
CAPITAL PUNISHMENT IN INDIA: AN ANALYSIS

Jayaditya Bora, B.B.A.LL.B., KIIT School of Law, Bhubaneswar, Odisha

ABSTRACT

Capital punishment in India is a legal form of punishment in India for certain offences. The death penalty is currently used in India for offences such as murder, terrorism-related crimes, rape, etc. In India, capital punishment is allowed only in “*the rarest of rare cases*” and only after the due process of law is completed. The Supreme Court of India laid down the criteria for giving the death penalty in the Bachan Singh v. State of Punjab case in 1980. It held that the death penalty should be imposed only when the crime is of an “*extremely heinous nature*” and that there should be “*irreversible evidence*” of guilt. Capital punishment is carried out by either hanging or shooting. In India, the use of the death penalty has been declining over the years. In 2018, India executed four people, the lowest number since 1995. The debate over capital punishment in India is ongoing, with several human rights organizations and other groups advocating for its abolition. This research paper revolves around this very topic of “*capital punishment*” in India and its interpretation and meaning, constitutional validity and history along with some landmark and important cases.

Introduction

Every punishment is predicated on the idea that there must be a consequence for transgression. There are two basic justifications for applying the penalty. One is the idea that it is both fair and just for someone to pay for their wrongdoing, while the latter is the idea that punishing offenders deters others from committing crimes. The same premise underlies other penalties and the death penalty or capital punishment as well.¹

Given the circumstances of today, the debates and arguments over the death penalty is the one that is most universally pertinent. Death penalty is a crucial component of the criminal justice system in India. The presence of the death penalty is criticized as inhumane due to the growing power of the human rights movement in India. However, this is a peculiar argument, as it is morally wrong to safeguard a person's life at the expense of the lives of many other innocent members of society or potential victims.²

India is a nation that adheres to the “*innocent unless proven guilty*” rule of law and the reformatory theory of law. The death penalty is the harshest punishment a condemned person can receive. As a result, India does not frequently pass death sentences. The death penalty, which is reserved for the most heinous or serious offences, was imposed for instance by the Supreme Court in the horrific case of Nirbhaya rape case since, this case was one of the rarest of the rare case. Executions for these offences typically include hanging i.e., the offenders are hanged to death. Yet it's important to note that it's a relatively uncommon phenomenon in India. The death penalty is covered under both the Code of Criminal Procedure (1973) and the Indian Penal Code (1860).²

Capital Punishment

The Latin word “*capitalis*” which means “*concerning the head*” is where the English word “*capital*” originates. Hence, capital punishment implies to lose one's head i.e., death penalty for committing a heinous offence. The expression “*capital punishment*” refers to the worst

¹ Unknown, *Constitutional Validity of Capital Punishment*, NEWINDIALAW.BLOGSPOT.COM, (Mar. 16, 2023, 5:45 PM), <https://newindialaw.blogspot.com/2012/11/constitutional-validity-of-capital.html>. ² Lok Sabha Secretariat, *Capital Punishment in India*, LOKSABHADOCS.NIC.IN, (Mar. 16, 2023, 5:55PM), https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/CAPITAL_PUNISHMENT_IN_INDIA.pdf.

² Gurpreet Kaur Dutta, *Capital Punishment in India: Laws and Cases*, FINOLOGY BLOG (Mar. 16, 2023, 6:13 PM), <https://blog.finology.in/Legal-news/capital-punishment-in-india>.

type of punishment. It is the penalty for the most egregious, terrible, and abhorrent acts committed against people.³

Although the nature and severity of these offences differ from nation to nation, state to state, and age to age, the death penalty has always been the result of capital punishment. In law, criminology, and penology, the term “*capital sentence*” refers to a death sentence. The manner for carrying out the death sentence is described in Section 354 clause (3) of the Code of Criminal Procedure (1973), which is “*Hanging by the neck until dead*”.

- The terror attack in Mumbai, 2008 by Mohammad Ajmal Amir Qasab who was executed on November 21, 2012 at the Yerwada Jail in Pune.
- Dhananjay Chatterjee, who was accused with killing and raping a minor girl aged fourteen. He was found guilty and was sentenced to death. He was hanged on August 15, 2004 in Alipore Jail Kolkata.
- Yakub Memon, who was found guilty of involvement in the 1993 Bombay bombings, was executed by hanging on July 30, 2015 at the Nagpur Central Jail.

The aforementioned cases are some famous cases due to the severity of the offences committed by the offenders and the Court of law awarded the convicts death sentence or capital punishment.⁴

History of Capital Punishment in India

Under Hindu Law:

Death punishment convictions date back as far as the Hindu religion and community. The old texts and writings make reference to the death punishment. The Hindu judicial system did not consider the death sentence to be cruel, and it was instead substituted by as much torment as feasible to establish a repressive effect on society so that people abstain themselves from committing crimes or wrongdoings.

³ Manmeet Singh, *Is Capital Punishment Ethical*, Legal Service India (Mar. 16, 2023, 6:25 PM), <https://www.legalservicesindia.com/article/1882/Is-Capital-Punishment-Ethical.html>.

⁴ Gurpreet Kaur Dutta, *Capital Punishment in India: Laws and Cases*, FINOLOGY BLOG (Mar. 17, 2023, 7:40 PM), <https://blog.finology.in/Legal-news/capital-punishment-in-india>.

Kalidasa who was a Sanskrit author and who is considered as one of the greatest poets in ancient India, has eloquently illustrated the need for the death penalty. The Mahabharata and Ramayana (*Historical & Mythical epics*) have also argued for the necessity of the death sentence by declaring that the king's main objective is to safeguard society from dangers of all types, which may be accomplished by putting the offender to death.

Ashoka who was one of the great emperor of the Maurya Empire did not believe that the death sentence was unfair even in the Buddha's period, when Ahimsa (non-violence) was the moral law or code of conduct. Deterrence and mental wellness were the core principles of the Dand Niti i.e., the punishment policies in India.

There is no denying that the Hindu criminal justice system is heavily influenced by the ideas of social security and non-correctional philosophy. Manu Smriti, one of his well-known works, illustrates the wrongdoing and the vulnerability of the culprit. In his works, Kautilya or Chanakya who was an ancient Indian polymath, also addressed the death sentence since, in his opinion, it is a crucial instrument for securing safety of the public.⁵

Under Muslim Law:

Sharia law, which governs Islamic traditions and the culture, was created based on the Quran, the Hadith (Sunnah), the Ijma', the 'Urf, the Masalih al-Mursala, and the Qiyas, which are the sources of Islamic law and was thus, derived from these said sources.

The Quran opposes the justification of taking a person's life. Ijad: the act of giving life and Idam: the act of taking it away, are seen in Islamic philosophy as wholly divine rights. The Quran allows the taking of life by authorities other than Allah through the proper channels of law and justice, as required by Sharia Law, in order to prevent other horrific crimes from taking place in society. According to Sharia law, the following offences are listed.

- Hadd Crimes: "*Hadd or Huhud*", which alludes to the penalty established by Allah himself, were the terms used to describe the offences that had an impact on the society. This category of crimes includes homicide, robbery, drinking alcohol, carnage, apostasy i.e., *the abandonment or renunciation of a religious or political belief or*

⁵ Naveen Talawar, *Capital punishment in India*, iPLEADERS BLOG (Mar. 17, 2023, 7.35 PM), <https://blog.ipleaders.in/capital-punishment-in-india-2/>.

principle, and insurrection. The punishment for these offences will be severe, and neither the judge nor the victim have the authority to alter the verdict.

- Tazir Crimes: Tazir in Islamic law refers to a crime's punishment at the judge's or state's ruler's discretion. Criminal offences fall under this category of crimes. The courts have the ability to determine whether to press charges against these kinds of offences, unlike the first set of crimes. Obscenity, fabricated evidence, and attempted infidelity or adultery are included in this category of offences.
- Qisas Crimes: Premeditated murder, attempted premeditated murder, accidental murder, and purposeful or unintentional wounding are the offences covered by Qisas. The offences under this category are punishable by Qisas (*equal punishment for the crime committed*) or Diyut (*compensating the victim or their legal heirs*), and in such circumstances, the victim or his/her legal guardian, may forgive or lessen the penalty

The severity of the crimes and the penalty are different for each of the three types of aforementioned category of crimes, and each category has a specified punishment or penalty.⁶

Capital Punishment Before & After Independence

It wasn't until the year 1931 that the question of capital punishment came up in the British India legislative assembly when Shri Gaya Prasad Singh, a representative from Bihar, sought to present a measure to do dispense with the death penalty for offences included by the Indian Criminal Code. Nonetheless, once the then Home Minister answered, the proposal was rejected. During discussions in the Legislative Assembly prior to independence, then Home Minister Sir John Thorne clarified what the government's stance was towards the death sentence in British India. The death sentence for any offence for which it is now sanctioned is still in effect, according to the government and it does not believe that it is judicious to revoke capital punishment or death penalty as a form of punishment for heinous crimes.

The Indian Penal Code of 1860 as well as the Code of Criminal Procedure of 1898 were two colonial era legislation that the Indian government enacted after gaining its independence. Six penalties, including the death penalty, were imposed by the IPC.⁶

Reformative and deterrent theories of punishment combined together has created the basis of Indian criminal law. Using penalties to discourage criminals is necessary, but the perpetrator

has to be provided the opportunity to make amends. When the death sentence is applied, the courts must give a thorough explanation of why it was applied.

Crimes Punishable by Death Penalty

There are various offences under the IPC (1860) which are punishable by death, for instance, murder, terrorism-related activities, waging war against the state or country, abetting suicide, and rape etc. Practicing sati or promoting it directly or indirectly is a serious offence in India and it can be punishable by death under Sati Prevention Act of 1987.

For those who participate in the manufacturing or distribution of drugs and narcotics or psychoactive drugs in a pre-set amount or who provide financial assistance based on prior offences, Section 31 A of the Narcotic Drugs & Psychotropic Substances Act imposes death sentence or capital punishment for such offences.

Offences committed by military forces or personnel under military laws like the Army Act of 1950, Navy Act of 1957 or Air Force Act of 1950. Such offenders committing certain offences under the aforementioned military statutes may be punished by death.⁶

Offenders Exempted from Death Penalty

Intellectually or Mentally Challenged / Disabled Person:

Someone who is cognitively challenged or retarded may qualify as an offender who is immune from capital punishment under the law. It is generally described as having an intellectual handicap if the person committing a heinous crime is unable to understand the nature and effects of his / her acts. A person who has a criminal background may not be cognizant of the facts and circumstances i.e., the intricacies of their offence due to their intellectual disability. As a result, the law making authorities included those with intellectual disabilities to the category of offenders who are excluded from capital punishment.⁶

Children below the age of 18 (Minors):

According to Indian laws, someone who has committed a crime while still a minor, that is,

⁶ Naveen Talawar, *Capital punishment in India*, iPLEADERS BLOG (Mar. 18, 2023, 11.05 AM), <https://blog.ipleaders.in/capital-punishment-in-india-2/>.

under the age of 18, cannot be executed. The lawmakers decided to include minors in the group of offenders that are exempted from the death penalty because they thought that anyone who hasn't reached maturity has room for improvement and might be able to learn from his / her mistakes by being given the right environment and education. In addition, a separate law known as the Juvenile Justice Act (2015) is a statute implemented in situations involving minors & it is beneficial for juveniles because it gives them a chance to improve.⁷

Pregnant Women:

According to Sec.416 of the Code of Criminal Procedure (1973) a woman who's been given a capital punishment may have her sentence delayed or converted to life imprisonment if the Court determines that she is expecting a baby. This is justified by the fact that executing the pregnant woman offender by capital punishment would kill both the mother and the unborn child. The unborn kid in the woman's womb hasn't done anything wrong and doesn't deserve to perish as a result of what she did. So, pregnant women may be included in the group of criminals who are exempted from the capital punishment.⁷

Procedure After the Imposition of the Capital Punishment

1. The Session's Court is in charge of making decisions in criminal cases in India. Cases involving murders, theft, dacoity, etc. are some of the cases handled by the court. Since adjudication of such heinous cases takes place in the Session's Court, the judge of the said court may award a death penalty depending on the kind of offence committed by the offender.
2. Following the imposition of the punishment and in line with Sec.366 of the Code of Criminal Procedure (1973), the Session's court must provide the matter to the High court of the appropriate state seeking affirmation of the penalty. Until the High Court affirms the sentence, the Session's court must place the accused offender in prison custody with a warrant.
3. In accordance with Sec.367 of the Criminal Procedure Code of 1973, the High court can direct for a more thorough investigation of the crime which took place or the gathering of further evidence at any time where it is pertinent to the guilt or innocence of the convicted individual.

4. In accordance to Sec.368 of the Criminal Procedure Code of 1973, the High court has the authority to uphold a conviction, inflict any additional punishment it sees fit, or modify the accusations and order for a new trial, it can nullify the conviction and also can also acquit the convicted offender. The sentence cannot be confirmed by the court until the deadline for submitting an appeal has passed.
5. Each judgment or sentence that is presented before the High Court for verification under Sec.369 of the Criminal Procedure Code of 1973 regardless of whether it is a fresh sentence or one that the High Court has previously imposed, must be signed & approved by at least two judges.
6. In accordance with Sec.371 of the Criminal Procedure Code of 1973, the Honourable High Court's affirmation of a judgement or any other decision shall be delivered to the Session Court without any delay and it should bear the seal or stamp of the High Court and it should be authenticated by the official signature of a High Court Officer.

Clemency Powers

The High Court must affirm the capital punishment in order for it to be executed as a final judgement. In the event that the conviction is affirmed, the convicted party may appeal to the Supreme Court. The convicted individual may next file a mercy plea to the President of India and the Governor of the state if the appeal petition is rejected by Supreme court.

In accordance with Articles 72 & 161 of the Indian Constitution, the President and Governors have the power *“to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the sentence of any person guilty of any offence.”*⁷

Although they can exercise the aforesaid powers in conformity with Article 74 & Article 163 that states Council of Ministers will aid and advice the President and the Governor.

Procedure to Execute Offenders in India

If a convict is awarded a death penalty by the Court of law due to the offence committed by the offender, then he shall be executed by hanging him to death. According to Sec.354 (5) of the

⁷ INDIA CONST. art. 72, cl. 1, art. 161.

Criminal Procedure Code of 1973, hanging is the sole method of execution approved in India for the execution of a civilian, and it is the only method used in the civil court system. The sentence given by the Court will direct that the offender shall be hanged by the neck till he / she dies.⁸

Shooting: Firing or shooting is also another method of execution practised in India. A shooting / firing squad member can execute a criminal who has been awarded the capital punishment. Air Force, Navy & the Army are the only institutions equipped to carry out the execution of the offenders using this method. The Army Act of 1950 specifies that both hanging and firing are acceptable methods of execution within the Army Court-Martial system.¹⁰

Constitutional Validity of Capital Punishment

The fundamental rights to life and personal freedom are protected by the Indian Constitution's Article 21. Although every individual is given "*the right to life and personal freedom*" under this article, the state has the power to restrict or revoke even this right in order to preserve peace and order.

According to the ruling in the case of "*Maneka Gandhi v. Union of India*"⁹, the Court stated that the method regarding the execution (capital punishment) must follow a proper procedure since it involves taking away a person's life. It also needs to be fair, rational, and impartial. It indicates that the government may impose restrictions on or remove a person's right to life through the passage of legislation, provided that a just and legitimate process is followed. But nevertheless only the most severe crimes are to be punished with capital punishment and it is not and should not be a punishment for any and all crimes. The lawmakers have long talked about and debated the subject of death penalty. Nevertheless, after years of discussion and controversy, Indian lawmakers have not made a final decision about the retention or abolition of the procedure of capital punishment.

The majority of countries have various views on crime and varying approaches to penalising offenders. India, like many other countries, believes that altering the criminal's conduct and behaviour and helping them to be better, responsible and good human beings towards the

⁸ The Code of Criminal Procedure, 1973, sec. 354, cl. 5

¹⁰ The Air Force Act, 1950, sec. 163.

⁹ *Maneka Gandhi v Union of India*, (1978) SCR (2) 621.

society is a better method to deal with crime than using traditional forms of punishment.

India is one of 78 other countries that continue to use capital punishment.

Rarest of Rare Doctrine: This doctrine was established by the Supreme Court in the case of *“Bacchan Singh v. State of Punjab”*¹⁰. The Supreme Court maintained the death penalty's legitimacy in this case and a rule was established stating that it should only be used in the *“rarest of rare cases”*. The exact parameters of this term were not specified, though. According to the case, death penalty is legitimate and constitutional if it is set out as a punishment alternative for the offence of murder and if the standard punishment set forth by law for murder is imprisonment for life. This indicates that the death sentence can only be applied in the *“rarest of rare cases”* when all other options have been exhausted.

Later in the case of *“Macchi Singh v. State of Punjab”*¹¹ the Court laid down some guidelines for assessing whether an offence fell under the ambit of the doctrine of *“rarest of rare cases”*.

The three-judge bench in the said case affirmed Bachan Singh's decision and declared that the death sentence can only be imposed in the most extreme circumstances when the society will expect those in positions of judicial power to do so. In these circumstances, the following conditions must be met:

- (a) *Whenever a murder is carried out in a particularly horrific, repulsive, or ethically questionable manner in an effort to stir up a strong and excessive sense of outrage among the public.*
- (b) *In cases of dowry killing or killing someone from the backward classes.*
- (c) *When the offence is substantial i.e., the magnitude of the crime.*
- (d) *When a member of the Scheduled Caste is killed, that it causes indignation in society.*
- (e) *Whenever the dead person (murder victim) is a defenceless individual owing to old age or disease, a defenceless or vulnerable lady, or an innocent youngster (minor).*

¹⁰ Bacchan Singh v State of Punjab, A.I.R. 1980 SC 898.

¹¹ Macchi Singh & Others v State of Punjab, (1983) SCR (3) 413.

Subsequently, in the case of “*Santosh Kumar Satishbhushan v. State of Maharashtra*”¹², the Supreme Court stated that the “*rarest of rare*” doctrine acts as a guideline in executing Sec.354(3) of the Criminal Procedure Code (1973) & it establishes the principle that life imprisonment is the standard punishment for heinous offences and that death penalty is an exception.

Later, in the case of “*Prajeet Kumar Singh v. State of Bihar*”¹⁵, the Court answered as to what would be considered a “*rarest of rare case*”. The Supreme Court stated that, a murder must be conducted in such a way as to “*provoke great and severe outrage of the society, it should be immensely brutal, causing dread and terror i.e., diabolical and grotesque, revolting*” in order to receive the death penalty.

In India, capital punishment is rarely carried out. The 4 criminals convicted in the Nirbhaya gang rape and murder case who were hanged simultaneously on 20th March, 2020 were Pawan Gupta, Akshay Thakur, Mukesh Singh, and Vinay Sharma. A total of just eight executions has taken place since the year 2000, including them. Although many death row inmates get their death sentences, it seldom prevails. Just four of the nearly 1500 death row inmates who received the death penalty between the years 2004 & 2015 were executed.

The 262nd Law Commission Report on Capital Punishment (Death Sentences)

The 262nd Report on the question of the death sentence in India was issued on August 2015 by the Indian Law Commission, which is presided over by Justice A.P. Shah. It was recommended that all crimes aside from those related to terrorism and actions of waging war be exempted from the death sentence¹³. The following suggestions were mentioned in the report:

- 1) The Commission advocated swift implementation by the government of policies including witness protection programmes, police reforms, and victim compensation policies.

¹² Santosh Kumar Satishbhushan Bariyar v State of Maharashtra, (2009) Appeal (CRL.) 1478 of 2005.

¹⁵ Prajeet Kumar Singh v State of Bihar, Appeal (CRL.) 1621 of 2007.

¹³ Sanjeev Sirodhi, *Retain death penalty only for terror cases: Law Commission*, THE SUNDAY GUARDIAN (Mar. 19, 2023, 12:13 PM), <https://sundayguardianlive.com/legally-speaking/retain-death-penalty-terror-cases-lawcommission>.

- 2) The progression of our own legal doctrine which eliminated the necessity that the death penalty be constrained to rare cases by either the Supreme Court to specific justifications for levying a life sentence, to providing additional justifications again for the death sentence shows the direction the country needs to go. The Commission also believed that India should move towards independence at this time given the extended and better dimensions of the right to life. It underlined what was necessary for relationships between the Government and the citizens to be productive.
- 3) Although there isn't a strong legal justification for punishing terrorism in respect to other offences, it has repeatedly been argued that removing capital punishment for offences and war crimes would endanger national security and public safety. The commission found that it wasn't necessary to postpone the first stage towards the repeal of the death sentence for all offences other than terrorism despite the lawmakers' objections.
- 4) As a result, the Commission recommended that the death sentence be abolished for all offences other than those involving terrorist attacks and war crimes. The Commission also genuinely aspires for speedy and inexorable advancement towards total abolition.¹⁶

Recent Cases

Yakub Memon v. State of Maharashtra¹⁴, Yakub Memon in this case was the main suspect for the explosions. He was a financial consultant (Chartered Accountant) and was accused of participating in the Bombay bomb case in 1993, which was orchestrated by Tiger Memon and Dawood Ibrahim. 257 people were killed by the blasts. In the year 1994, August 5th, Yakub Memon was taken into custody at the New Delhi Train Station.

Murder, supporting terrorism, and criminal conspiracy to perpetrate terrorism were all proven the offences for which he was found guilty. In accordance with the 1987 TADA (Terrorist & Disruptive Activities Prevention Act), the Trial Court also found him guilty of unlawfully carrying and possessing guns and ammunition and sentenced him to death.

Notwithstanding Memon's appeal for a revision, the Supreme Court affirmed the death penalty for him. Memon filed a curative petition before the Apex Court on 22nd May, 2015. The petition

¹⁴ Yakub Abdul Razak Memon v State of Maharashtra, (2013) Appeal (CRL.) 1728 of 2007.

¹⁸ Manoj v State of Madhya Pradesh, (2022) Appeal (CRL.) 248-250 of 2015.

was turned down on 21st July, 2015. He also submitted a mercy appeal, which the Governor of Maharashtra rejected, asking for a stay of execution. Yakub Memon was put to death at Nagpur Central Prison on 30th July in the year 2015.

Manoj v State of Madhya Pradesh¹⁸, the Supreme Court reiterated its decision and the guidelines established in Bachan Singh's case in this case. The principles from the case of Bachan Singh should be applied to each case in view of its circumstances. The death sentence only applies where the alternate option is indisputably rejected. In this case, the court offered a number of recommendations for a better evaluation of the characteristics and reach of rehab and recovery. Following are some of the guidelines of the case given by the Supreme Court:

- 1) At the trial stage, mitigating aspects if any in the case has to be taken into account.
- 2) The State and as well as the accused must provide information to the Trial court.
- 3) The state should collect more information within a set time period, including age, family background, previous and present situations, education, criminal records, income, occupation, etc.
- 4) Depending on the specifics of each situation, other relevant aspects such as diseases or unstable behaviour should be taken into consideration. At the time of sentence, the court must be informed with this information, and the accused must be given the chance to provide any mitigating factors and present a plea or defence.
- 5) The conduct and action of the convicted offender within the jail, the tasks completed there, the participation, and other information and reports from the authorities about the offender are relevant and required in order for assessment.

After a judgement has been made, the court must explicitly consider the circumstances of the offender and determine if the offence in issue genuinely constituted something peculiar and uncommon that would make even life imprisonment an insufficient penalty. The courts must assess the full facts and circumstances, their accumulated influence on the application, even after giving the accused's available mitigating considerations the maximum weight, and find that there is no other alternative than to issue a capital punishment. Despite the fact that it should be rarest of rare case to sustain the death penalty, the Courts should analyse the instances

of the case to see whether any aggravating circumstances are present to their greatest extent and also no mitigating circumstances are present at all.

Manoj Pratap Singh v. State of Rajasthan¹⁵ the Supreme Court affirmed the 37-year-old man's death sentence for raping and murdering a seven and a half-year-old autistic girl child. Manoj Pratap Singh, the offender, was roughly 28 years old, the crime was perpetrated in Rajasthan. According to a three-judge bench, the crime was perpetrated with severe depravity, especially given the victim's fragility and the way it was carried out.

Using a stolen motorbike, the offender kidnapped the victim, taking full advantage of the confidence established by the gift of candy that the offender offered to the girl. She afterwards experienced a sexual attack and a head injury as her head was smashed, breaking her frontal bone among other ailments. The victim's private regions had also been severely injured.

The offender claimed that he was just 28 years old when the incident was committed. He also has a wife, a small daughter, and an ageing father as members of his family. The Supreme Court stated that, when these mitigating considerations are taken into account with a number of other facts relevant to his past, there does not appear to be any hope of his rehabilitation and reformation.

The Apex Court observed that the offender had a criminal past and was connected to at least four cases of theft, vandalism, and attempted murder. Furthermore, the current offence involved the usage of a stolen motorbike. The offender was sentenced to seven days in jail for assaulting with another prisoner, and the court also observed that he was previously found guilty of killing another prisoner.

The Court in this case stated that the convict was a “*threat to the preservation of order in the society*”. In view of the accused's irredeemable behaviour, the Court claimed that the option of handing the prisoner a life sentence for the remainder of his natural life without commuting was likewise unworkable. The Bench said that it had “*no choice but to confirm the death sentence handed to the appellant*” since it was inevitable in this particular situation.¹⁶

¹⁵ Manoj Pratap Singh v State of Rajasthan, (2022) SLP (CRL.) Nos. 7899-7900 of 2015.

¹⁶ Manoj Pratap Singh v State of Rajasthan, (2022) SLP (CRL.) Nos. 7899-7900 of 2015.

Conclusion

Throughout the beginning of time, India has implemented the death sentence, commonly referred to as capital punishment. The death sentence has been the most favored penalty throughout India for crimes and offences that basically violate the law from the days of the monarchy. No notion of heinous or grave offenses that would call for the death punishment existed back then. The ideas & concepts of *“rarest of rare situations,” “special causes,” “grievous crimes,” “severe offences,”* etc. are now taken into account before the capital punishment is administered to the offender.

The use of the death penalty is acknowledged as a kind of retributive and preventative punishment as well as an effective deterrent tool in society. Many claim that it infringes on basic human rights and is ineffective as a deterrence. Although in the Indian context, it is possible to argue that some offences are so heinous and dreadful in character and essence that no penalty less than the capital punishment can be thought of as fair or right.

Mohammad Ajmal Kasab who was a Pakistani terrorist and was responsible for the terrorist attacks in Mumbai in the year 2008 which is popularly known as the 26/11 attack. Ajmal was convicted for eighty different offences and thus, he *“lost his right to humane treatment”* as Judge M L Tahilyani said in the case, such criminals forfeit their right to humane treatment for committing barbaric offences. Death sentences can only be issued in the most exceptional and exceptional circumstances in India. Every time it is not possible for the State to act and prevent offences which fall under the category of the rarest of rare cases and so, completely eliminating capital punishment would put the country and its people at greater risk.

Thus, in the present situation, when India has experienced an upsurge in murder and rape cases, where harsh actions must be undertaken against the offenders, repealing capital punishment i.e., death sentences would not make sense. The death sentence is perceived as a more terrible punishment than life imprisonment, thus if it were employed more frequently whenever the offender is completely proved guilty, individuals would be less inclined to commit crimes.