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## CAPITAL PUNISHMENT IN INDIA

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### ABSTRACT

India is a developing country with a constant increase in crime rates. Legislation in India states various punishments given for criminal activity such as imprisonment, life imprisonment, capital punishment, etc. Capital punishment is regarded as the most severe punishment for criminal activities. Capital punishment is defined under Section 354(5) of the Criminal Code of Procedure, 1973 as "Hanging by the neck until dead", and is awarded only in the 'rarest of cases'. In India, the death penalty is awarded by the court as the maximum punishment for certain serious offenses, including murder, terrorism, and drug trafficking. In this article we will discuss the historical background of capital punishment and elaborate two primary concepts concerning capital punishment - reformative theory and preventive theory. For a better understanding we will discuss some rarest of the rare cases.

## Introduction

Capital punishment in India refers to the legal process of sentencing a person to death as a punishment for a crime. In India, the death penalty is awarded by the court as the maximum punishment for certain serious offenses, including murder, terrorism, and drug trafficking. The Indian Penal Code (IPC) and other laws, such as the Prevention of Terrorism Act (POTA), provide for the imposition of the death penalty in specific circumstances. The execution of the death sentence in India is carried out by hanging the convict until death. The decision to award the death penalty is subject to a rigorous legal process that includes several levels of judicial review and clemency petitions to the President of India. The issue of capital punishment in India has been a subject of intense debate and controversy, with some arguing that it is necessary for maintaining law and order, while others oppose it on moral, ethical, and human rights grounds.<sup>1</sup>

The use of capital punishment is an old form of punishment that has been present in almost every country in the world. Throughout history, capital punishment has been consistently used and has never been completely abandoned as a mode of punishment. In ancient Greece, the laws of Draco allowed for the use of capital punishment for crimes such as murder, treason, arson, and rape, although Plato believed it should only be reserved for the most hardened criminals. Similarly, the Romans employed capital punishment for various offenses, but during the republic, citizens were temporarily exempted from it.<sup>2</sup>

In India, the use of the death penalty is reserved only for exceptional cases that are considered to be extremely rare. This includes offenses such as waging war against the state (under Section 121), murder (under Section 302), kidnapping for ransom (under Section 364A) as well as other crimes outlined in the Indian Penal Code of 1860. Additionally, there are other laws such as The Commission of Sati (Prevention) Act of 1987 and Prevention of Terrorism Act of 2002, which prescribe offenses that are punishable by death.<sup>3</sup>

**Bacchan v. State of Punjab** case established the Doctrine of Rarest of Rare. In Criminal Appeal No. 273 of 1979, Bacchan Singh was accused, tried, and found guilty of murdering

<sup>1</sup> [https://en.wikipedia.org/wiki/Capital\\_punishment\\_in\\_India](https://en.wikipedia.org/wiki/Capital_punishment_in_India)

<sup>2</sup> [https://www.researchgate.net/publication/361025100\\_A\\_Study\\_of\\_Capital\\_Punishment\\_in\\_India](https://www.researchgate.net/publication/361025100_A_Study_of_Capital_Punishment_in_India)

<sup>3</sup> <https://www.legalserviceindia.com/legal/article-726-the-doctrine-of-rarest-of-the-rare.html#:~:text=The%20Doctrine%20of%20Rarest%20of%20Rare%20was%20established%20in%20the,high%20punishment%20of%20the%20land.>

Desa Singh, Durga Bai, and Veeran Bai under Section 302 of the Indian Penal Code. The Sessions Judge sentenced him to death, and his appeal was later dismissed by the High Court, which upheld the death sentence.<sup>4</sup>

## Historical background

The Code of Criminal Procedure (CrPC), 1898 originally mandated the death penalty as the standard punishment for murder, requiring judges to explain their decision if they chose to impose a sentence of life imprisonment instead. However, in 1955, an amendment was made to the CrPC that removed the requirement for judges to provide written explanations for their decision to impose a sentence other than the death penalty. This change demonstrated a lack of legislative preference for one punishment over the other. In 1973, the CrPC was amended again, with life imprisonment becoming the default punishment for murder, and the death penalty being reserved only for exceptional cases. These exceptional cases might include particularly heinous crimes where the perpetrator is considered too dangerous to ever be considered for parole after serving 20 years. This change reflected a clear intention to reduce the use of the death penalty in India. The CrPC of 1973 brought in a two-stage process for criminal trials, involving separate hearings for both conviction and sentencing.<sup>5</sup>

## Theories of punishment

1. **Reformative theory:-** The reformative theory asserts that despite committing a crime, a criminal remains human and should not be dehumanized. Instead of focusing solely on punishment, the primary objective of any punishment should be to rehabilitate the offender using individualized methods. It is possible that the offender committed the crime under certain circumstances, and the chances of them repeating the offense are low. Therefore, during the period of incarceration, efforts should be made to reform the offender.

The proponents of this theory suggest that in order to bring about a significant change in the criminal's character or mindset, they must be treated with sympathy, tact, and kindness. Harsh punishment may worsen the offender's feelings and sensitivity. The

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<sup>4</sup><https://indiankanoon.org/doc/1235094/#:~:text=Bachan%20Singh%2C%20appellant%20in%20Criminal,sentence%20and%20dismissed%20his%20appeal>.

<sup>5</sup> [https://en.wikipedia.org/wiki/Capital\\_punishment\\_in\\_India](https://en.wikipedia.org/wiki/Capital_punishment_in_India)

use of the death penalty is the last resort, indicating that the human justice system failed to reform the offender.

2. **Preventive theory:-** The theory of punishment known as the Preventive Theory aims to prevent future crimes by rendering the offender unable to commit them. This concept is similar to the Deterrent Theory, which also seeks to prevent crimes. The Preventive Theory is considered a valuable method for inhibiting crime and has been deemed an effective deterrent by the Preventive Philosophy. The various forms of preventive punishment can be categorized as permanently or temporarily disabling the criminal, rehabilitating and re-educating them, and instilling the fear of punishment.<sup>6</sup>

### **Case laws on Capital Punishment**

#### **1. BACHAN SINGH VS STATE OF PUNJAB<sup>7</sup>**

- **Facts:-** Bachan Singh was found guilty of killing Desa Singh, Durga Bai, and Veeran Bai by the Sessions Court and was sentenced to death under Section 302 of the Indian Penal Code. He challenged this decision by filing an appeal in the High Court, but it was dismissed, and the death penalty was upheld. Bachan Singh then took his case to the Supreme Court, where he questioned whether the circumstances of the case would qualify as 'special reasons' under Section 354(3) of CrPC, 1973.<sup>8</sup>
- **Judgement :-** The appeal was rejected by the Supreme Court, following the majority view. The Court rejected the argument against the constitutionality of Section 302 of the IPC, which allows for the death penalty to be imposed, as well as the challenge to the constitutionality of Section 354(3) of the CrPC, 1973.
- It has been determined that this case once again raised the issue of the legality of the death penalty. This was a unique case that is considered extremely rare, and the principle established in this case remains one of the most significant.

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<sup>6</sup> <https://thelawbrigade.com/wp-content/uploads/2020/06/Ishaan-IJLDAI.pdf>

<sup>7</sup> (1980) 2 SCC 684

<sup>8</sup> [https://blog.ipleaders.in/analysing-the-judgment-of-bachan-singh-v-state-of-punjab-1980/#Facts\\_of\\_the\\_case](https://blog.ipleaders.in/analysing-the-judgment-of-bachan-singh-v-state-of-punjab-1980/#Facts_of_the_case)

## 2. MACCHI SINGH VS STATE OF PUNJAB<sup>9</sup>

- **Facts:-** This case took place in Punjab and began with a series of family disputes that escalated into violence. On the night of August 12-13, 1977, a number of attacks occurred in and around five villages in which 17 people were killed and three others, including men, women, and children, related to Amar Singh and his sister Piaro Bai, were injured. Machhi Singh, who had a feud with Amar Singh and Piaro Bai, organized and carried out the attacks. He and 11 of his associates were prosecuted in five separate sessions courts, with Machhi Singh being a common accused in all cases. The co-accused varied in number from trial to trial, and after the trials, those found guilty were convicted under appropriate provisions. Machhi Singh and three others were given the death penalty, while nine accused were sentenced to life imprisonment. The convicts made 14 appeals to the Punjab and Haryana High Court, but their appeals were unsuccessful, and the death sentences were confirmed. As a result, the convicts filed a special leave appeal.<sup>10</sup>
- **Judgement:-** The facts of the case indicate that this was a brutal and heartless murder of unarmed and defenseless victims by Machhi Singh, who was a very wicked and vicious individual. The court confirmed the ruling of both the sessions court and the high court of Punjab and Haryana, which mandated the imposition of the death penalty on Machhi Singh and three other individuals. Mahinder Singh was given the benefit of reasonable doubt, as there was a lack of evidence that he possessed the rifle. Kashmir Singh was sentenced to death by a sessions court and confirmed by the high court for causing the death of a 6-year-old child while they were sleeping. The sentences of imprisonment for life and other sentences imposed on the rest of the appellants were confirmed. The death penalty was imposed on Machhi Singh, Kashmir Singh, and Jagir Singh, and their sentences would be executed following the law. Machhi Singh was separately sentenced to death in all cases, and the sentence would be deemed to have been executed in all cases if it is carried out in one.

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<sup>9</sup> 1983 AIR 957

<sup>10</sup> <https://lawfoyer.in/machhi-singh-and-others-v-state-of-punjabmachhi/>

- It provides further explanation of the exceptional cases where the use of the death penalty could be justified.

## Conclusion

Capital punishment, also referred to as the death penalty, has been in use in India for a long time. Even during the monarchy, it was the most prevalent form of punishment for criminal activities that violated the law. However, back then, there was no distinction between severe or lesser crimes that could warrant the death penalty. It is only in recent times that concepts like 'rarest of rare cases,' 'special reasons,' 'grievous crimes,' 'serious offenses,' etc., have been considered before imposing the death penalty.

While it is important to hold criminals accountable for their actions, society should aim to eliminate the crime itself rather than simply punishing the offender. The idea of capital punishment is archaic and brutal, and should be eradicated due to its involvement in taking the life of a human being, which is unethical since life is valuable and irreversible once taken.

The legal system should aim to reform criminals and the punishment should be severe enough to serve as a deterrent for others. It is possible to create a punishment that is worse than the death penalty. One approach could be to make the offender continually reflect on the gravity of their actions through discussion of capital punishment and the harsh realities of life in prison. This way, the offender would feel the weight of their offense every day and night.