
THE EVOLUTION OF THE 'RAREST OF RARE' DOCTRINE IN INDIAN JURISPRUDENCE: A CRITICAL ANALYSIS OF SUPREME COURT JUDGMENTS ON CAPITAL PUNISHMENT

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ABSTRACT

Capital punishment is an extremely divisive matter in jurisprudence, emphasizes the convergence of law, ethics, and societal structure. Whether the death penalty protects justice or compromises basic human rights is a topic of debate in the legal community. While utilitarians assess its deterrence effectiveness, retributivist theories defend it as proportionate punishment for grave crimes. However, critical and natural law viewpoints, which place an emphasis on justice, dignity, and changing social norms, cast doubt on its legitimacy. Concerns about discrimination and arbitrariness are brought up in the discussion, which also emphasizes judicial discretion, international human rights commitments, and constitutional morality. This essay examines the philosophical grounds for the death penalty, its applicability today, and the conflict between morality and the rule of law by examining it from a variety of jurisprudential perspectives.

INTRODUCTION

The concept of capital punishment has always been a subject of intense jurisprudential debate. While it is widely implemented across jurisdictions for heinous crimes, its legitimacy raises fundamental questions about the nature and purpose of law. In India, the death sentence is reserved for grave offences such as murder, rape, and treason. Its origins can be traced back to the Vedic period, where references in the Mahabharata and Ramayana reflect an early reliance on retributive justice rooted in customs. The positivist orientation of law is evident in the Artha shastra of Kautilya, which codified capital punishment as a state instrument for maintaining order. Likewise, the Manu smriti represents an early attempt at grounding punishment in a form of proto-legal positivism, reinforced by societal customs and divine authority.

The colonial era marked a jurisprudential transition, with the Indian Penal Code of 1860 embodying elements of the Historical School of Jurisprudence, as British codification merged local traditions with English common law. Simultaneously, it reinforced legal positivism, where enforceability and codification became the hallmark of validity. In the post-independence and contemporary period, the judiciary, particularly in *Bachan Singh v. Union of India* (1980), attempted to reconcile natural law principles of justice and human dignity with positivist legality, giving rise to the “rarest of rare” doctrine. The introduction of the Bhartiya Nyaya Sanhita, 2023 reflects this ongoing tension between retributive and rehabilitative theories of punishment, as well as between morality and legality.

Thus, the evolution of capital punishment in India illustrates a jurisprudential journey—from retributive theories of the ancient era, to positivist codification in the colonial period, to the natural law–positivism dialectic in contemporary constitutional adjudication. This study underscores the struggle of Indian jurisprudence to reconcile the legitimacy of death penalty with the principles of justice, morality, and human rights.

OBJECTIVE

1. To trace the historical evolution of capital punishment in India from ancient retributive justice to the modern “rarest of rare” doctrine.
2. To analyse the jurisprudential basis of the death penalty with reference to landmark judgments and constitutional provisions.

3. To evaluate the role of capital punishment as a deterrent against heinous crimes in contemporary Indian society.

RESEARCH METHODOLOGY

This study adopts a doctrinal legal research methodology, relying on statutes, constitutional provisions, Law Commission reports, and judicial pronouncements as primary sources. Various court decisions are analysed to understand the application and interpretation of the death penalty, particularly under the “rarest of rare” doctrine. Secondary sources such as books, journal articles, and commentaries provide academic insights and critiques. The methodology is analytical in nature, focusing on the historical development, current relevance, and future prospects of capital punishment in India.

REVIEW OF LITERATURE

1. Mohanta, Tejaswi, Capital Punishment - When and Why Justified, 2020 April, National University of study and research in Law - It has been analysed about the section 336 and section 369 of CrPC and also about its execution. this paper has also analysed about the supreme court’s power to sentence a capital punishment. It emphasizes the need for a new rule to regulate capital punishment and deeply researches about the justification of capital punishment.
2. Ms. Ravi, Death penalty in India: A critical study, international journal of creative research thoughts, 2022, vol 10, 2320 – 2882 - The notion of the capital punishment is very controversial. It has focused on the cruelty in the capital punishment. According to this article the life of a human being is divine and the divine laws would not permit us to destroy such life. It is also stressed that the Article 21 of the Indian constitution has violated if death penalty is sentenced.
3. Divya Govindan, Retribution, Rehabilitation and Restoration – Working Towards the Goals of Criminal Justice, 2 Indian J. Integrated Rsch. L. 1 (2022) - The author explores the impact of various punishment theories retribution, deterrence, incapacitation, rehabilitation, and restoration on the criminal justice system. She differentiates the retributive model, which focuses on proportional punishment and moral retaliation, from rehabilitative and restorative models that aim to reform

offenders, repair harm to victims, and facilitate their reintegration into society.

4. Sharma, V., & Sood, P. (2023). Theories of punishment: Retribution, deterrence, reformatory and preventive. *Journal of Emerging Technologies and Innovative Research (JETIR)*, 10(1), 700–712 - Authors explore four principal theories of punishment—Retributive, Deterrent, Reformatory, and Preventive emphasizing their foundational principles, advantages, and drawbacks.
5. Rajkumari & Pratap Singh, R. D. P. (2023). The Doctrine of Rarest of Rare: A Critical Analysis. *Indian Journal of Integrated Research in Law*, II(IV). ISSN: 2583-0538 - The author explores the doctrine of rarest of rare in Indian criminal law, tracing its evolution from ancient practices of capital punishment to its present judicial application. He studies the landmark judgment of *Bachan Singh v. State of Punjab* (1980), where the Supreme Court upheld the constitutionality of the death penalty and restricted its use to rarest of rare cases. Further, he examines the *Macchi Singh* (1983) decision, which laid down specific criteria like the manner of crime, motive, magnitude, and victim's status for awarding death penalty.
6. Yadav, B., & Pandey, A. (n.d.). Rarest of rare doctrine for death penalty sentencing: A critical analysis of asymmetric reasoning in evidentiary value vis-à-vis aggravating and mitigating circumstances. *Delhi Journal of Contemporary Law*, V(e-ISSN 2582-4570), 147–159 - Dr. Bharti Yadav and Adarsh Pandey the authors explore the “Rarest of Rare Doctrine” laid down in *Bachan Singh v. State of Punjab* (1980) and critically analyse how Indian courts apply it in capital punishment cases

HISTORY OF THE STUDY

The journey of capital punishment begins with the primitive tribal society where execution is implemented based on the phrase “eye for an eye”, also the code of Hammurabi (Babylon, 1760 BCE) has prescribed capital punishment for apparently 25 crimes. In these ancient periods of time there has been no trace of natural law is found but those cruel society have been delivered justice on the principle of “a life for life”, and when civilization drastically happened Ancient Greece has established The Draconian Code (7th century BCE) which made death the punishment for virtually every crime makes such law looks quite brutal.

In India texts like the *Manu smriti* and *Artha Shastra* which is considered as a codified law

endorsed capital punishment for heinous offenses such as murder, treason, and espionage. The principle of *Dand Niti* emphasized retribution and deterrence. Magnifying the scripture Artha shastra, Kautilya has outlined execution methods and justified death penalty for crimes threatening state security which also shows the essence of retributive justice. These laws have been made in the paradox of tolerance. Where the society is intolerant of tolerance of crimes, so the laws made by such society are slightly inhumane and delivers retribution as justice. During medieval periods the Islamic law also influenced Indian jurisprudence, capital punishment was prescribed for crimes like adultery, apostasy, and murder, executed through stoning or beheading, this also gives rise to retributive justice where the indicted are considered as dangerous weed to the society and so the monarch of such period believes that destructing those weeds can make the society pure and divine by mandating retribution for brutal crimes.

Over a period of time, during colonial era The British codified capital punishment in the Indian Penal Code (IPC) of 1860 currently BNS, which prescribes death penalty for various crimes. Execution by hanging became the standard method. Here the motive to deliver justice is taken place as to create a fear of execution among the other who is intended to commit the same crime, for the less serious crimes rehabilitation and pecuniary punishments have been provided. This is the era where the rehabilitation is served to crimes and the legislation believed that the cognition of the criminals can be changed accommodating the society by rehabilitating them inside the prison. This also makes the laws which does not mandates the capital punishment allowing the judiciary to choose between retribution and rehabilitation. Followed by the post-independence changes, The Constitution of India guarantees the right to life under Article 21, and this humanizes and scrutinizes the penal laws but allows capital punishment through “due process of law” which makes The Code of Criminal Procedure (CrPC), 1973 formalizing capital punishment. Article 21 permits the right to life but the capital punishment is provided to several crimes mentioned in CrPC currently BNSS which creates a balance between humanity and social control.

In the contemporary period of time when the judiciary oscillates between retributive justice and rehabilitative justice, the supreme court of India has delivered a judgement in the case of *Bachan Singh v. State of Punjab* which establishes the rarest of rare doctrine, only in accordance with this doctrine capital punishment can be served. And in the case of *Macchi Singh v. State of Punjab* the supreme court has addressed the application of the rarest of rare doctrine by providing a five-step test to identify the rarest of rare cases.

The evolution from Kautilya's Artha Shastra to the Macchi Singh the impact of retribution has been gradually decreased. This shows the rise of natural justice and the decline of retributivism and positivism.

NATURAL LAW AND RETRIBUTION

The Indian legislation is quite flexible where the inconsistent judiciary oscillates between retribution and rehabilitation. Where according to the jurist Beccaria, the primary purpose of punishment was deterrence to prevent the offender from committing further harm and to dissuade others from similar crimes, but not retribution or vengeance, so in Indian context applying his ideas, retribution wouldn't work effectively but would make society dysfunction by creating a deterrence. In the case of *Sunil Batra v. Delhi administration*, the supreme court of India has restored the scope of natural rights regarding Beccaria's ideas by protecting the right to life of the accused through giving imprisonment cancelling the death penalty.

Also, capital punishment regarding *Stephen Breyer* is absolutely unconstitutional, respecting his views in India, the supreme court has passed a judgement of *Channu Lal Verma v. State of Chhattisgarh* where the Justice Joseph questioned the moral legitimacy of the death penalty, urging a re-examination of its constitutionality in light of evolving standards of decency.

Natural justice in India is protected by some Indian jurist among the most prominent jurist Justice Krishna Iyer Held that capital punishment must be reserved for the gravest cases and must pass the test of reasonableness under Article 21. By these judgements in India with reference to Article 21 of Indian Constitution the natural justice is protected and several judgements passed by the judiciary. Here the natural law is secured only in several cases, but in others retribution is served to create a deterrence like the ideas of Thomas Aquinas, even though Thomas Aquinas is a natural thinker, he says that the state may execute a person if their continued existence threatens society, if a person's existence threatens the peace in the society such existence can be executed for the common good of the society which is highlighted in the *Nirbhaya* case so, the natural law is incorporated in the Indian legislation but it is not completely implemented.

POSITIVISTIC PERSPECTIVE

Positivism is the supremacy of the legislations which has been implemented in the society.

According to H.L.A. Hart he did not oppose capital punishment outright; emphasized that legality is distinct from morality. He believed that morality that is the core essence of natural law is completely different from positive law so, the positive laws can be implemented effectively on the society in order to maintain peace and order. The crux of his ideas is seen in the judgements like *Bachan Singh v. Union of India*, *Machi Singh v. Union of India* also in *Kehar Singh v. Union of India* where retribution is served as it is given the sovereign judiciary which should be followed. Here the capital punishment is given to treat the heinous crimes by the sovereign which lacks natural law but satisfies the concept made by H.L.A. Hart.

Jeremy Bentham is a positive jurist who apparently opposes capital punishment but he says that it can be used if it creates a greater benefit in the society. He sees the crimes in the society as weed and it can be treated by retribution to clear it and make the society clear again. In the judgement of *Swamy Shraddananda v. State of Karnataka*, the judiciary avoided the irreversible harm of execution while still serving deterrence and incapacitation even though it creates deterrence it also retains the peace by deterring the society for the same crime.

John Austin who says the law as the command of sovereign backed by sanctions where he believes that the sovereign's orders should be followed even it is retribution. According to him sovereign is the one who knows the societal needs and will treat the society according to its needs which is established in the Indian case of *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* where it criticized arbitrary application; stressed individualized sentencing and mitigating factors.

However these positivists have influenced the Indian Judiciary quite prominent, it lacks the natural law and absolutely violates the article 21 of Indian Constitution which shows the inconsistency relatively.

CAPITAL PUNISHMENT IN SOCIOLOGICAL APPROACH

Society is defined as the group of people having same kind of norms and values in their culture. Here in jurisprudential view according to Auguste Comte in the context of retribution, Punishment should serve societal stability, not emotional vengeance. So, the punishments should be served only for treating the crimes not for vengeance. In the law commission report No. 262 (2015) which shows some essence of Comteian principles by emphasizing that retributive justice is outdated and ineffective. Advocates a shift toward reformative and

utilitarian models of justice.

Montesquieu is a scholar who reviewed the retribution as a punishment which must fit the crime not exceed it. Excessive retribution undermines justice. He believes that the retribution must be relented to the crime committed but should not exceed the severity. In Indian context his ideas are incorporated in the “rarest of rare” doctrine and emphasis on individualized sentencing reflect Montesquieu’s concern for proportionality and legal clarity.

In several cases the sociological school is more compatible to the current society in India where the death penalty should be served only to the crimes which deserve it and not out of vengeance or to the less severe crimes.

JURISPRUDENTIAL FUTURE PATH

The rarest of rare doctrine, while historically important, is laden with ambiguity, arbitrariness, and ethical quandaries. The legislation of the capital punishment shows the absolute ambiguity by referring to the words of Thomas Aquinas the legislation must be very defined to the society so the people would be clear on the consequences of their actions. The ambiguity should be removed from the legislation and a clear law should be provided to the judiciary to avoid the oscillation among the punishments.

To the society of India, the concepts of Hegel would be more suitable where Hegel's theory of punishment stems from his conviction that crime is a deliberate rejection of the ethical order, and that the law represents the community's ethical will. According to a Hegelian perspective, it would only be justified for crimes that essentially upend the foundations of moral and social life—acts so serious that they completely invalidate the right itself. By enforcing such a penalty, the state treats the offender as a morally responsible, logical being who has decided to face this consequence, reinforcing the rule of law and the community's shared values. According to Hegel, the death sentence therefore turns into the "negation of the negation," restoring the moral order via a purposeful and well-reasoned act of justice.

The future of retribution in India depends on achieving a balance between deterrence, justice, and human rights. While the judiciary has confined its application to the "rarest of rare" circumstances, the death sentence is likely to remain in place for acts of extreme savagery, terrorism, and threats to national security. Judicial changes should concentrate on creating

clearer sentencing criteria to eliminate arbitrariness and maintain uniformity across cases. At the same time, the government may try to limit the scope of the death sentence, ensuring that it is reserved for the most serious offenders while fostering rehabilitation for minor crimes. Finally, the future road involves maintaining death punishment as a protection of justice but gradually complying with growing constitutional and humanitarian principles.

CONCLUSION

The debate over death punishment in India highlights the difficult balance between justice, deterrence, and constitutional morality. While its detractors consider it an inhumane and arbitrary approach, its continuous use in the "rarest of rare" circumstances indicates its significance in dealing with crimes that shock society's conscience. Judicial statements have sought to assure justice and uniformity, yet the element of subjectivity remains in sentence. At the same time, the legislative and judiciary have exercised prudence by restricting its reach, preventing abuse while maintaining it as a deterrent to grave offenses. Ultimately, death punishment in India represents society's will to uphold order and justice, even as disagreements over its need and extent continue to define its future course.

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