
INTERNATIONAL STANDARDS V/S NATIONAL PRACTICE: A COMPARATIVE ANALYSIS OF INDIA'S DEATH PENALTY JURISPRUDENCE

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ABSTRACT

This research paper conducts a detailed examination of India's death penalty jurisprudence, scrutinizing the relationship between international standards and the nation's actual legal practices. The study begins by declining the historical evolution of India's approach to capital punishment and the key legal frameworks that govern it. Subsequently, the paper engages in a comparative analysis of India's death penalty practice with prevailing international standards and guideline.

This research critically evaluates how India's legal system aligns with international Human Rights norms and treaties concerning the death penalty. This involves an exploration of the country's adherence to principles such as due process, fair trial standards, and the prohibition of cruel, inhuman, or degrading treatment. The study seeks to highlight areas of convergence and divergence, shedding light on the challenges and opportunities for harmonizing India's Death Penalty jurisprudence with global Human Right benchmarks.

Additionally, the paper investigates the impact of international perspective on India's domestic legal landscape, considering factors such as judicial decisions, legislative development, and public disclosure. By examining landmark cases and legal precedents, the research aims to elucidate the influence of international standards on shaping India's Death Penalty Jurisprudence and the extent to which these standards are integrated into the national legal frameworks.

Furthermore, the study delves into the societal implications of India's death penalty practices, exploring issues of transparency, access to legal representation and the potential for systematic biases. Through an interdisciplinary approach, incorporating legal analysis and sociological perspective, the paper aims to provide a holistic understanding of the

interplay between international standards and the actual implementation of the death penalty in India.

In conclusion, this research paper contributes a nuanced examination of India's death penalty jurisprudence within the context of international standards. By synthesizing historical, legal, and societal perspective. The paper aims to illuminate the challenges and possibilities associated with aligning national practices with global human right norms. The findings of this study offer valuable for policymaker, legal practitioners and scholar engaged in discussion on the evolution and reforms of India's Death Penalty Jurisprudence.

Keywords: Death Penalty, Jurisprudence, Human Rights Norms, Fair Trial Standards, Legislative Developments.

• INTRODUCTION

Capital Punishment has been a perennial subject of intense scrutiny, evoking debates surrounding justice, morality, and human rights on global scale. Within this context, the interplay between international standards and national practice become a focal point of analysis, exemplified by the nuanced examination of India's death penalty jurisprudence. This research embarks on a comprehensive exploration, seeking to unravel the complexities inherent in the relationship between India's domestic approach to capital punishment and the overarching international human rights framework that advocate for its abolition or stringent regulation.

India, a nation with a rich and diverse legal landscape, has witnessed a dynamic evolution of death penalty jurisprudence over the years. This paper aims to navigate this intricate terrain by tracing the historical trajectory of capital punishment in India, elucidating the pivotal legal doctrines that have shaped its application. From the colonial era to the present, the evolution of India's death penalty jurisprudence forms a backdrop against which the comparative analysis with international standards is conducted.

Moreover, the research extends beyond the legal realm to explore the societal implications of India's death penalty practices. By incorporating sociological perspective, the paper delves into issues of transparency, access to legal representation and the potential for systematic biases.

This interdisciplinary approach aims to offer a holistic understanding of the impact of India's death penalty practices on its diverse population.

• CAPITAL PUNISHMENT IN INDIA

The term “Capital” is derived from Latin word “capitalis” means the head. Thus, capital punishment means to lose one’s head.

Capital punishment is also known as Death Penalty. It refers to the execution of a criminal who is sentenced by the court to death for any serious crime. This is the most serious form of punishment that an individual can get. It serves as punishment for most heinous, grievous crime against humanity.

(A) HISTORY OF DEATH PENALTY BY HINDU LAW

According to the Hindu Law, death penalty played an important part in the history. Throughout the history, the death penalty and exile were used as a direct means of execution of individuals who committed serious crimes against the humanity.

References, to death penalty cases are deeply rooted in the history of the Hindu community, and were also evident in the ancient sculptures and texts.

Death penalty was implemented with a focus on inflicting maximum torture to create a profound impact on society. Historical findings trace remnants of the death penalty back in fourth century.

(B) HISTORY OF DEATH PENALTY BY MUSLIM LAW

According to Muslim Law, death penalty is operated under Sharia Law which is derived from Quran, Sunnah (Hadith), Ijma, Masalih-al-Mursala and Qiyas.

In verse 2:30 of Quran it is clearly said “Your Lord is said to be angles, I am appointing vicegerent on Earth”. It means that “Your lord said to be the angles, I am about to create a human being out of clay, when I have fashioned him and breathed of my spirit into him, kneel in front of him”

According to Islamic beliefs, the act of giving life (Ijad) and taking it away (Idam) are exclusively divine prerogatives.

In alignment with Sharia Law and the Quran, to prevent heinous crime, the Quran permits the authority, other than Allah, to take life through legal and due process of law.

• **CRIMES FOR WHICH DEATH PENALTY IS GIVEN IN INDIA.**

(A) MURDER

According to Section 302 of IPC, murder is a heinous crime.

In case of Bachchan Singh V/s State of Punjab the Supreme Court ruled that the death penalty is deemed constitutional when applied as an exceptional punishment for severe crimes.

(B) RAPE

According to Section 375 of IPC, rape is a heinous crime. Those who cause the victim's death during a rape, show cruelty to the victim's body, or engage in gang rape may receive death sentence.

The Nirbhaya case refers to the brutal gang rape and murder of a young women in Delhi in 2012. The perpetrators were sentenced to death and the case sparked widespread outrage, leading to legal reforms and increased awareness regarding sexual violence in India.

(C) TREASON

If someone attempts to engage in warfare against the government, they may also face the possibility of receiving the death sentence.

In case of Sarabjit Singh V/s State of Punjab, Sarabjit Singh faced charges related to spying and involvement in bomb blast, which were considered acts of waging war against the Indian Government.

The supreme court upheld his death sentence, emphasizing the severe nature of the charges and the potential threat to national security.

(D) TERRORISM RELATED CRIME

Engaging in the activities that jeopardize people's life or cause significant harm to property,

involving the use of the explosions, fall under terrorism and may lead to punishment, including death penalty.

• **POSITIVE ASPECT OF CAPITAL PUNISHMENT**

Supporters of death penalty argue that it should be retained not only in India but globally. They assert that citing civilised nations should not be a reason to abolish the death penalty. They believe that it is justified in severe cases like murder, rape, serving as a punishment for criminals with a profound sense of guilt. It is claimed that giving death penalty will provide justice to the victim and have a positive impact in the society.

• **NEGATIVE ASPECT OF THE DEATH PENALTY**

The prevalent observations indicate a flawed justice system and a compromised right to justice, leading to the unjust execution of the innocent individuals. Deficiencies in the legal procedures often result in wrongful convicting individuals who struggle to present evidence of their innocence in the court. The ethical dilemma arises concerning the appropriateness of administering death as punishment for murder, rape. Many argue for the abolition of the death penalty and says that many nations support this stance, emphasizing the need to afford criminals an opportunity for rehabs, and reforming during their incarceration.

This approach aims to foster realization, repentance, and improvement in the life of the offenders.

• **LAW COMMISSION OF INDIA'S REPORT IN DEATH PENALTY**

The Law commission of India in its 262nd report (August 2015) recommended that death penalty be abolished for all the crimes other than terrorism related offences and waging war.

Complete recommendations of the report are as follows-

1. The commission advised the expeditious implementation of the Police Reforms, Witness Protection Scheme and Witness Compensation Scheme proposed by the government.
2. The progression of our legal principles, evolving from the elimination of the necessity for providing specific reasons for choosing life imprisonment over death penalty in 1955,

subsequently demanding special justification for imposing the death penalty in 1973, to the pivotal year 1918, wherein the Supreme Court constrained the death penalty to the exceptionally rare cases, reflects the trajectory we must follow. This course is guided by an understanding of the expanded and deepened facts of the right of life, heightened due process requisites in the state-individual relationship, prevalent standards of constitutional morality and human dignity. The commission opts that the time has arrived for India to move towards the abolition of the death penalty.

3. While there exists no sound or rational basis for distinguishing terrorism from other criminal offences, apprehensions are frequently expressed that the elimination of the death penalty for terrorism and war-related crimes may impact the national security. Despite the reservations raised by the legislator, the Commission perceives no justification for delaying the initial move towards abolishing the death penalty for all offences, excluding those related to terrorism.

4. The commission advised the abolition of the death penalty for all the offences other than those related to terrorism and acts of wars.

5. Furthermore, the Commission ardently wishes for a swift and irreversible trajectory towards Absolute Abolition.

• DOCTRINE OF RAREST OF RARE

The “RAREST OF RARE” doctrine in law, rooted in Indian Jurisprudence and shaped by significant judgements from the Supreme Court, addresses the imposition of the death penalty in criminal cases. This legal principle emphasizes the exceptional and severe nature of crimes that warrant the ultimate punishment.

Fundamentally, the doctrine advocates against the routine or mechanism of Death Penalty, emphasizing its reservation for the most heinous and extraordinary cases. The underlying philosophy recognizes capital punishment as an extreme measure, justifiable only when the committed crime is deemed so egregious that no other form of punishment is appropriate.

The Indian Judiciary, through various legal decision, has outlined specific criteria for identifying cases for identifying cases deemed the “Rarest of Rare”. There criteria encompass factors such as the brutality of the crime, the motive behind it, the gravity of harm caused and

the society's impact. Courts are tasked with a meticulous examination of case-specific circumstances to determine if the crimes meet the threshold of exceptional brutality and depravity.

A landmark case reinforcing the application of this doctrine is *Bachchan Singh V/s State of Punjab* (1980). In this judgement, the Supreme Court validates the constitutionality of the death penalty, emphasizing its imposition only in the rarest of rare cases. The court stressed the importance of a balance approach, considering both the nature of the crime and the characteristics of the offender, and mandated a comprehensive examination of aggravating and mitigating circumstances.

Over time, the doctrine has evolved through subsequent legal decision, refining criteria, and offering guidance to trial courts and appellate authorities. The judiciary's nuanced approach recognizes that the imposition of the death penalty has fuelled ongoing debates on its efficacy and morality.

Critics argue that the subjective nature of determining the rarest of rare cases introduces arbitrariness and allows for judicial decisions. Concerned about the potential errors, biases and the irreversibility of the death penalty have ongoing debates on its efficacy and morality.

In practice, applying the "rarest of rare" doctrine involves a careful consideration of case-specific details. Courts assess factors such as premeditation, cruelty and the impact on the victim's family, ensuring that the death penalty is reserved for cases that profoundly shock the collective consciences of society.

As global debates on the death penalty persist, the "rarest of rare" doctrine remains a significant legal framework aiming to balance the need for justice while preventing the arbitrary or excessive use of capital punishment. Its application reflects a nuanced understanding of the gravity of certain crimes, acknowledging that society's ultimate punishment should be reserved for the most egregious offences that defy ordinary moral and ethical bounds.

• UNDERSTAND THE NATIONAL AND INTERNATIONAL PERSPECTIVE OF CAPITAL PUNISHMENT (DEATH PENALTY)

- EVOLUTION OF INDIA'S CAPITAL PUNISHMENT JURISPRUDENCE.

India's approach to capital punishment has undergone substantial transformation over the period of time, spanning from the colonial era to the contemporary landscape. A comprehensive understanding of its historical trajectory is fundamental for contextualising the ensuing comparative analysis aligned with international standard. The infusion of capital punishment into the legal system during the colonial rule by the British laid the foundational framework. Post-independence the nation confronted the intricate task of delineating the parameters governing its application. This research meticulously traces the development of key legal doctrines and landmark cases that have significantly contributed to the shaping of India's death penalty jurisprudence.

(a) COMPARATIVE ANALYSIS IN ACCORDANCE WITH THE INTERNATIONAL STANDARDS.

The crux of this research paper involves a meticulous examination of how India's execution of the death penalty aligns with established global human rights frameworks. International instruments and treaties, epitomized by the UDHR (Universal Declaration of Human Rights), elucidating principles such as due process fair trial standards and the prohibition of cruel, inhuman, or degrading treatment- all which constitutes indispensable criteria for evaluating capital punishment. The research critically scrutinizes India's adherence to these principles delving into instances where the nation's practice either harmonize with or deviate from the prevailing global consensus. Such as analysis unveils the intricate complexities entailed in reconciling domestic practices within international norms.

(b) IMPACT OF INTERNATIONAL PERSPECTIVE ON INDIA'S LEGAL LANDSCAPE

Beyond the confines of legal doctrine, this research undertakes an exploration of the influence wielded by international perspective on India's domestic legal sphere. Through an exhaustive examination of landmark cases and legislative development, the study aims to shed lights on the resonance of global human rights consideration within Indian courts and legislative chambers.

International standards, with their considerable influence, play a pivotal role in shaping legal

discourse and decision-making. A nuanced comprehensive of this influence is indispensable for understanding the dynamic forces that Mold India's approach to death penalty, offering insights into the potential for alignment or tension between national and international legal framework.

• LANDMARK CASES OF CAPITAL PUNISHMENT

1. BACHCHAN SINGH V/S STATE OF PUNJAB (1980).

Background: Bachchan Singh was convicted of murder and sentenced to death. His appeal reached the Supreme Court, challenging the constitutional validity of the death penalty.

Decision: The Supreme Court, in a 4-1 decision, upheld the constitutionality of the death penalty. However, it introduced the "rarest of rare" doctrine, stating the capital punishment should be imposed only in the most exceptional cases where the alternative punishment is unquestionably foreclosed.

Impact: This case laid the groundwork for subsequent cases, establishing the "rarest of rare" doctrine as a guiding principle in determining when the death penalty is appropriate.

2. RAJENDRA PRASAD V/S STATE OF UTTAR PRADESH (1979)

Background: Rajendra Prasad was sentenced to death for the murder of his wife. The case reached the Supreme Court, challenging the imposition of the death penalty.

Decision: the Supreme Court emphasize the need for the court to provide special reason for awarding the death penalty. It highlighted that the death sentence should not be routine and should be reserved for cases where there are exceptional circumstances warranting such a severe punishment.

Impact: This case underscored the importance of providing a specific and compelling reason when imposing the death penalty, setting a precedent for subsequent judgement.

3. MACHHI SINGH V/S STATE OF PUNJAB (1983)

Background: Machhi Singh was convicted for murder and the case reached the Supreme Court for sentencing.

Decision: The Supreme Court expanded on the “rarest of rare” doctrine introduced in Bachchan Singh. It provided guidelines for determining when a case qualifies as the “rarest of rare” by considering factors such as the nature of the crime, motive and the character of the accused.

Impact: This case further clarifies the criteria for applying the death penalty, helping the court assess the gravity of the offences and make more informed decision on whether capital punishment is justified.

• **LEGAL PROCEDURE FOLLOWED IN INDIA.**

Upon receiving a death verdict from the Session (Trial) Court, finalization requires the validity by the High Court. Subsequent conformation by the High Court provides the convicted individual the opportunity to appeal to the Supreme Court. In the event of appeal denial or non-consideration by the Supreme Court, the condemned party may submit a mercy petition to both the President of India and the Governor of the State. The contemporary constitutional clemency authority of the President and the Governor is derived from the Government of India Act, 1935. However, unlike the Governor General, the President and the Governor in independent India lacks clemency power.

- EXECUTION PROCEDURE

(A) HANGING

Hanging entails meticulous preparation within the execution in the civilian court system. It encompassing the secure restraint of the condemned individual, the precise placement of a noose around the neck, and the utilisation of the trapdoor mechanism to affect a rapid and forceful drop. This method is inducing a fracture- dislocation of a cervical vertebrae particularly the second, leading to officially declare spinal cord damage and concurrently causing strangulation.

Following the execution, a duly qualified medical professional is engaged to officially declare the demise, adhering to legal regulation and human rights.

(B) SHOOTING

In context to capital punishment, the method involves use of firearms for the execution of the

condemned individual. This process is carried in an execution chamber, the strategic placement of proficient marksmen and the secure restraint or the appropriate position.

Qualified marksmen, following established protocols, uses firearms to administer a lethal shot with the objective of causing immediate and irreversible damage to the vital organs.

Following, the execution, an examination is done by a duly qualified medical professional serves to formally declare the demise.

• CONCLUSION

The imposition of the death penalty extends beyond a mere punitive measure when awarded to the accused. It involves terminating a life in the pursuit of justice and adherence to the law, arising moral concern as it signifies a lack of respect for human life. Advocating against the Death Penalty does not equate to supporting the criminal, rather it emphasizes the elimination of opportunities for personal growth and transformation that might otherwise alter an individual's life.

Democracies globally are increasingly embracing reformative theories of punishment, abandoning deterrent theories that negate the potential for improvement. Even the most heinous criminal are human beings, maintain a semblance a common human dignity.

The authority to decide who lives or dies based on self-established rules raises ethical question, highlighting the paradox of claiming to be civilized society while endorsing the act of killing in the name of justice.

The foundation of the Death Penalty lies in the deterrent theory, which aims to set example through fear, but reformative approached offer alternatives that allow for positive change.

Ancient and barbaric practices of capital punishment, involving the immoral act of taking human lives, should be abolished, recognizing the preciousness and irreversibility of life.

A democratic society should prioritize reformative theory over deterrent theory, emphasizing the potential for improvement and re-interrogation into society.

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