

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

DEATH PENALTY IN INDIA: - A LEGAL AND HUMAN RIGHTS PERSPECTIVES

AUTHORED BY - SONAM THAKUR
SAGE UNIVERSITY INDORE
CRIMINAL LAW

GUIDED BY: DR. JYOTI PANCHAL MISTRI
(ASSOCIATE PROFESSOR)

ABSTRACT:

The death penalty, also called capital punishment, means giving the punishment of death to a person for committing very serious crimes. In India, this punishment is given only in the most extreme cases, like murder, terrorism, rape of minors, and crimes that shocks the whole society. Even though the law allows the death penalty, it is used very rarely. The Indian courts follow a rule called the “rarest of rare” doctrine. This means that only when no other punishment seems enough, then only the death penalty is given.

There has always been a big debate in India about whether the death penalty should continue or not. Some people believe that it is necessary to give such punishment to protect society and to give justice to the victim and their families. They say that it works as a warning to other criminals. On the other hand, many human rights groups and legal experts believe that taking a person’s life is not the right way to give justice. They say it goes against the life which is the basic human right under the Indian constitution.

One of the biggest problems with the death penalty is that sometimes innocent people get punished due to wrong investigations or unfair trials. Once a person is hanged, the mistake cannot be corrected. Also, it has been seen that poor and uneducated people are more likely to get the death penalty because they don’t get proper legal help. This makes the system Unfair. Many legal experts have also said that there is no strong proof that the death penalty stops crime better than life imprisonment.

In India many important court cases have shaped the way the death penalty is used. In Bachchan

Singh vs State of Punjab, the Supreme Court said that the death penalty should only be given in the “rarest of rare” cases. In other, cases like Shatrughan Chauhan and Yakub Memon, the court discussed how long delays, mental health, and other issues should be considered before hanging someone.

Around the world, more than 140 countries have stopped using the death penalty. They believe in reforming the criminal instead of killing them. India has not yet ended the death penalty, but it has been using it less and less in recent years the Law Commission of India, in its 262nd reports, also suggested ending the death penalty except for cases of terrorism.

KEYWORDS:

Death Penalty, Capital Punishment, Indian Judiciary, Human Rights, Criminal Justice, Rarest of Rare Doctrine, Law Reforms.

INTRODUCTION:

The death penalty also known as capital punishment, is one of the oldest forms of punishment in the world. It means giving the punishment of death to a person who is found guilty of doing a very serious or dangerous crime. In India, the death penalty is still a legal punishment, but it is given only in the rarest of rare cases. This means that it is used only when the crime is so brutal and shocking that no other punishment would be Enough.

The topic of the death penalty Is very serious and sensitive. Some people believe that the that penalty is necessary to give justice to the victim and to stop others from doing similar crimes. They feel that if a person has done something so bad that it has hurt many people or taken someone’s life, then that person also does not deserve to live. On the other hand, many people believe that killing someone’s, even if they are a criminal, is not the right thing to do they say that it is not the government’s job to take a personal life and that every person has a right to leave no matter what mistake they have done.

In India the laws related to the death penalty come from the Indian Penal Code 1860, and the code of criminal procedure 1973. Crimes like murder [Section 302 IPC], Kidnapping for ransom [Section 364A] comma terrorism related offenses, and the rap of minor girl Below the age of 12 [after 2018 amendment] can lead to the death penalty. But just because of law allows the death penalty doesn’t mean it is given in every cases. Judges must look at the seriousness

of the crime the way it was committed the background of the criminal and whether the person can be changed or reformed only if the code thinks that life imprisonment is not enough, it will give the death sentence.

The Indian Supreme Court introduced the idea of the “rarest of rare” Principle in the case of Bachchan Singh vs State of Punjab in 1980. According to this principle, the death penalty should be given only when the crime is extremely brutal, inhuman, and affects the entire society. This rule is used by judges to decide when a death sentence is appropriate. Still, many people believe that this rule is not always followed properly. Some people get the death sentence while others who did similar crimes get life imprisonment. This creates confusion and makes the justice system look unfair.

Another big issue with the death penalty is that poor people and those who don't have good legal support often suffer more. Rich and powerful people can hire good lawyers, and many avoid harsh punishment, but poor people who don't understand the legal system often get punished more severely. This creates inequality. In some cases, people have been wrongly sentenced to death and the mistake was found later. But by that time, it was too late. This shows that the justice system is not perfect, and when the punishment is death, even one mistake can lead to the loss of an innocent life.

The process of giving the death penalty also takes a lot of time after the lower court gives the sentence the person can go to the high court and then to the Supreme Court if all codes reject the appeal the person can send a mercy petition to the president of India under article 72 or the governor of the state under article 161 this mercy petitions can take many years to be decided. During this time the person lives in fear and suffers mentally sometimes, people who were waiting for years for their mercy petitions to be answered were later found to have become mentally ill due to the stress and fear. This makes the punishment even more painful.

In the last few years, India has seen some very serious crimes, like the Nirbhaya gang rape case in 2012, which made people very angry. In such cases people demand the death penalty for the accused to get justice quickly. This shows that public opinion also plays a big role in such decisions. But the question is should the law be influenced by public emotions? or should it be based only on justice facts and fairness?

In many other countries, the death penalty has been completely removed. More than 140

countries have either abolished it in law or stopped using it in practice. They believe that every human being has the right to live and that the state should focus on reforming criminals, not killing them. They argued that life imprisonment is enough to punish someone and that giving that punishment does not make society safer. Instead, it shows that the government is also using violence as a solution, which is not good message.

India is a democratic country that believes in the values of Justice, equality, and dignity. Our Constitution gives every person the right to life under article 21. So, the question arises can we justify taking away someone's life even if they are a criminal? Is the death penalty truly needed in today's time, or can we find better ways to deal with serious crime?

RESEARCH OBJECTIVES:

The purpose of this research is to look closely at how the death penalty works in India and to find out whether it is still the right kind of punishment in today's time. The study aims to answer some important questions and explore the topic from different angles the main objectives are:

1. To learn about the meaning and use of the death penalty in Indian law.
2. To explore how Indian courts have handled death penalty cases.
3. To examine whether capital punishment prevents crime.
4. To find out if everyone gets equal treatment under the death penalty system.
5. To compare India's approach to other countries in the world.
6. To understand the human and emotional side of this punishment.
7. To study how long the whole process takes and the impact of delays.
8. To think about what changes can make the system better.

HYPOTHESIS:

The death penalty in India is not always used fairly and often affects the poor and underprivileged more. It has not been clearly proven to reduce crime. Many people face long delays and suffer mentally while waiting for execution. Therefore, there is a need to rethink whether capital punishment is best form of justice in today's time.

LITERATURE REVIEW:

The death penalty is one of the most debated topics in Indian law. over the years, many scholars, judges, law commissions, and human rights groups have studied and written about it. The literature on this topic helps us understand how the death penalty has been used in India, what

problems exist in its use, and whether it should continue or be removed.

One of the most important legal sources is the Indian Penal Code IPC [1860], which lists the crime for which a person can be given that penalty. This includes murder [Section 302], terrorism related crimes, kidnapping for ransom, and rape of minor girls under certain conditions. The Code of Criminal Procedure [CRPC] 1973 explains how courts should conduct trials, and how the death sentence should be given and confirmed.

A very important court case in this topic is Bachchan Singh vs State of Punjab [1980]. In this case, the Supreme Court said that the death penalty should be given only in the “rarest of rare” cases. This means it should be used only when the crime is extremely brutal, and no other punishment is enough. This case is a turning point in how the death penalty is used in India.

Another major case is Machi Singh vs State of Punjab [1983]. The Supreme Court gave some guidelines on what kind of crime can be called “rarest of rare”. It explained that the nature of the crime, how it was done, and its effect on society must all be considered.

Later, in Shatrughan Chauhan vs Union of India [2014], the court said that delays in deciding mercy petitions and mental health of prisoner are also important. If there is too much delay, or if the prisoner is mentally unwell, the death penalty can be changed to life imprisonment. This case brought attention to human rights of death row prisoners.

The Law Commission of India, in its 262nd Report [2015], studied the death penalty deeply. It said that the death penalty should be removed for all crimes, except in cases of terrorism and war against the nation. The Commission noted that there is no solid proof that death penalty prevents crime better than life imprisonment. It also said that the system is not fair because poor people suffer more due to lack of good legal help.

Many scholars and writers have also given their views. Some say that death penalty is necessary for justice and safety of society. They believe it scares other criminals and gives peace to the victim's family. Others say that it is outdated, cruel and goes against the right of life. They also worry about wrongful convictions, where innocent people may get punished by mistake. In such cases the damage can never be undone.

Human rights organizations, like Amnesty International, have strongly spoken against the death penalty. They say that it is often used unfairly especially against minorities, the poor and people without good legal support. They argue that No one has the right to take another person's life even the state.

Globally, many countries have stopped using the death penalty. Over 140 countries have either removed it from their laws or do not use it anymore. They believe in reforming the criminal Instead of killing them. This has raised question in India too, about whether we should move in the same direction.

Legal experts like A.G Noorani and Bikram Jeet Batra have written books and articles on this topic. They explain how the death penalty system in India has many problems, such as unequal treatment, long delays, and pressure from public opinion or media. They suggest that India should follow the example of other Democratic countries and abolish the death penalty.

Some recent studies have also shown that public opinion is changing. While people used to support the death penalty in cases of brutal crimes, now more people are open to the idea of life imprisonment instead, especially if it means justice is delivered quickly and fairly.

In short, the literature shows both sides of the debate. One side says that the death penalty is needed for serious crimes. The other side says it is inhuman, unfair and not effective. Most recent reports and experts now agree that the time has come to seriously think about whether India still needs death penalty or if it should be replaced with a more just and human system.

ANALYSIS:

The death penalty is one of the most serious punishments in India, as it takes away a person's life. This section looks deeply into how this punishment is used, how it works in the justice system, and whether it is fair or not. Also covers the issues, problems, and changing views in society.

1. Death penalty in Indian law:

death penalty is allowed by Indian laws and is given for some of the most serious crimes. The Indian Penal Code [IPC] lists several offences where death can be given. some of them includes:

- . Section 302- Murder
- . Section 121 - Waging war against state
- . Section 376AB, 376DB, 376E - Rape of minor girl under 12, gangrape and repeat offenders
- . Section 364A- kidnapping for ransom
- . Terrorism laws- Like the Unlawful Activities [Prevention] Act [UAPA]

But even though the law allows the death penalty, the courts use it very rarely, it is not given in every case of murder or rape. The Supreme Court said in the Bachchan Singh vs State of Punjab, 1980 case that the death penalty should be used only in the “rarest of rare” cases. This means it should only be given when the crime is so cruel or shocking that nothing else seems enough.

2. The Rarest of Rare Doctrine

The “rarest of rare” rule Helps judges decide when the death penalty is justified. Codes have to look at both the crime and the criminal. This includes:

- . How serious the crime was.
- . If it was planned or done suddenly
- . Whether the criminal can be reformed
- . The mental condition, background, and age of the criminal

This rule was further explained in the Machi Singh vs State of Punjab case 1983, where the court gave five categories of cases that may deserve the death penalty. This included crimes that affect society deeply or involve cruelty beyond limits.

However, applying this rule is not always easy. What one judge sees as the “rarest of rare” may not be seen the same way by another judge. This makes the system uncertain.

3. Who gets the death penalty?

Studies show that many people who get the death penalty in India are from poor and backward communities. They often don't have money to hire good lawyers and they Don't fully understand how the legal system works. many times, their side is not presented properly in court.

Reports by organizations like the project 39A [by National Law University, Delhi] found that most people on death row are either poor, less educated, or belong to minority groups. This shows that the system may be unfair to the weaker section of the society.

4. Delay and mental torture

In India even after someone is sentenced to death, the punishment is not carried out quickly.

The person can file an appeal in the High Court, Supreme Court and then send Mercy petitions to the president or the governor. Whole process can take many years.

While waiting the convict is kept in a small cell, alone. without knowing when they will be hanged. This causes a lot of mental stress, depression, and even mental illness. In the Shatrughan Chauhan vs Union of India 2014 case, the Supreme Court said that if there is an unreasonable delay in deciding Mercy petitions, the death sentence can be changed to life imprisonment.

5. Wrongful convictions and misuse

There have been many cases where people were first given the death penalty but later found to be innocent. In such cases, if the execution had already happened an innocent life would have been lost forever. This is one of the strongest arguments against the death penalty- because courts can make mistakes.

Also, sometimes the decision to give the death penalty is influenced by public anger, media coverage, or political pressure. For example, in the Nirbhaya case [2012], there was huge public demand for the death penalty, which may have affected how quickly and strongly the court acted.

6. Does the death penalty stop crimes?

One of the main reasons given in support of the death penalty is that it scares criminals and stops others from doing similar crimes. But research has shown that this may not be true. Many serious crimes are done in anger, fear, or without thinking. In such situations, criminals are not afraid of punishments.

Also, state or countries that have removed the death penalty have not seen any increase in crime. This shows that capital punishment may not be the strongest way to stop crimes.

SUGGESTION:

After studying the death penalty system in India, there are many issues related to fairness delay and human rights: -

1. Make sentencing clearer and consistent:

Courts should follow clear and fixed guidelines while giving a death penalty. At present, different judges sometimes give different punishments for similar crimes. This creates confusion and inequality. A well-defined rule for deciding when to give the death sentence should be followed in all courts.

2. Provide better legal aid to poor and needy accused:

Many people who get the death sentence are poor and cannot afford good lawyers. The government should ensure that every accused person gets proper legal help from trained and serious legal aid lawyers especially in capital punishment cases.

3. Focus more on life imprisonment without parole:

Instead of the death penalty, courts can give life imprisonment without parole for the most serious crimes. This will keep society safe and allow the convict to reflect on their actions. It is less extreme form of punishment than death.

4. Speed up the legal process in death penalty cases:

Many prisoners stay on death row for years, waiting for appeal and mercy petitions to be decided. This delay causes great mental torture. The government and courts should set a time limit for deciding such cases quickly and fairly.

5. Reform the mercy petition process:

The President and Governors take many years to decide mercy petitions. This should be made faster and more transparent. Also, the reason for accepting a rejecting or rejecting a mercy petition should be shared clearly.

6. Review the use of the “rarest of rare” principle:

The rarest of rare rule is important, but it is often misused or misunderstood. Training should be given to judges on how to properly apply this rule while considering both the crime and the criminal’s background.

7. Conduct regular reviews of death penalty cases:

The Judiciary or a special nation committee should review death penalty cases regularly. This will help ensure no innocent person is wrongly punished and that all legal rights of the convict are protected.

8. Spread awareness about human rights and justice:

The public, especially students and future lawyers, should be educated about human rights, fair trial and justice. This will help reduce public pressure in high profile cases and help create a more balanced justice system.

9. Learn from other countries experiences:

India can study how other countries have removed the death penalty and still managed the crime control effectively. These can help Indian lawmakers think about better, fairer, and more modern forms of punishment.

10. Start a national level debate on abolition:

The government should hold discussions in Parliament and with the public on whether India still needs the death penalty. A proper national debate can help in making an informed and Democratic decision on this important issue.

CONCLUSION:

The death penalty has always been a very serious and emotional topic in India. On one side, it is seen as a strong punishment that gives justice to victims and teaches a lesson to society. On the other side, many people believed that killing a person even if they are criminal, is not the right way to bring justice.

We also found that the death penalty is not always applied equally. Poor and uneducated people, who don't get proper legal support often suffer more. There are also many delays in the legal system, and this causes mental pain to people on death row. In some cases, innocent people have even been wrongly sentenced to death, which shows that mistake can happen even in serious cases.

The Law Commission of India and many human rights groups have recommended that the death penalty should be removed, except in very special cases like terrorism. Around the world, most countries have already stopped using capital punishment and instead focus on life imprisonment and reform of criminal.

India is a democratic country that believes in justice, equality, and human dignity. The right to life is a basic right for every human being, even for those who have committed crimes. So, the time has come for India to think deeply about whether the death penalty should continue or whether it is time to move towards a more humane and fair justice system.

In conclusion, the death penalty is not just a legal issue, but also a moral and social one. It needs serious discussion, careful thought, and honest debate. A justice system should not only

punish, but also give a chance to reform and protect the rights of every person. India must now decide what kind of Justice it truly believes in.

REFERENCES:

1. The Constitution of India, Article 21- Right to Life and Personal Liberty.
2. Indian Penal Code, 1860 [IPC] - Section 121, 302, 364A, 376AB, 376DB and 376E.
3. Criminal Procedure Code, 1973 [CRPC] - Sections related to sentencing and appeals in death penalty cases.
4. Bachchans vs State of Punjab, AIR 1980 SC 898 - Supreme Court case that established the “rarest of rare” doctrine.
5. Machi Singh vs State of Punjab, AIR 1983 ac 957 - Case that clarified the categories of rarest of rare crimes.
6. Shatrughan Chauhan vs Union of India, [2014] 3 SCC 1 - Case on delay in execution and mental health of death row convicts.
7. Project 39A Reports, National Law University, Delhi - “Death Penalty India Report” [2016] and annual statistics on capital punishment in India.
8. Law Commission of India, Report No.262 [2015] - “The Death Penalty”, recommended abolition of capital punishment for ordinary crimes.
9. Universal Declaration of Human Rights, 1948, Article 3 and Article 5 – Right to life and protection from cruel punishment.
10. Amnesty International Reports – Annual global review of the use of the death penalty.
11. International Covenant on Civil and Political Rights [ICCPR] – United Nations treaty on human rights, to which India is a party.
12. Sharma, B.R. [2020]. “Capital Punishment in India: A Study of Trends and Issues”. Indian Journal of Criminology.
13. Batra, N. [2021]. “Rethinking the Death Penalty: A Legal and Human Rights Perspective”. Journal of Indian Law and Society.
14. National Crime Records Bureau [NCRB] – Annual reports on crime statistics in India.
15. Indian Express, The Hindu, and Live Law – News articles and court updates on major death penalty cases like the Nirbhaya case.