, cold-blooded, and brutal killing of a little girl after raping her, the court determined, was certainly one of the rarest of rare deeds. Although a fourteen-year-old girl was raped and killed, the court in Kumudi Lai v. State of U.P.<sup>12</sup> declined to uphold the death punishment.

In Amrit Singh v. State of Punjab<sup>13</sup>, a girl in the second grade was brutally raped. The extensive bleeding ultimately claimed her life. The trial and high courts both judged the defendant guilty in accordance with section 302 and handed down a death sentence. The Supreme Court determined that the death was not intentional despite the savagery of the rape.

The two constitution seats, due to rulings by the supreme court in the cases of Jagmohan and Bacchan Singh, would not create a normalised classification of circumstances in which the

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<sup>8</sup> Appeal (crl.) 1621 of 2007

<sup>9</sup> Bhaeru Singh v. State of Rajasthan, (1994) 2 SCC 407

<sup>10</sup> AIR 1983 SC 629.

<sup>11</sup> Laxman Naik v. State of Orissa, (1994) 3 SCC 381

<sup>12</sup> (1999) 4 SCC 108.

<sup>13</sup> 2007) 1 SCC 41

teaching of the most uncommon of uncommon could be applied, despite stern requests from the showing up insight to do so. In its ruling in the Jagmohan case, the Supreme Court of India stated that judicial discretion would be used to ensure the most secure possible protection for involved parties rather than setting forth rules.

In the case of *Deena v. Union of India*<sup>14</sup>, the constitutionality of section 354(5) of the Indian Penal Code 1860 was contested on the grounds that hanging with a rope breached constitutional prohibitions against barbarism and thus violated Article 21. The court decided that hanging is a just and reasonable execution method within the purview of Article 21 of the Indian Constitution and is, thus, constitutional. Section 354(5) of the I.P.C. defines hanging as a fair execution technique.

The death penalty is deemed to be a genuine national legislation by the Supreme Court's three judges in the case of *Sher Singh v. the State of Punjab*<sup>15</sup>, when it was determined that the *Bachan Singh* rule must be followed. In important rulings, instructions for carrying out the death punishment were provided. The death penalty had already been declared unconstitutional in the United Kingdom, some Australian states, and some states in the United States of America, it was argued before the court in the case of *Vinay Sharma v. State of NCT of Delhi*<sup>16</sup>, and as a result, such punishment should also be deemed unconstitutional in India. The Supreme Court declared that the death sentence should not be abolished in India simply because it has been abolished in other nations. Every country has its own unique legal system, complete with unique legal statutes and sentencing guidelines. Because of this, the court determined that the death sentence will be used as long as it is stipulated in the Indian penal code and is not declared unconstitutional. The findings of the aforementioned case are applied to the findings of this particular set of papers, it is clear from the legal conclusions of the judgement that the court could not simply abolish the principle or phenomenon of the death penalty on the basis of the assertion that numerous nations around the world have made the death penalty an illegal and unconstitutional form of punishment over time.

It is important to note that all of the warrants issued to show non-compliance with the directives made in the *Shabnam v. Union of India*<sup>17</sup> case are relevant. which specifies the steps to be taken when issuing a warrant for execution, warns against issuing one before all legal remedies have

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<sup>14</sup> 1984 SCR (1) 1

<sup>15</sup> 1983 SCR (2) 582.

<sup>16</sup> AIR 2018 SC 3290

<sup>17</sup> 2015)3 SCC 484.

been tried, and notes why a warrant for execution should not be issued. As it meets no requirement, India is not required to worry with it. It is argued that there is no evidence to support the claim that life in prison or the death penalty deters murder more effectively than either.

The requirement of every legal framework tempts a nation or a state to abolish specific principles and stop their practise, which is why the importance and peculiar nature of every legal system have been carefully emphasised in the ruling previously cited. Comparing the legal systems of other nations would not allow it to be easily removed

Different viewpoints exist about the issue of the death penalty, which is now being discussed in India. Numerous academics have argued that the existence of such obtuse penalty is unnecessary, and this idea has received a lot of attention from research groups.

he 262nd report on the death penalty in India has been produced by the Indian Law Commission, which is chaired by Justice A.P. Shah. The Supreme Court forwarded the case to the Law Commission in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*<sup>18</sup> and *Shankar Kisanrao Khade v. State of Maharashtra*.<sup>19</sup>

The Law Commission report in its 35th report however made it plain that the lethal punishment or the death sentence The Indian Law Commission, led by Justice A.P. Shah, has released its 262nd report on the death penalty in India. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* and *Shankar Kisanrao Khade v. State of Maharashtra*, the Supreme Court sent the case to the Law Commission. However, the Law Commission report in its 35th report made it clear that the death penalty or other forms of capital punishment The Commission concluded that the death sentence, like life imprisonment, would not serve the penology goal of deterrence after conducting a thorough investigation,

according to the 262nd Report. In actuality, it falls short of achieving any legally justifiable judicial goals. The Report acknowledged that there is no legal defence related to criminology for treating illegal terrorism differently from other wrongdoings, but the concern of the times is that abolishing the death penalty for these offences will affect public safety. This is in relation to supporting passing for those sentenced in dread arguments and for using force against the country.

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<sup>18</sup> (2009) 6 SCC 498.

<sup>19</sup> (2013) 5 SCC 546.

## **CONCLUSION**

According to the 262nd Report, the Commission conducted a thorough analysis and came to the conclusion that the death penalty, like life in prison, would not achieve the deterrence purpose of criminology. Actually, it fails to accomplish any goals of the judiciary that may be justified by law. The Report stated that there is no legitimate argument based on criminology to treat illegal terrorism differently from other wrongdoings, but the current worry is that removing the death penalty for these crimes will compromise public safety. This relates to defending the release of those who were convicted in gruesome trials and for utilising force against the nation.

There is an urgent need for clarity regarding the concept of the rarest of rare cases because there are numerous irregularities in the application of the principle of the rarest of rare in cases where the death penalty is in question. Although various high courts from various states have established a judicial trend that the death penalty is constitutional in nature, this trend needs to be reversed immediately.