
CAPITAL PUNISHMENT IN INDIA

Suhani Aggarwal & Chhayanshi Goyal, BA.LLB (H), Manav Rachna University,
Faridabad

ABSTRACT

The death penalty has been a controversial subject in India for many years, with some arguing that it is an effective way to deter serious crimes, while others argue that it violates the right to life. While the death penalty remains a part of the criminal justice system in India, it is likely to remain so in the foreseeable future. It is important to understand the laws and regulations surrounding capital punishment in India in order to ensure that justice is served. There have also been concerns about the fairness and potential for wrongful convictions of defendants. In this Research paper we will review the current state of the art of capital punishment and the current debates and calls for its abolition in India.

Keywords: Capital punishment, debates, death penalty, sexual offences, provisions under law, cases, India, morality, criminal justice system

Introduction: Overview of Capital Punishment in India

Capital Punishment is a form of punishment in which an individual is put to death as a consequence of a criminal offense or a violation of a law. It is a harsh and irreversible form of punishment and is used in India as a deterrent against serious offenses. In India, the death penalty is prescribed for a wide range of offenses, including murder, terrorism, treason, drug trafficking, and other serious crimes. The Indian Penal Code (IPC)¹ and other statutes specify the various crimes for which the death penalty may be imposed. The Indian Supreme Court has ruled that capital punishment should only be imposed in the “rarest of rare cases”², where the crime is so heinous that it shocks the collective conscience of society. In India, capital punishment is carried out by hanging, and the process must be done in accordance with the rules and regulations set forth by the Indian government. The death penalty has been a controversial subject in India for many years, with some arguing that it is an effective way to deter serious crimes, while others argue that it is cruel, inhuman, and violates the right to life. A number of high-profile cases in recent years have sparked widespread debate and discussion on the issue. Despite the controversy, capital punishment remains a part of the criminal justice system in India, and it is likely to remain so in the foreseeable future. It is important to understand the laws and regulations surrounding capital punishment in India in order to ensure that justice is served.

Historical background of Capital punishment in India

- Capital punishment has a long history in India, dating back to ancient times. The Code of Manu, a Hindu law book written around 200 BCE, prescribed the death penalty for crimes such as murder, theft, and treason.
- During the British colonial period, capital punishment was widely used as a means of controlling the Indian population. The British introduced the Indian Penal Code in 1860, which included provisions for the death penalty for crimes such as murder, rape, and sedition.

¹ The Indian Penal Code (IPC) is the official criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law.

² This doctrine was established in the case of *Bachan v. State of Punjab* AIR 1980 2 SCC 684.

- After India gained independence in 1947, the death penalty remained in place and was used extensively in the early years of the country's history. However, there were also significant efforts to abolish it. In 1956, the Law Commission of India³ recommended that the death penalty be abolished for all crimes except for treason and waging war against the state.
- Despite these efforts, the death penalty remained in place and was used regularly until the late 20th century. In recent years, there has been a decline in the number of executions, with only a handful taking place each year.

Current status of Capital punishment

In recent years, there have been calls for the abolition of the death penalty in India. In 2015, the Law Commission of India recommended that the death penalty be abolished for all crimes except those related to terrorism and waging war against the state. However, this recommendation has not been implemented.

There have also been concerns about the fairness of the death penalty system in India, including issues with wrongful convictions, inadequate legal representation for defendants, and discrimination against marginalized communities. Despite these concerns, the death penalty remains a legal punishment in India and continues to be used in some cases.

As of 2022, the death penalty remains legal in India and can be imposed for certain crimes, including murder, terrorism, and certain drug offenses. However, its use is restricted to "the rarest of rare cases" and must be confirmed by the High Court. There have been ongoing debates and calls for the abolition of the death penalty in India, with concerns about its fairness and potential for wrongful convictions. However, no significant changes to the current status of capital punishment have been implemented.

Arguments in favour of Death Penalty

The people who want to abolish death penalty claim that it violates the sanctity of life. So is not the sanctity of victim's life more important than the convict's life. In our zeal to protect the rights of criminals, we should not minimise the rights of their victims. An innocent's life should

³ The Law Commission of India is an executive body established by an order of the Government of India. The commission's function is to research and advise the government on legal reform.

be valued over the offenders. The most common place argument given is that executing a murderer will not bring the victim back. Justice is not about bringing back the dead. It is about enforcing consequences of one's own action. It is about preventing future misfortune and protecting the life of the vulnerable and about arming the weak. Some people stress on the barbaric⁴ nature of the death penalty as a reason for its abolition, forgetting that the acts committed by the people sentenced are not exactly humane.

Arguments Against Death Penalty

Most importantly people should understand that certainty of punishment and not severity is the real deterrent to crime. The death penalty is unjust and inhumane. Miscarriage of justice is, in fact, one of the biggest concerns about the death penalty. Unfortunately, even in 21st century, someone could be wrongly hanged. Studies conducted by Amnesty International have shown that the process of deciding who should be on death row is arbitrary and biased. It is a fallacy to think that one killing can be avenged with another. For, capital punishment is merely revenge masquerading as justice. Especially, in a country like India where free legal aid is, at best a mockery to the system, there is no denying the fact that most of those waiting death sentence are of weaker backgrounds.

Provisions under Law for Criminal Punishment

The Indian Penal Code, 1860:

1. Section 121- Anyone who attempts to or is successful in waging war against India may be sentenced to death.
2. Section 132- Abatement of armed rebellion by an officer or member of the army, navy, or air force resulting in mutiny can be punished by death.
3. Section 194- Fabricating evidence is punishable by the death penalty if it is done to get a capital conviction for a crime.
4. Section 302- Death penalty for a person who commits murder.

⁴ Barbaric means uncivilised or primitive

5. Section 305- Punishment for assisting or supporting a person under the age of 18 or an intellectually disabled person in committing suicide.
6. Section 364A- Kidnapping a person with the intent to cause them harm or death or for ransom.
7. Section 376A- Death penalty for rape that results in death or a permanent vegetative state of the victim.
8. Section 376E- Repeat rape offenders may face the death penalty.
9. Section 396- Death penalty in cases of dacoity with murder.

The Commission of Sati (Prevention) Act, 1987: Anyone involved in the commission of Sati directly or indirectly is subject to the death penalty under this act. *⁵

Narcotic Drugs and Psychotropic Substances Act, 1985: Under Section 31A of the NDPS Act there is death penalty for providing financial support or taking part in the production or sale of narcotics or psychoactive substances in a predetermined amount.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989- Forging evidence that results in the conviction and execution of an innocent member of a scheduled caste or tribe is punishable by death under this Act.

Army Act, 1950; Air Force Act, 1950 and Navy Act, 1957- Different offences committed by members of the military forces under military laws like the Army Act, 1950; Air Force Act, 1950, and Navy Act, 1957, are also punishable by death.

Case Laws Regarding Capital Punishment (Death Penalty)

The case of *Jagmohan Singh v The State of Uttar Pradesh*⁶ led to a landmark judgement by the Supreme Court in which the five-judge bench upheld the constitutional legitimacy of the sentence of capital punishment under Section 302 of the Indian Penal Code, 1860. The court

⁵ Note: Pregnant women, minors and those who are intellectually disabled may be exempted from this kind of punishment.

⁶ AIR 1973 SC 947

held that Art. 19 does not directly deal with the freedom to live, but it is subject to reasonable restrictions and the general public interest. The death sentence can neither be held unreasonable nor unconstitutional, as the framers of the Constitution had to acknowledge capital punishment permissible in the eyes of the law before making provisions to pardon, suspend, remit, or commute the sentence.

How capital punishment is interpreted by SC⁷

The Supreme Court cited the cases of *Furman v State of Georgia*⁸ and the thirty-fifth Report of the Law Commission of India to explain that capital punishment cannot be abolished on a black-and-white perception and it is better suited to retain it in India.

It also further cited the cases of *Ram Narain v The State of Uttar Pradesh*⁹ to reiterate that the Apex Court does not generally interfere with the judgements of the High Court unless there had been a disregard for the principles of justice or a serious failure of justice.

The case of *State of Madras v V.G. Row*¹⁰ to state that the standard for the test of reasonableness depends upon the individual statute which has been impugned and not just on any general standard or abstract pattern.

the case of *Municipal Committee v Baisakhi Rain*¹¹ to observe that the policy of the law to give a very wide discretion to the judges in deciding the severity of punishment has its origin in the 'impossibility of laying down standards,' which is a fundamental of the criminal law as administered in India.

the case of *Budhan Choudhary v The State of Bihar*¹² to declare that Art. 14 can hardly be invoked in matters of judicial discretion as they do not hold any ground for violation of equality when the judgement is passed with the individual consideration of unique facts and circumstances.

⁷ Supreme Court(SC)

⁸ 408 U.S. 238 (1972)

⁹ AIR 1973 SC 2200

¹⁰ AIR 1952 SC 196

¹¹ Law Journal 475

¹² 1955 AIR 191

Conclusion

“The death penalty is not about whether people deserve to die for the crimes they commit. The real question of capital punishment in any country is, do we deserve to kill?”

— ***B. Stevenson***

Capital punishment in India is a divisive issue. While the death penalty is still used as a punishment for very serious crimes, public opinion on its use is becoming increasingly divided. The Indian Supreme Court has shown a greater willingness to hear arguments against the death penalty and has issued several judgements in favour of its abolition. It is now up to the Indian government to decide if and how to move forward with the issue.