
CAPITAL PUNISHMENT IN INDIA: AN INSIGHT

Pranjal Soni, LLM, Institute of Law and Legal Studies, Sage University Indore

ABSTRACT

This paper examines the issues related to Capital punishment and its purview in perusal to the Criminal Justice System in India. It is the most important and complex punishment as witnessed in the eyes of judicial reforms and the rights of the accused. Capital punishment has been very keen under observation with constitutional rights, the gravity of offenses, and the rate of the rarest doctrine. Further, it has been found that in this backdrop, the Indian Supreme and Higher judiciary have undertaken several findings and rulings concerning Capital punishment to envisage the core the capital punishment.

Introduction:

As everyone knows, there is a high rate of crime and criminality in India. The death penalty can also be termed as capital punishment. It is the penalty that will be imposed for the most serious and egregious offense. Penalties are necessary to uphold social order; those who break the law will suffer the repercussions. The state-approved way of executing someone for a serious and heinous crime is the death penalty. The current global crime rate is among the highest in history, with India ranking among the top 10 nations worldwide in terms of crime rate. Section 368 of the Code of Criminal Procedure permits the High Court to apply the death penalty, as does Section 53 of the Indian Penal Code, 1860. The death sentence varies according to the country, state, and place. The death sentence is deemed unethical by several human rights movements. Article 21 of the Indian Constitution guarantees the Right to Life and personal liberty to all the citizens of India. Since the death penalty has been applied to criminals since ancient times, it cannot be considered unique, even though there are several offenses for which it is applied. The method by which a person is executed by the state for their crimes is known as capital punishment. When a criminal is sentenced to death by a court for their offense, this is known as the capital punishment or death penalty.

Historical Background:

The death penalty has a long history of legalization. Almost no country in the world can claim that the death penalty has never been used. The history of human civilization reveals that the death penalty has never been abolished as a form of punishment. The Draconian laws of ancient Greece heavily penalized murder, conspiracy, burning, and assault or rape with the death sentence.

However, Plato argued that it should be reserved specifically for the desperate. The Romans also used it for a variety of crimes, albeit citizens were barred from it for a short period during the Republic. This finds support in the opinion of Sir Henry Maine, who stated that although the Roman Republic did not abolish the death penalty, it was not used and was instead primarily regulated by the act of punishment or banishment and the questioning process.

Evolution of Capital Punishment in India: -

Dharma precepts served as the foundation for the administration of the criminal and civil justice

systems. Ancient historical works like the Shastras, the Vedas, the Mahabharat, the Ramayana, and the Geeta contain the most intricate compilations of laws and life lessons. These books encompass the following topics: debt, sales, assault, defamation, theft, robbery, adultery, murder, and relationship disputes, among many more civil and criminal cases.

Due to its reliance on caste, color, and creed as primary dividing lines, Hindu law has always been biased in its administration of justice.

Banaras later wrote a code for the Hindus at the request of Warren Hastings, the Governor General of India during the British East India Company's rule. "Gentoo Code" was the code's given name. Major offenses like murder, robbery, etc. would be punishable by death under this code.

The Indian Penal Code, passed in 1861, allowed for the death penalty to be applied to murder. Some members of the Constituent Assembly.

Expressed support for abolishing the death penalty during the 1947–1949 development of the Indian Constitution, but this provision was not included in the final form. Over the next two decades, private members' bills to outlaw the death penalty were introduced in both the Lok Sabha and the Rajya Sabha, but none of them were enacted.

Methodology:

Two types of detailing were needed. Firstly, the need for such cases and laws in India were detailed which defined and regulated the Capital Punishment judiciary regarding the Criminal Justice System and secondarily such research was made out regarding Capital Punishment in India for effectively carrying out trend analysis. Thus, the first task was to break down the analytical structure of crimes and offenses which made capital punishment a consequence, also a comparative case analogy was made out to clarify the need for Capital Punishment in Indian Criminal Jurisprudence available. Secondly, the studies were made out on several findings which were ruled by the Apex Court in the classification and epitome of Capital Punishment and its weightage in the Criminal Justice System.

Birth of the Doctrine: “Rarest of Rare”

Every criminal justice system in the world works to keep the ratio of punishment to crime at

the same level. The judiciary's policy of not prosecuting a single innocent person while leaving hundreds of criminals unpunished leads to a high number of criminals going unpunished, which in turn encourages criminal behavior in society. Eventually, this undermines the legitimacy of the legal system, making justice inevitable. In *Rajendra Prasad V. State of U.P.* 1979, The death sentence would not be justified, according to the Supreme Court, unless it could be proved in the court that the offender continues to pose a severe risk to social security. Justice Krishna Lyer believes that three categories of criminals—white collar crimes, killing a dangerous killer who could harm society and offenses against societal disorders—should be executed. The Supreme Court subsequently ruled that the death penalty under Section 302 of the Indian Penal Code (IPC) for an accused person convicted of murder did not violate any fundamental constitutional rights.

The Supreme Court's interpretation of Article 21 (right to life) and Article 19 (protection of certain rights regarding conviction for offenses) of the Indian Constitution gave rise to the "rarest of the rare" theory in the context of the death penalty in India. *Bachan Singh v. State of Punjab* 1980 is the seminal case that developed and established this theory (1980). The following are some essential elements and significant case laws concerning India's "rarest of the rare" doctrine:

The Apex court established the "Rarest of Rare Cases" criterion for the imposition of the death penalty in the landmark decision of *Bachan Singh v. State of Punjab*. These cases are as follows:

1. Only the most extreme cases of extreme responsibility shall be subject to the exemplary punishment of the death sentence.
2. Before the death penalty is applied, all of the offender's circumstances and the environment in which the crime was committed must be taken into account.
3. The death penalty may only be applied in situations where life in prison appears to be an inadequate punishment given the circumstances of the crime and where it is evident that the circumstances and nature of the offense make life imprisonment unsuitable for carrying out the intended punishment. Additionally, no message from the judiciary to the public should be sent, leading to the conclusion that life in prison should be the norm and the death penalty an exception to the rule.

4. Before the death penalty is applied as an exceptionally exemplary punishment, an account of the aggravating and mitigating circumstances should be prepared. During this process, full weightage should be given to the mitigating factors, and a just balance between the two should be made. There are numerous instances where the court, having carefully considered all the options and realizing the seriousness of the crime, chose to either impose the death penalty or, adopting a more reforming stance, impose life in prison.

The punishment in the well-known case of *Machhi Singh v. State of Punjab* 1983, in which a family conflict resulted in 17 deaths of persons on both sides, varied from the death penalty to life imprisonment for 9 people, depending on the seriousness of their crimes. It showed how the act and its consequences led to the penalty that was given. The Supreme Court has held the five circumstances based on which decision would be taken whether to give the death penalty or not.

1. Manner of commission of crime
2. Motive for commission of crime
3. Anti-social or socially abhorrent nature of crime
4. Magnitude of crime
5. Personality of a victim of murder

Arguments in favour and against Capital Punishment.

The death sentence, commonly known as capital punishment, is a highly debated issue. Both supporters and opponents of the death penalty offer reasons to back up their claims. The following are some arguments for and against the capital punishment penalty:

Arguments in Favor of the Capital Punishment.

- **Deterrence:** Supporters of the death penalty argue that it deters criminal activity, especially serious crimes like murder. The theory is that potential criminals might be deterred by the fear of receiving the harshest punishment possible.

- **Retribution:** According to some, the death sentence serves as a kind of justice or retaliation by making sure that those who perpetrate the most heinous crimes ultimately pay a price for their deeds. It is thought to be a means of balancing the legal system.
- **Closure for Families of Victims:** Supporters of the death penalty claim that it gives victims' families a sense of closure by giving them a measure of justice and enabling them to continue living on.

Arguments against of the Capital punishment:

- **Lack of Deterrence:** According to some research, there is insufficient proof to establish that the death sentence works better than other types of punishment at deterring crime. Opponents claim that in the real world, offenders may not be deterred by the possibility of punishment.
- **Arbitrary Application:** Opponents point out that the death penalty is frequently used arbitrarily and is affected by socioeconomic, racial, and other factors and legal representation quality, among other issues. This calls into question equality and justice.
- **Human Rights Violation:** According to many international treaties on human rights, the right to be free from unreasonable and cruel punishment is violated by the death penalty, according to critics. The death sentence is considered by many nations and organizations as a violation of fundamental human rights.

Class of offenders not subject to the death penalty: -

- **Pregnant women**

The list of criminals exempt from the death penalty now includes pregnant women. Section 416 of the CrPC states that a woman who has been given a death sentence may have her sentence postponed or reduced to life in prison if the high court determines that the lady is pregnant.

- **Minor**

According to Indian law, a person cannot be executed if they were under the age of eighteen when the offense was committed. Furthermore, a distinct statute known as the Juvenile Justice Act (2015) is provided by our laws and is exclusively applied in cases involving juveniles. This

is advantageous because it allows criminals to become members of the elite group of offenders who are not subject to the death penalty.

- **Intellectually disabled**

As per the legal provisions, those who are intellectually challenged or retarded may qualify as exempt from capital punishment. It is sometimes said that a person who commits a significant crime has an intellectual disability if they are unable to understand the nature of their actions and the consequences of them.

Suggestions and Recommendations:

- Proper law should be laid down: A large number of statutes provide for the application of the death sentence. As it became apparent that numerous laws existed authorizing the death penalty, no one was justifying such a punishment in the most exceptional of circumstances. This led to a great deal of uncertainty among jurists regarding the justifications for which the accused should receive the same punishment.
- A decision needs to be made carefully: In a democracy like India, the people make the decisions. Although the accused has committed a brutal act, if there are circumstances that show the accused will not harm society, the accused should not be executed; rather, the execution will be based on the accused's previous behavior in society before the crime. This discretionary authority to impose the death penalty rests with the guardians of the Constitution, who will follow the precedent decisions of the constitutional court.
- No pardon power for terrorists: - Our Constitution grants pardon power to the President and Governor but if the accused is found terrorist who affected the public at large, then he is not entitled to apply for a pardon.
- There can be no upper age limit on the application of the death penalty: Although there is no law in our country that permits a juvenile to be executed, if a juvenile commits a horrific crime—such as rape, murder, or other violent crimes—which is an extremely rare occurrence, it indicates that the juvenile had adequate knowledge of the consequences of his actions when he committed the offense, and as such, he must be executed with capital punishment.
- The death sentence must not be used hurriedly: Before applying the death penalty,

constitutional courts should carefully consider all relevant factors, as determined by a panel of jurists.

Conclusion:

One of the most contentious issues in Indian society is the death sentence. It has existed since antiquity and is currently prevalent in a few major nations, India included. The death penalty is only applied in the rarest of circumstances in India, although there is considerable debate about what exactly qualifies as a "rarest of the rare cases." Reducing crime and imposing a penalty in the name of justice are the ultimate goals of punishment in all cases. India experiences a similar situation; however, it is legal under the Indian constitution even though it violates Article 21's guarantees of the right to life and dignity. This paper offers a summary of capital punishment in India. It also discusses the background and several instances involving the death punishment. The study found that all decisions made about severe crimes were made with the general public in mind, which led to the conclusion that the death penalty should only be applied in extremely rare circumstances.

The use of the death penalty has always raised ethical and societal questions around the globe. Execution is not only punishment; it is more than that since, by the principles of human rights, it is immoral and shows a lack of regard for human life. Execution is the process of killing someone who is accused of a horrible crime in the name of justice.

Consequently, when enforcing laws, the legislature and the judiciary ought to approach the task from the perspective that the crimes themselves must be eradicated, not the criminals.

Bibliography

Books

N.V. Paranjape, Crime and punishment trends and reflection (edition 2020)

C.K. Thakkar 'takwani' and mc Thakkar criminal procedure

Prof. S.N. Misra (edition 2020)

Supreme Court criminal digest (1950-2021) Author - V.R. Manohar

Articles

<https://www.juscorpus.com/doctrine-of-rarest-of-rare-cases-is-it-truly-rare/>

<https://www.thehindu.com/opinion/editorial/abolition-is-the-way-the-hindu-editorial-on-the-higher-judiciarys-move-on-the-death-penalty/article66649608.ece>

<https://ijlljs.in/capital-punishment-in-india-the-unending-conundrum/>