
DEATH PENALTY IN INDIA: JUSTICE OR REVENGE

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ABSTRACT

This article critically examines the contentious issue of the death penalty in India, exploring whether it serves as a tool of justice or a manifestation of societal revenge. Rooted in both historical precedent and modern legal frameworks, capital punishment remains embedded within the Indian judicial system under the "rarest of rare" doctrine, as upheld in cases like *Bachan Singh v. State of Punjab*. The article navigates through global perspectives, constitutional challenges under Article 21, and the impact of procedural safeguards defined in the *Bharatiya Nyaya Sanhita*, *Bharatiya Nagrik Suraksha Sanhita*, and *Bharatiya Sakshya Adhiniyam*, 2023. Drawing from both retributive and reformatory theories of punishment, it highlights key judicial opinions and evolving societal attitudes—particularly post-*Nirbhaya* case—where public outcry, media trials, and socio-economic biases have influenced capital sentencing. The paper also discusses international human rights positions, including India's obligations under the ICCPR and recommendations from the Law Commission advocating abolition for ordinary crimes. Through critical case law and scholarly views, the article argues that the death penalty risks irreversible errors, denies opportunities for reform, and is increasingly misaligned with the principles of human dignity and justice. Ultimately, it calls for a principled re-evaluation of capital punishment in India, questioning whether the justice system should deliver moral progress or merely satisfy public vengeance.

I. INTRODUCTION

Death penalty i.e. punishment by execution granted by a recognized social agency usually the state. It is carrying-out of the judicial sentence of death as the punishment for an offence committed in the eyes of law. It is synonymous with the term referred to as ‘capital punishment.’¹ Being the most extreme form of punishment defined by law for person convicted with heinous crimes. It mandates certain legal procedure codified in law to be followed for execution. The death penalty is predominantly employed by nations across the world for particularly heinous offenses.

Out of the total 193 United Nations, member states and two observer states fall into four categories based on the use of capital punishment. As of 2024 – 53 countries maintain the death penalty in law and practice, 23 countries permit its use but have abolished it; they have not used it for at least 10 years and are believed to have a policy or practice carrying out for executions, while 110 have exceptional circumstances.² The practice has long sparked debate between those who advocate for it and those who oppose it. The matter of punishment is not wholly about legal grounds but extends to human concerns, as it involves taking away a person’s life.³

The central question is whether a state or law enforcement body should have the authority to deprive a person life through legal means. Opinions on this differ greatly, and arguments both for and against the death penalty have been widely discussed. A prominent and recent example of this debate was seen in India following the 2012 Nirbhaya gang rape and murder case. The brutality of the crime led to nationwide protests and a strong demand for the death penalty for the convicts. While many supported the execution as justice for the victim, other questioned the effectiveness of capital punishment in deterring such crimes and raised concerns about its ethical implications.

The question is whether this death penalty is a means of revenge in the cloak of justice in furtherance of “eye for an eye”, or is it really a social need of the hour which is why the Indian legal system as still not done away with it. This article explores whether capital punishment in

¹ Deen K. Chatterjee, *Encyclopedia of Global Justice*, 106 (Springer publications, 2012).

² Annex II: Abolitionist and Retentionist Countries, Amnesty international. May 2024.

³ Sanjeev P. Sahni, Mohita Junnarkar, *The Death Penalty*, 2 (Springer nature Singapore publications, 2020).

India upholds justice or reflects society's desire for revenge.

II. HISTORICAL AND PHILOSOPHICAL BACKGROUND

As stated, the concept of the death sentence has been present since ancient texts, including the Code of Hammurabi, the Bible, and other religious scriptures. Esteemed philosophers such as Plato, John Locke, and Thomas Hobbes- who were proponents of the social contract theory- also endorsed capital punishment for grave offenses. In societies where this was the norm, the idea of punishment began to evolve, ultimately leading to the rejection of the death penalty. One of the most significant figures in this shift was the renowned criminologist Cesare Beccaria, who argued that the death penalty is inhumane, ineffective, and essentially a form of state-sanctioned murder. Influenced by such reasoning, Michigan became the first U.S. state to abolish the death penalty in 1846, followed by Portugal and Venezuela in 1867. The global movement gained further momentum when the United Nations supported the abolition of capital punishment during the drafting of the Universal Declaration of Human Rights in 1948.⁴

III. LEGAL FRAMEWORK IN INDIA

In India, Penal Code of 1861 was retained, which included judicial sentence of death for the offence of murder at the end of colonial era in 1947. During the period of drafting of the Indian Constitution, several members raised their concerns for the ban Death Penalty. The constitutionality of the death penalty has been brought into questions in various instances.

In the case of *Bachan Singh v. State of Punjab*, Doctrine of 'Rarest of Rare' was introduced. In the *Bharatiya Nyaya Sanhita, 2023*, the substantive criminal law of the land for India, death penalty is provided for in certain exceptional occasions of offences which are considered "rarest of the rare".⁵

In the provision of Article 21 of the Indian Constitution, punishment of death penalty violates the right to life. However, the Supreme Court dismissed this claim, asserting that all necessary legal procedures- outlined in the *Bharatiya Nagrik Suraksha Sanhita*⁶ and *Bharatiya Sakshya*

⁴ Ngamjai Wangsacha & Bellen Camdir, *An Overview of Capital Punishment in India*, Indian Journal of integrated Research in law, 3(2), 2.

⁵ See *Bachan Singh v. state of Punjab* 1980 CrIj 636.

⁶ *Bharatiya Nagrik Suraksha Sanhita, 2023*.

Adhiniyam⁷- are followed before issuing a death sentence. As long as these procedures are observed, the right to life can be lawfully restricted, making the awarding of the death penalty constitutionally valid.⁸

IV. ARGUMENTS IN SUPPORT

Some argues if a person has committed a terrible crime and chooses to accept their punishment, we should respect their choice. Accepting the death penalty can be seen as taking responsibility for their actions.

Even though many people say that the death penalty is cruel and violates human rights, others believe that it can be a fair punishment if done properly and without delay.⁹ There shouldn't be one rule for all crimes- sometimes the death penalty might be the right punishment based on the seriousness of the crime. Retribution is an impartial societal response aimed at upholding moral order.¹⁰ Crimes- especially murder, terrorism, and rape- deserve punishment proportional to the harm they caused. The existence of death penalty serves as a powerful warning to potential offenders. The fear of the ultimate punishment- losing one's life- may discourage individuals from committing heinous acts.¹¹ Beyond these two pillars, the death penalty provides closure for victims' families, allowing them to move forward after a tragic loss. The finality of the punishment can bring a sense of justice being served- something that a lesser sentence may not offer in cases of extreme brutality.

Furthermore, public sentiments often demands severe penalties in response to crimes that shock the conscience of the nation. It is judicial discretion safeguarding built into the Indian legal system to ensure that the death penalty is not handed arbitrarily. In the Nirbhaya case,¹² the Supreme Court upheld the death penalty for the convicts, emphasizing that such acts fall into the category of the "rarest of rare" crimes. In Kehar singh vs. UOI¹³ related to the assassination of Prime Minister Indira Gandhi, the death penalty was seen as necessary to preserve national

⁷ Bharatiya Sakshya Adhiniyam, 2023.

⁸ Shirsho Ghosh, *Death Penalty: Disguised as Justice or Social Necessity*, International Journal of Law Management & Humanities, 3(3), 800.

⁹ Hugo Adam Bedau, Paul G. Cassell, *Debating the Death Penalty*, 9 (Oxford Printing Press, 2015).

¹⁰ Louis P. Pojman, *The Death Penalty*, 52 (Rowman & littlefield, 2000).

¹¹ Matthew H. Kramer, *The Ethics of Capital Punishment*, 9 (OUP Oxford, 2011).

¹² Kehar singh vs. UOI 1989 AIR 653.

¹³ Mukesh & Anr. State of NCT of Delhi and others, AIR 2017 SC 2161.

security and public confidence in the rule of law.

Although there is international debate on the matter, the fact remains that many democratic societies still uphold capital punishment in their legal frameworks. The death penalty is not about vengeance- it is about fairness, deterrence, closure, and societal protection. While it must be applied with caution and judicial care, its existence reinforces the seriousness with which a society treats its most grievous crimes.

V. ARGUMENTS AGAINST THE DEATH PENALTY

The death penalty, especially from a revenge perspective, raises ethical, social, and legal concerns. While the emotional appeal of punishing heinous offenders with death might seem justified, a deeper examination reveals its ineffectiveness and potential for irreversible harm. The debate over the death penalty- particularly its abolition- has been deeply tied to human rights concerns. It is increasingly seen as a violation of fundamental rights and an insult to human dignity.¹⁴ The death penalty, a common punishment historically, offers no benefits- neither to private individuals nor to society as a whole. Instead, it needlessly sacrifices lives that could have otherwise been redeemed or reformed for the greater good.

Such punishment is excessively harsh, especially in cases where exile or rehabilitation could have been sufficient. Depriving a person to their life strips them of their humanity and their opportunity for moral correction. This act of vengeance is not justice; mercy should be advocated over violence. Even the desire for revenge, is more about emotional impulse than public safety. It surely doesn't comfort those grieving a lost one to see another death; absurdity of expecting emotional healing from an execution.¹⁵

The views of India's early presidents and legal experts demonstrate a clear discomfort with the concept and application of the death penalty. Their emphasis on reform, justice, and restraint in punishment reflects a broader principle that capital punishment is not only fallible and irreversible but often unnecessary in a society that values human rights and rehabilitation.¹⁶

¹⁴ Madoka Futamura, Nadia Bernaz, *The Politics of the Death Penalty in countries in transition*, 1 (Taylor & Francis, 2013).

¹⁵ Cesare Beccaria, Giuseppie Pelli, *Against the Death Penalty*, 29 (Princeton University Press, 2020).

¹⁶ Janak Raj Jai, *Death Penalty*, 51 (Regency Publication, 2005).

The cost of prolonged trials, appeals, and special security arrangements often surpass the costs associated with incarcerating a person for life. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*¹⁷, the Supreme Court emphasized how the death penalty unfairly targets the socio- economically disadvantaged. While in the case of *Shatrughan Chauhan v. UOI*¹⁸, the Supreme Court recognized mental illness and inordinate delay in disposing of mercy petitions as valid grounds for commuting death sentences.

The death penalty is ineffective, unjust, and rooted in revenge rather than reform. It denies the chance for redemption and risks irreversible errors. Justice must value life-not take it.

VI. JUDICIAL AND EXECUTIVE DISCRETION

In India, the judiciary plays a central role in determining the applicability of the death penalty, particularly under the doctrine “rarest of rare” case. However, this principle has often led to inconsistencies in judicial decisions, raising concerns about arbitrariness in sentencing. Article 72(1) (C)¹⁹ of the Indian Constitution empowers the president to grant pardons, including death penalty cases. However, it’s interpretation alongside Article 72(3)²⁰ – which addresses the Governor’s powers- has led to confusion and inconsistency in capital punishment across states.

In the *K.M. Nanavati* case²¹, justice Kapur argued that suspending a death sentence falls under the President’s authority and does not conflict with judicial decisions, highlighting the separations between executive and judicial functions.

VII. PUBLIC AND MEDIA OPINION

Public sentiments and media coverage have increasingly influenced the criminal justice system, especially in high- profile death cases. Certainly, media sensationalism can distort facts, shape public perception, and exert pressure on both judges and political leaders; decisions are led by emotions and public outrage than by legal principles. The susceptibility of our system of capital punishment to media- perpetuated fears and passions raises unavoidable questions about who

¹⁷ *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, 2009(57) BLJR 2348.

¹⁸ *Shatrughan Chauhan v. UOI*, 2014 AIR SCW 793.

¹⁹ Constitution of India, 1949.

²⁰ Constitution of India, 1949.

²¹ *K.M. Nanavati v. State of Maharashtra*, 1962 AIR 605.

bears the responsibility for media reform and, ultimately, about the viability of a system that decides life and death in a media-saturated context.²²

Public protests, including candlelight vigils, have become common tools for demanding harsher punishments, especially in cases involving crimes against women and children. Public opinion and media trials poses serious challenges to the fairness and impartiality of justice.²³ Decisions must remain grounded in evidence, fairness, and constitutional principle- not in the sway of public sentiments.

VIII. GLOBAL PERSPECTIVES

The status of the death penalty varies globally, shaped by legal philosophies, human rights framework, and socio-political contexts. Countries like UK, Canada and Australia have abolished capital punishment, emphasizing human dignity and the possibility reform.²⁴ Their legal system prioritize rehabilitation over retribution, reflecting public consensus and concerns about wrongful convictions. While USA and Japan still impose and execute death sentences selectively.²⁵ The UN Human Rights Commission advocates for the universal abolition of the death penalty, framing it as a violation of the right to life. It urges adherence to the second optional protocol to the ICCPR, and regularly evaluates member states' practices. India is party to international treaties like the ICCPR, yet retains the death penalty for "rarest of rare" cases. The Law commission of India (2015) recommended abolishing the death penalty for ordinary crimes, citing no evidence that it effectively deters crime more than life imprisonment.²⁶

IX. THEORETICAL FRAMEWORK

Debates over capital punishment are rooted in two opposing theories of justice: Reformative and Retributive. Retributive Justice is grounded in the belief that individuals should receive punishment proportionate to the severity of their crimes – commonly summed up as "an eye

²²Susan Bandes, *Fear Factor: The role of Media in covering and shaping the death penalty*, Ohio State Journal of Criminal Law 1(2), 597.

²³Advisory on public opinion about the death penalty, 2023.

²⁴A. Hammel, *Ending the Death Penalty*, 14 (Palgrave Macmillan UK, 2010).

²⁵Petra Schidt, *Capital Punishment in Japan*, 3 (Brill, 2002).

²⁶Girija Nand, Veena Kumari, *Death penalty in India : Retributive or reformative*, International journal of Law, Policy and Social Review 5(1) , 11.

for an eye.” Reformatory justice focuses on transforming the offender into a responsible and law-abiding individual rather than simply punishing them.

While retributive theory supports capital punishment as a form of moral revenge, reformatory theory condemns it as a denial of human potential and dignity. In India, where legal and moral tension coexist, the death penalty raises a critical question- are we delivering justice or merely satisfying societal vengeance? A progressive justice system must weigh not just the crime, but the possibility of change.²⁷

X. CONCLUSION AND WAY FORWARD

The death penalty in India remains a deeply contested issue, oscillating between demands for justice and accusations of revenge. While the judiciary upholds capital punishment in the rarest of rare cases, its application often raises concerns about arbitrariness, media influences, socio-economic bias, and the risk of irreversible errors. Though traditionally justified as a deterrent and a means of retribution, modern critiques increasingly highlight its ineffectiveness and effective dilemmas. The argument that justice must be proportional is challenged by the reality that capital punishments may not allow space for rehabilitation or redemption. Moreover, global trends, including the stance of UN and several democratic nations, advocate for its abolition in favor of upholding human dignity and correcting systematic flaws.

The Indian legal framework continues to wrestle with this duality- whether to preserve the death penalty as a measure of justice or to phase out an alignment with evolving human right norms. Reformatory justices, emphasizes changes and reintegration, urging society to prioritize the possibility of transformation over retribution. The true test lies in whether the justice system seeks to serve society’s moral progress or its thirst for vengeance. In this light, a re-examination of the death penalty’s place in modern India becomes not only necessary but urgent, as the nation strives to balance justice, deterrence, and humanity.

It may be concluded that the concept of ‘death’ stands apart from other criminal sanctions in that the preconditions for its lawful imposition significantly more stringent. These include enhanced fair trial standards designed to prevent miscarriages of justice with potentially fatal

²⁷Ranjana Tiwari, Dr. Rakesh Kumar, *Theories of punishment with special reference to capital punishment*, Journal of Emerging Technologies and innovative research, 7(10), 2337.

consequences, as well as heightened scrutiny by international human rights mechanisms- most notably, the Human Rights Committee.²⁸

In a democratic and evolving India, justice must be guided by reason, not retribution. While the death penalty may appear justified for the gravest crimes, it often mirrors society's desire for revenge rather than upholding constitutional values. True justice lies not in ending a life, but in preserving the potential for reform. Capital punishment risks irreversible mistakes and denies the opportunity for redemption. As we progress, India must reflect- do we uphold the law to deliver justice, or to appease public anger ? The path we choose will define the moral compass of our justice system.

²⁸ Evelyne Lagrange, Christian Tomuschat, *The Right to Life*, 39 (Nijhoff, 2010).