
CAPITAL PUNISHMENT AND HUMAN DIGNITY

Hansi Prashanth Jain, BML Munjal University

Introduction

In this essay, I will attempt to show that capital punishment unhinges the concept of human dignity. The concept of human dignity in India has evolved through the jurisprudence of courts. However, the rulings that have upheld the constitutionality of the death penalty have not substantively considered the question of human dignity and have provided flimsy justifications to support their position. Hence, I will look at how human dignity is defined by different Indian cases and show that the concept of dignity followed in some cases is different from the concept of dignity which is taken into consideration while examining the constitutional validity of the death penalty. I will also look at the constituent assembly debates to show the mindset of the framers of the constitution.

Section 302 of the Indian Penal Code, states that whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to a fine. The IPC is the document that prescribes the death penalty as a legitimate source of punishment. The IPC was a colonial legislation enacted in the 1860s, codified by Thomas Babington Macaulay. The UK however, abolished capital punishment in the year 1965. The country that drafted this rule, has repealed it. Why then has India not abolished it?)

In three cases—Jagmohan Singh v. State of Uttar Pradesh¹ (1973), Rajendra Prasad v. State of Uttar Pradesh² (1979), and Bachchan Singh v. State of Punjab³ (1980)—the Supreme Court maintained the death penalty's constitutionality. It declared that if the death penalty is established by law and the procedure is fair, just, and reasonable, a convict may receive the death sentence. Judges should provide "special reasons" when passing death sentences because this will only occur in the "rarest of rare" circumstances.

¹ 1973 SCC (1) 20

² 1979 SCC (3) 646

³ 1882 AIR 1325

Before discussing if the death penalty completely derails the concept of human dignity. It is pertinent to understand how the Indian courts perceive human dignity.

Human Dignity and Capital Punishment

The way dignity has been applied in the cases that discuss the constitutional validity of death penalty is impoverished. However, the concept of dignity has evolved over time through the jurisprudence of Indian courts.

Human dignity as such is just mentioned once in the preamble of the constitution and it has developed and found its way into Article 21 through a number of precedents. Human dignity is now considered a constitutional value and is the basis for several rights provided to marginalized sections and those sections of society that were in conditions that are not dignified.

Article 21 states that no person can be deprived of his life and liberty except according to the procedure established by law. The cases listed below are not cases related to capital punishment, however, they are cited to show what the position of human dignity is in India.

In the case of *M. Nagaraj v. Union of India*,⁴ it was held that “It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away.” In the case of *Shabnam v. Union of India*,⁵ it was held that “This right to human dignity has many elements. First and foremost, human dignity is the dignity of each human being as human being. Another element, which needs to be highlighted ... is that human dignity is infringed upon if a person's life, physical or mental welfare is harmed. It is in this sense torture, humiliation, forced labour, etc. all infringe on human dignity.” In the case of *National Legal Services Authority v. Union of India*,⁶ it was held that the basic principle of the dignity and freedom of the individual is common to all nations, particularly those having democratic set-ups.

In my understanding, the above-mentioned cases show that-

⁴ (2006) 8 SCC 212

⁵ Writ Petition (Criminal) No. 89 of 2015

⁶ AIR 2014 SC 1863

- a. The state has a duty to protect and facilitate human dignity by taking positive steps in that direction.
- b. Human dignity is infringed if a person's life, physical or mental welfare is harmed.
- c. Dignity is common to all democratic nations.

When dignity is seen in the light of the above precedents it is easy to decipher that capital punishment completely violates the concept of human dignity laid down by the apex court in recent years.

The physical and mental welfare of a person subjected to capital punishment will definitely be harmed and therefore, will violate the dignity of that person. The state also has a duty to facilitate and protect the dignity of an individual, which is clearly not happening as people are still subjected to capital punishment in the "rarest of rare" cases.

More than 70% of the world's countries have abolished capital punishment in law or practice⁷. The basis for most countries to abolish the death penalty is human dignity. For example, In South Africa, the Death penalty was abolished as it was considered to be Cruel, inhumane and degrading punishment that infringes on the right of Human dignity, the Canadian Supreme Court too in the case of *Kindler v. Canada* held that capital punishment constitutes a serious impairment of human dignity. It is said to be the ultimate desecration of human dignity⁸.

If dignity is common to all democratic nations then and if most of the nations look at capital punishment in a way that derails human dignity, then logically India must have a similar view on it too and must abolish capital punishment.

The dissenting opinion of Bhagwati. J. in the case of *Bachchan Singh v. State of Punjab* talks about how our constitution is a humane document which respects dignity of the individual and the worth of the human person and directs every organ of the state to strive towards achieving the constitutional value of human dignity. Bhagwati J. goes on to say that "the entire thrust of the Constitution is in the direction of development of the full potential of every citizen, the right to life along with basic human dignity is highly prized and cherished and torture, cruel or

⁷ <https://deathpenaltyinfo.org/policy-issues/international>

⁸ AIR 2017 SC 4161

inhuman treatment or punishment which would be degrading and destructive of human dignity are constitutionally forbidden.⁹” These are views I agree with.

Dignity was held to be a constitutional principle, rather than free standing fundamental right. In the case of Justice K.S Puttaswamy (retd.) and Anr. v. Union of India¹⁰. Dignity, in my opinion being a constitutional principle and value must not be curtailed or restrained in any sense. In the case of M. Nagaraj v. Union of India¹¹ it was held that “Human dignity refers to the intrinsic value every human carries and this cannot be taken away by the state.” Even though capital punishment is awarded in the “rarest of rare” cases it is derailing the concept of human dignity, which is a constitutional principle and must be kept on the highest pedestal. It was also held in the case of Justice K.S Puttaswamy (retd.) and Anr. v. Union of India¹² that dignity is an intrinsic value “Intrinsic value also leads to the right to integrity, both physical and mental. The right to physical integrity includes the prohibition of torture, slave labor, and degrading treatment or punishment.”

The question now arises will capital punishment amount to degrading punishment? The answer to this question lies in the south African case of State v. T. Makwayane and M Mchunu¹³. In this case, the South African Constitutional Court held that “Death is the most extreme form of punishment to which a convicted criminal can be subjected. Its execution is final and irrevocable. It puts an end not only to the right to life itself but to all other personal rights which had vested in the deceased under Chapter Three of the Constitution. In the ordinary meaning of the words, the death sentence is undoubtedly a cruel punishment. It is also an inhuman punishment for it “...involves, by its very nature, a denial of the executed person's humanity”, and it is degrading because it strips the convicted person of all dignity and treats him or her as an object to be eliminated by the state.”

Capital punishment is therefore a degrading punishment as death is final and irrevocable, it strips the convicted person of dignity and is in ultra-vires with the right to physical integrity.

In my opinion, the court’s jurisprudence in the recent cases which involve human dignity must be applied while testing the constitutionality of capital punishment. If the above precedents are

⁹ 1882 AIR 1325

¹⁰ AIR 2017 SC 4161

¹¹ (2006) 8 SCC 212

¹² AIR 2017 SC 4161

¹³ 1995 (3) SA 391

applied, one can come to a logical conclusion and say that capital punishment unhinges the concept of human dignity.

Framers of The Constitution and Capital Punishment

In the case of *Bachchan Singh v. State of Punjab*, the court held that the framers of the constitution were well aware of the provision of capital punishment of the IPC, and the words used in Article 21 translate to say that a person can be deprived of his right to live in accordance with fair, just and reasonable procedure established by a valid law, the same as the ratio of the judgment of *Jagmohan Singh v. The State of UP*. On the basis of these findings, the apex court in both cases held that capital punishment is constitutional and doesn't defile human dignity. The court in these cases did not dwell on the meaning of human dignity, but simply said that capital punishment does not derail human dignity.

While grappling with a number of issues, one of the issues the constituent assembly came across was the constitutionality of the capital punishment. Mr. Z.H. Lari, who was a part of the constituent assembly debates pointed out that capital punishment must be abolished and the reason for the same was the "sanctity of Human life."¹⁴

One may interpret the principle of the "sanctity of life" more mundanely as the principle of the absolute value of humans. "Sanctity of "life" requires us to uphold life. The "sanctity of life" principle holds that every life is of equal value regardless of condition.¹⁵

The theological or philosophical view that all human life has an inherent dignity, worth, and holiness that distinguishes it from all other beings in the world is known as the sanctity of life. This viewpoint does not claim that human life is holy in the sense that it is divine, but rather that it is unique within the biological world and has an inestimable value, making it deserving of preservation for the duration of its full existence. The notion of the sanctity of life, which has philosophical and religious underpinnings, is applied to a variety of bioethical matters, including abortion, euthanasia, genetic engineering, and cadaver organ transplants.¹⁶

¹⁴29th November 1948, Constituent Assembly of India Debates (Proceedings)- Volume VII

¹⁵ Swartz, N. P. (2015). Sanctity of Life and Human Dignity as Human Rights Values Vis-À-Vis The Death Penalty: A Religio-Ethico Reflection. *Advances in Social Sciences Research Journal*, 2(4).

<https://doi.org/10.14738/assrj.24.653>

¹⁶ <https://www.encyclopedia.com/science/encyclopedias-almanacs-transcripts-and-maps/life-sanctity>

In my understanding, the speaker Mr. Z.H Lari tried to convey that every human irrespective of what they've done, deserves to live and the state cannot award capital punishment as it is permanent and irrevocable. Mr. Z.H Lari in my opinion spoke about human dignity and how it will be infringed if capital punishment is awarded to a criminal. One of the other speakers Mr. Amiyo Kumar Gosh then agreed with Mr. Z. H. Lari and said that the state must revise the punishment of the death penalty and a more reformatory punishment needs to take its place, however, the speaker also felt that the proper place of doing this is not the Constitution of India. The speaker said that this can be done only by amending the IPC later on¹⁷.

This shows that the framers of the constitution spoke about human dignity through the words "sanctity of life" and wanted an amendment of the IPC which would then abolish the death penalty. One of the speakers disagreed but however mentioned that the topic is open to debate.

Therefore, the reasoning of the courts that the framers of the constitution were in favor of capital punishment is wrongly formed, as the makers of the constitution wanted an amendment of the IPC and not another article in the constitution.

Capital Punishment as a Deterrent To Crime

One of the other reasons mentioned in the case of Bachchan Singh was that India needs capital punishment, as it is a deterrent to crime. In *Bachchan Singh v. Union of India*, it was held that "in most of the countries of the world including India, a very large segment of the population including notable penologists, judges, jurists legislators, and other enlightened people believe that death penalty for murder and certain other capital offenses does serve as a deterrent and a greater deterrent than life imprisonment." This view was taken in a lot of judgments where the death penalty was discussed.

In the case of *Jagmohan Singh v. State of UP*¹⁸ it was held that "A large number of murders is undoubtedly of the common type. But some at least are diabolical in conception and cruel in execution. In some others where the victim is a person of high standing in the country society is liable to be rocked to its very foundation. Such murders cannot simply be wished away by finding alibis in the social maladjustment of the murderer. Prevalence of such crimes speaks,

¹⁷ 30th November 1948, Constituent Assembly of India Debates (Proceedings)- Volume VII

¹⁸ 1973 SCC (1) 20

in the opinion of many, for the inevitability of death penalty not only by way of deterrence but as a token of emphatic disapproval of the society.”

In the case of *Ediga Annamma v. State of Andhra Pradesh*¹⁹, the court held that “deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime.”

The 35th law commission report too, stated that capital punishment must not be abolished as it is a deterrent to crime.

However, it has been found that the murder rate in non-death penalty states has remained consistently lower than the rate in states with the death penalty, and the gap has grown since 1990.²⁰

Deterrent as defined by the Oxford dictionary means something that makes somebody less likely to do something.

Immanuel Kant’s view on human dignity regards human dignity as an absolute value. “In his opinion, human beings are precious "beyond any price" because they have "an intrinsic worth, i.e., dignity." Kant believed that people could never be "used" as a means to an end. He even went so far as to say that this is the fundamental moral principle.

As rational beings, the beings we are discussing must be respected for their reason, which is what is meant by "considering them as ends-in-themselves." Therefore, no matter how noble our goals may be, we may never manipulate or use individuals to reach those goals.²¹”

Now keeping in mind, this definition of human dignity, if a man is sentenced to capital punishment because it will instill fear in others and prevent others from committing crime, then the person being executed is used as a means to an end. The goal however, is to reduce crime, but the Kantian view on human dignity makes it clear that no matter how noble the goal is, no individual must be used to reach the goal. No human must be used as a mere object to fulfil the goal of reducing crime in the country.

¹⁹ (1974) 4 SCC 443

²⁰ <https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>

²¹ From James Rachels, *The Elements of Moral Philosophy*, pp. 114-17,122-23

Therefore, the reasoning of the courts itself derails the concept of human dignity, as stated by Kant. Capital punishment being a deterrent to a crime, should not be a ground while checking the constitutionality of the death sentence. Awarding Capital punishment to anyone because it acts as a deterrent to crime, would be using the person to achieve a goal, which is completely against the concept of human dignity laid down above.

The constitution of India was made after great consideration and thought and the framers of the constitution worked towards ensuring dignity, freedom and equality for all Indians who had been deprived of these fundamental rights in the past. India being a country that was under colonial rule for over a period of 200 years, must keep human dignity at the highest pedestal. In the above essay, I have tried to bring out inconsistencies in the judgments that upheld the constitutionality of capital punishment. I have tried to touch upon three key points. Firstly, the concept of dignity has evolved since these judgments, and the concept of dignity as laid down by the supreme court in recent years must be used while checking whether capital punishment is constitutional or not. Secondly, I have tried to delve into the constituent assembly debates in order to show that the framers of the constitution too, wanted to be done away with capital punishment. Lastly, I have looked at the Kantian view of human dignity and applied that to the reasoning of the courts to show that the reasoning provided by the courts to uphold the death penalty in itself unhinges human dignity.

Capital Punishment is a cruel, inhumane, and degrading punishment, that violates the basic constitutional value that is human dignity, which must be upheld that all times.