DEATH PENALTY IN INDIA: CONSTITUTIONAL VALIDITY AND THE DEBATE ON ABOLITION

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ABSTRACT

Every human has a right to live life with dignity. No person can live without right which guarantees the life and liberty. In the absence of right to life the authority may turn into anarchy. In the Constitution of India, Article 21 guarantees the right to life and liberty for every citizen within the territory of India. Every right come along with certain reasonable restrictions. The death punishment comes under the purview of right to life. It violates the dignity and life of the person. The Indian legal framework permits the capital punishment for heinous offences which is brutal and inhumane in nature. The execution of the capital punishment is subject to the constitutional safeguards and judicial scrutiny. The Supreme Court of India recognised that the death penalty cannot be imposed as routine practice. It has developed as by the doctrine of 'rarest of rare' to guide its application. This doctrine strikes the balance between social interest of the society, the rights of the accused and need for justice in grave offences. The main concern about unfair sentences, wrongful conviction, delay in execution and the permanent nature of the capital punishment has increased the debate over a period. This article examines the constitutional validity of the death penalty in India with specific focus on Article 14 and 21 of the Constitution. It also analyses the judicial approach, sentencing principle, human right concerns and argument surrounding to retention and abolition of the sentence.

1. Introduction

The capital punishment is the sentence which is grave and serious form of punishment under the criminal law in India. It is the last punishment to hang till death. This punishment includes the termination of life and liberty of a person who is convicted under the specific provision relating to serious crime for death penalty. The implementation of such sentence comes under the ambit of question such as punishment, dignity and human rights and the role of the state. The application of death penalty has retained in India, subject to the certain conditions on its use. The law does not allow the capital punishment to any ordinary criminal act of the person, but law recognises death penalty for serious and heinous criminal act. It is also reserved for judicial consideration in certain cases.

The existing legal framework recognises the capital punishment. The Bharatiya Nyaya Sanhita, 2023, came into force on 1st July, 2024, permits death penalty as one of the forms of punishment sentenced in serious offences which includes Murder.[1]

A constitutional debate over this mainly concerns the life and liberty guaranteed under Article 21 of the Constitution of India. It further raises the question on application of the sentence, fairness in the procedure and equality before law. The apex court has upheld the constitutional validity of the death penalty subject to its application in exceptional cases. For this, the principle laid down by the Supreme Court is "Doctrine of Rarest of Rare" in the landmark judgement of Bacchan Singh v. State of Punjab.[2] This doctrine safeguards its application from its routine usage.

The debate over the capital punishment still continued. The supporters of retention of death penalty argues, the death penalty is necessary to uphold the justice in the serious nature of crime. It provides the appropriate an eye for eye treatment to the extreme criminal conduct. On other side, the abolitionists raise the concerns over the inconsistent sentencing, delay in execution and wrongful conviction. This is urge of need to examine the both constitutional values and practical concerns.

[1]The Bharatiya Nyaya Sanhita, No. 45 of 2023, § 103(1) (India) (providing for death or imprisonment for life as punishment for murder).
[2]*Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684, 730–31 (India).

2. Meaning and Nature of Death Penalty

The death penalty means the punishment of death imposed by the competent court. The capital punishment sentenced to the convicted person after the guilt of the accusation is proved, in such offences where the capital punishment is described. It differs from the various other punishments. This punishment takes away the life and permanently removes the possibility of returning in the society.

Historically, the capital punishment has been associated with retribution theory of punishment. Under this approach, Punishment is a tool to response to the serious criminal act. Another view is that, the death penalty is punishment for deterrence.[3] It has deterrence approach, so the severity of the punishment can discourage the individual from indulging in such grave and heinous criminal activities.

In modern penology, the punishment shifted towards the rehabilitation, reformation and validates the respect for human dignity. The criminal justice system provides punishment for unlawful conduct as well as maintains the safeguard for excessive and arbitrary form of punishments.[4] This establishes the stringent balance between the interest of society and rights of the person who is convicted in serious offence.

3. Legal Position in India

The capital punishment has not abolished yet from India. The current legal framework provides the sentence as capital punishment in serious offences. The Bharatiya Nyaya Sanhita, 2023 replaced the colonial law Indian Penal Code, 1860 and continues to recognise the death penalty in serious criminal offences.[5]

The courts are not free to deliver the death sentence as a routine measure. The Supreme Court laid down the safeguards for the application of capital sentence in exceptional circumstances. Usually, Court pass the sentences of life imprisonment as an alternative to the capital sentence.

The sentencing process involves two distinct stages. The first stage is the court determines the guilt of the accused and then decides the punishment. The distinction is vital for understanding

[3] *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684, 716–18 (India).
[4] *Manoj Pratap Singh v. State of Rajasthan*, (2022) 4 S.C.C. 165, 180–81 (India).
[5] The Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 4(a), 103(1), 358 (India) (replacing the Indian Penal Code, 1860 and recognising death as a punishment for certain offences).

the circumstances of the offender while sentencing the offender and offence become relevant at the sentencing stage.

4. Constitutional Validity

The Supreme Court of India has upheld the constitutional validity of death penalty on several occasions. The main issue raises the concern on striking the balance between capital punishment and protection of life and liberty.

The constitution does not completely prohibit the sentence which deprive the person from life and liberty. The deprivation must satisfy the constitutional and legal requirement and follow a fair procedure.[6] The presence of capital punishment in legislation does not allow the court to ignore the reasonability and remove the obligation from court. The court should ensure proper application of sentence and use carefully.

The constitution ensures the equality and fair treatment to every person and it also ensures the fairness in administration of justice. The capital punishment cannot be sentenced arbitrarily and unreasonably mechanical process. The nature of crime and circumstances of the offender has to be considered.

The supreme court approach has retained the capital punishment with certain reasonable conditions on the sentencing through judicial safeguards.

5. Rarest of Rare Principle

The "rarest of rare" principle is an important rule followed by Indian courts while deciding cases involving the death penalty. It means that the death penalty should be imposed only in the most serious and exceptional cases. The Supreme Court developed this principle to ensure that death is not given as a routine punishment.[7]

While deciding the sentence, the court considers both the circumstances of the crime and the circumstances of the offender. The seriousness of the offence, the manner in which it was committed, the age and background of the offender, and the possibility of reform are some of

[6] *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684, 713–14, 730–31 (India).
[7] *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684, 730–31 (India).

the important factors considered by the court.

The court must also consider whether life imprisonment is sufficient punishment. Death penalty is imposed only when the court finds that the case is so exceptional that no other punishment is appropriate.[8]

The principle therefore creates a balance between the need to punish extremely serious crimes and the need to protect human life and dignity. It also ensures that the death penalty is used only after careful examination of all relevant circumstances.

6. Analysis of the Death Penalty Debate

The debate on the death penalty in India involves a complex assessment of punishment, justice, public safety, human dignity and the possibility of reform. Capital punishment continues to be recognised for certain serious offences, particularly where the circumstances of the crime are exceptionally grave. Its retention is connected with the view that the criminal justice system must provide an appropriate response to serious violations of life and public safety. The punishment is also linked with deterrence and the interests of victims and their families. At the same time, the actual effectiveness of capital punishment as a deterrent remains a subject of continuing discussion.

The irreversible nature of execution creates another important dimension of the debate. A wrongful conviction cannot be corrected after an innocent person has been executed. This makes accuracy in investigation, evidence, trial and sentencing especially important in capital cases. Concerns also arise from differences in sentencing and the possibility that similar cases can receive different outcomes. These concerns highlight the need for consistency, transparency and careful judicial reasoning.

Delay in the execution process is another significant issue. Appeals, reviews and mercy proceedings can continue for long periods, creating prolonged uncertainty for the condemned person. The possibility of rehabilitation also remains relevant because criminal justice recognises that offenders can undergo reform. Therefore, the central question is not simply the severity of the crime but also the circumstances of the offender, the reliability of the evidence,

[8] *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684, 729–30 (India).

the possibility of reform and the need for a fair and consistent sentencing process.

The debate ultimately reflects the difficulty of balancing society's interest in justice and public safety with constitutional values of fairness, dignity and individual rights. The continuing discussion on retention and abolition therefore requires careful consideration of both the purposes of punishment and the risks associated with an irreversible sentence.

Conclusion

The death penalty in India remains a complex issue involving justice, human dignity, public safety and individual rights. Indian law permits capital punishment for certain serious offences, but its use is limited by the “rarest of rare” principle. The irreversible nature of death penalty, possibility of wrongful convictions, sentencing differences and delays in execution continue to raise concerns. At the same time, its retention is supported by the need for strict punishment in exceptionally serious crimes. Therefore, any decision on the future of the death penalty must carefully balance the interests of victims, society and the rights of the accused while ensuring fairness and justice.