

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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WHEN LAW AND ETHICS COLLIDE: RATIONALE BEHIND CAPITAL PUNISHMENT

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ABSTRACT

The present paper “When Law And Ethics Collide: Rationale Behind Capital Punishment” investigates and analyzes the rationale or the sanctity behind the capital punishment. The **CAPITAL PUNISHMENT** also called as **DEATH PENALTY** or **DEATH SENTENCE** is one of the most debatable and controversial punishment, hence the attraction to the mystery. The paper first analyzes the genesis behind the punishment and its historical conception, highlighting the personal laws as the pillar for the modern codified legislation on Death Penalty. The findings of this investigation are backed by the arguments argued by the proponents and the opponents on the issue of the capital punishment; and levied on these arguments, the catharsis of the paper is formulated. The paper unravels the enigma and the stigma of the capital punishment and how it plays as a deterrent or retributive to the law. The paper dwells into the depth beyond the landmark judgments like **Bachan Singh v. State of Punjab**¹ and **Deena Dayal vs Union Of India**², along with-it legal implication towards the constitutional creativity in the aspects for Capital Punishment. The paper establishes a foundation by analyzing the legal and constitutional challenges and compliances inherent to capital punishment. The investigation measures the aggravating and the mitigating factors for weighing the dire need for the Capital Punishment in our today’s society along with its consequences and inconsequence. The paper proposes an effective advocacy for governance over principles and pragmatic concepts behind the capital punishment. The confession of the paper leads to criminal jurisprudence with its controversial conflict with ethics and moral values. This investigation is a transfer of my interminable, insatiable restless monologue that had been conflictingly restless to express the rationale behind the Capital Punishment with praise and contempt.

¹ AIR 1980 SC 898

² 1983 AIR 1155, 1984 SCR (1) 1

KEYWORDS

- Capital Punishment	- Rarest Of Rare
- Death Penalty	- Execution
- Death Sentence	- Law

INTRODUCTION

Punishment as a compensation for the injury sustained by the injured? Punishment as the elimination of degenerate elements? Punishment as the payment of a fee stipulated by the power which protects the miscreant from the excess of revenge? Punishment as a declaration of war and a weapon against an enemy of law.?

Punishment can be summarized and interpreted in different ways and different concepts, thus the most common objective in these conjectures is the moral behind punishment. The ‘moral’ of punishment is to deter the crimes and provide compensation or the remedy to the injured by either penalizing the guilty or any injunctions, compensation etc, Thus, this investigation thoroughly examines the landscape and search for the realism to either challenge or advocate the idealistic view of our audience about Capital Punishment.

"Punishment is justice for the unjust." - **Augustine of Hippo**,³ the quote implies the depth of the application of the punishment serves in the delivery of justice; the punishment serves the law to ensure that everyone is met with their unwaivable and are not deprived of their subjecting rights, and when an incident does waive that right, the law ensures the punishment for the individual guilty for it.

Albert Einstein⁴ quoted, *"If people are good only because they fear punishment."*, the enforcement of capital punishment not only prevents but also deter the crime by embarking the unlawful acts as an ‘unwelcome act’ in the atmosphere of the society. The punishments act as a strict and brave consequences for the criminal offences, so that the predicament of receiving the punishment creates a ‘never-want’ scenario in the minds of the civilized society, so in order to deter the crimes, punishment should have to rhyme.

³ Augustine of Hippo was a theologian and philosopher of mixed Roman and Berber origin and the bishop of Hippo Regius in Numidia

⁴ Albert Einstein (14 March 1879 – 18 April 1955) was a German-born theoretical physicist who is best known for developing the theory of relativity.

'The wise considers the punishment as the *PERFECTION OF JUSTICE*', the quote stated by the Indian Historical Jurist **Manu**⁵ in his book '**Manusmriti**'⁶. The quote signifies the importance of the punishment being the essence of the laws to provide justice to its subjects. As the governance of laws has echoed the state, the apportion of the punishment has also been served alongside with it. A law without a sanction for its violation is never a law. Therefore, the laws are enforced with a corresponding consequence of its violation. Punishment stands as a pillar to deter and to prevent the society to transcend the laws. A crime committed with the intention to hurt or harm someone with the malicious intent should always be punished. Hence the CAPITAL PUNISHMENT also called as The Death Penalty, only be granted for the special cases which are very exceptional in nature. The Death Penalty is a highly debatable issue within its proponents and opponents. The law subjugates the Capital Punishment as the ULTIMATE PUNISHMENT given for the crimes which are considered as irredeemable, unforgivable and deprived of any virtue for forgiveness. The punishment has found its historical traces from ancient times and still a continuing process for providing the justice. This Paper subsequently search for the genesis of this 'WRATHFUL' punishment and its application in the contemporary India with the latest Doctrine of RAREST OF RARE; while enticing the audience with the need and critique of the same.

History and Origination of the Death sentence in India

To grasp the revelation behind Death Penalty we need to wind in the history for its genesis. The Death Penalty has always been considered as a serious punishment for the offences against the crimes but the psychology of Death being just a Punishment is highly fabricated, as the tradition of it lies in the past which has blurred the origin of it.

The origin of the Death Sentence is an enigma of its own and therefore does not provide a direct genesis of it, however there are various speculations or postulates which supports and entrails the foundation of the Death Sentence in historical context.

In Ancient Times,

When the civilization was in primitive stage, the society had no codified Laws except for the '*survival in adversity*'. There were no traces of ethical values or virtue but only cold brutal

⁵ Manu is considered as the first man, and the legendary author of Manusmriti, He is also known as the first king,

⁶ The Manusmṛti, also known as the Mānava-Dharmaśāstra or the Laws of Manu, is one of the many legal texts and constitutions among the many Dharmaśāstras of Hinduism.

indomitable spirit for survival. Every human was a tool that must had to labor to create more favorable conditions for earthly existence. The stronger beings used to claim their dominance over the weaker and exploit the weak to reap more claim of benefits, or simply to enrich their life while snatching over other's struggle. The psychology behind this 'Dominance' lies behind the psyche of pleasure received through gratification of conquest and superiority. The period can be noted as the time without laws, when the ONLY thing essential for ensuring the existence was the primal instinct of killing and surviving with fellow organisms.

However, the human cultural development was developing and thus a simple violation was raised against the primitive psychology of 'survival in adversity' and so the concept of civilization was formed, as the strangers of solidarity formed a State, they all collectively sacrificed or waived their rights to the State in exchange for security and prosperity, This new phenomena led to the concepts of '*debt and credit*' in the state, the state and the subject both were in debt of each other servitude, and disregard of it was considered as the breach of the **social contract** and thus the punishment was as a remedy for that breach, (**UBI JUS IBI REMEDIUM**).⁷ Throughout the human history, punishment was never based upon the miscreant for anyone's action but on the contrary, punishment was inflicted as an anger directed upon the one who has caused an injury due to the breach of his/her debt towards the State, but this anger was restrained and transformed through the concept that punishment should be of same equivalent price, which can be paid as a form of compensation.

In this social contract, the state and people have submissively waived their right with their correspondence duty and thus those were their '*debts*'. The objective of this goal was the adherence to state laws and ensuring peace and serenity in the State with the administration of justice. The *debtor* (subject) had to pledge something (for instance his/her life, freedom) in respect of safety and security from the *creditor* State) and thus both the parties had the right to uphold their rights in respect to other parties of the state, meaning all the civilians should have had to respect each other's right.

How can imposing Capital Punishment be considered as a compensation for 'debts'?
It because that infliction of suffering was considered as a compensation for those debts, the pleasure or the gratification lauded by the victim's families about the execution of their

⁷ Where there is a right, there is a remedy.

offender was considered as an extraordinary reward for their suffering, it was due to dignification of 'vengeance' titled into 'justice', even though justice was merely a further refinement of the sensibility to the injury.

Thus, it was the duty of an individual to protect the rights of other and the other's duty to protect the right of the individual. So, if any breached happened, a debtor hurts other debtor, the creditor was entitled to inflict the harm to debtor for the loss suffered. Hence the capital punishment became a prevalent method to compensate the lives of innocent debtors. It is with the moralization of 'debts' or 'guilts' that the genesis of capital punishment was formulated. 'INDEBTNESS TO STATE': this faith became the offender's instrument for execution.

As the civilization advances, the community tend to take the offences in a new prospect for punishment, because of ever continuing crimes, the society steeped into as a 'regular witness of habitual crimes' and hence punishment became less threatening, the offender was no longer executed in the same manner, the state can no longer unbridled wrath upon him in the accustomed way. Though this 'sickness' or the 'intention of inflicting injury' to innocent was strictly met with the severe punishment, as this sickness was considered as the greatest threat to the healthy.

4th Century BCE

As the time progressed, the society started the usage of various customs and traditions by building a civilization exclusive for the peaceful survival of the Humans and some domesticated animals for the benefits of the humans. This established a stepping stone for the framework of a civilized society or a State. The society thrived with enriching serenity and security established by the laws of the state In India, the origination of various Laws regarding the Administration of justice derives their birth from the 'Arthshastra'⁸ or 'Manusmriti', which were considered as the sacred text regarding the rights and duties of the public towards the State to promote solidarity and justice and the States's rights and duties to preserve its Subjects's security and ensuring Harmony.

Arthshastra

Written by **Kautilya**⁹ also famously referred as 'Chanakya'. The Arthshastra is a recorded literary text which narrates about the administration of Law and Policies in a State to ensure

⁸ Arthshastra is an Ancient Indian Sanskrit treatise on statecraft, politics, economic policy and military strategy.

⁹ Kautilya, also known as Vishnugupta and Chanakya, was a profound philosopher of ancient India.

peace and harmony of the state. The Arthshastra also deals with the crimes and their punishment by establishing a Deterrent. Arthshastra's perspective regarding the Death Sentence is considered as a pillar for deterring the public to prevent the violation of the law by creating Deterrent as a barrier to suppress the radicalizing transcend of Law. The Arthshastra strongly and profoundly subscribes the DEATH PENALTY as the Deterrent theory of punishment to advocate and to shape the public by instilling an everlasting fear to restrict the violation of the laws and ensuring public safety and security.

Some offences in which the Law adjudicated Death sentences were: -

- High Treason
- Murder of an innocent
- Certain types of thefts
- And many more.

The punishment for the offences were very gruesome and brutal in nature like Burning Alive to Death, Drowning to Death, Instantaneous Death (commonly called as '*Suddhavadha*') etc etc.

Manusmriti

Written by the **Sage Manu**, it is also known as the 'Grundnorm' for the Hindu's traditions and customary Laws, the Manusmriti situate certain rights and duties of the public and the State. It is a key text on **Dharma**¹⁰(duty of an individual) and Law. In Manusmriti, it is supported that a murderer should be condemned to death so that in the next life offender will not have to suffer for the great sin he has committed. Therefore, punishment of hanging a murderer is actually beneficial for reforming his sins for his next life. The manusmriti had described various punishment for the offences committed. The Death Penalty is a notable punishment prescribed for the crimes such as: -

- Murder and certain grave sexual offences.
- Theft
- Inflicting injury without any substantial reasoning.

However, the Manusmriti is heavily criticized for its favorable biasedness towards the **Brahmins**¹¹ (the top caste in the Varna system enshrined in the Manusmriti). The Manusmriti

¹⁰ Dharma refers to the moral, ethical, and religious duties and responsibilities that govern an individual's behavior and actions.

¹¹ Brahmin is a varna. The traditional occupation of Brahmins is that of priesthood at Hindu temples or at socio-religious structure.

also often provides exemptions towards several crimes committed by Brahmins and some societal privileges which promotes inequality and stir blind bigot and prejudice towards the lower caste.

Customary Laws: -

According to **Britannica**, the definition of religion is as follows, “**RELIGION**, *human beings’ relation to that which they regard as holy, sacred, absolute, spiritual, divine, or worthy of especial reverence. It is also commonly regarded as consisting of the way people deal with ultimate concerns about their lives and their fate after death.*”¹²

According to **Merriam-Websters**, the definition of Religion, “*personal set or institutionalized system of religious attitudes, beliefs, and practices*”.¹³

The religion can be considered as the narrative set by the divine persuasion of a Belief or a Faith, which bestow certain obligations and duties to its follower. In India, the State is a Democratic Secular State therefore a diverse religious commodity finds their home in it. Every Religion has prescribed paradigm of lifestyle along with certain sacred rituals in their holy books. The religion plays an establishing their role in shaping the conscience and the conduct of the society (which can be explained by depth in my previous paper “**Etymology of conscience and the birth of law: A moral perspective**”¹⁴). The paper explains how the religion plays an important and incessant role in shaping the Psyche and norms of the society. As Religion is considered as prima facie law of an individual due to its relationship with the faith and belief of the individual, hence the reason why personal laws have a memorable weightage in one’s consciousness. Therefore, Religious texts often act as the navigating compass for an individual’s conduct in the society.

Islamic Influences

Quran¹⁵, the religious text of the **Allah**¹⁶ and his teachings and the Hadith¹⁷ both mentions Death Penalty as a Valid and rightful punishment for several offences. The phrase such as from ‘**Qur’an, Sura 5, Ayat 33 & 34**’ states, “**اللَّهُ وَرَسُولُهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ**”

¹² <https://www.britannica.com/topic/religion>

¹³ <https://www.merriam-webster.com/dictionary/religion>

¹⁴ <https://www.lawjournals.org/assets/archives/2025/vol11issue8/11183.pdf>

¹⁵ The Quran, also Romanised as Qur'an or Koran, is the central religious text of Islam, believed by Muslims to be a revelation directly from God.

¹⁶ God according to Islamic beliefs.

¹⁷ Hadith refers to the Islamic oral tradition of anecdotes containing the purported words, actions, and the silent approvals of the Islamic prophet Muhammad.

”ذَابَّ عَظِيمٌ زِيٍّ فِي الدُّنْيَا وَلَهُمْ فِي الآرَةِ عَيْقَتُلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِّنْ لَّانٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ” meaning. ‘Indeed, the penalty for those who wage war against Allah and His Messenger and spread mischief in the land is death, crucifixion, cutting off their hands and feet on opposite sides, or exile from the land. This ‘penalty’ is a disgrace for them in this world, and they will suffer a tremendous punishment in the Hereafter.’ The Quran permits Death Penalty for the offences committed against the Allah’s teachings and his prescribed Laws in the Holy Book Quran.

Hinduism Influences

Manusmriti is one of the most influential sacred texts in Hinduism but there have been multiple accounts or rather multiple mentions of Death Penalty in various Hinduism sacred texts. The phrase from the Holy Book ‘Bhagavad Gita’¹⁸ – ‘Gita, 18.23’ states, “नियतं सङ्गरहितमरागद्वेषतः कृतम् ।अफलप्रेप्सुना कर्म यत्तत्सात्त्विकमुच्यते ॥ १८-२३॥” meaning, ‘Action which is regulated, done without attachment, without personal like-dislike, without hoping for the result, such an action is satvic¹⁹ in nature’. The Bhagavad Gita addresses the violence committed in the context of duty and righteousness. It suggests that violence, when performed as part of one's sacred duty without attachment or any subject matter to personal gain, is justified and valid.

Christianity Influences

The phrase from the Holy Book **Bible**²⁰ multiply suggests about Capital Punishment for the punishment for offences committed against the Mankind or the Laws, such as **Genesis 9:6** states that, “**Whoever sheds the blood of man, by man shall his blood be shed, for God made man in his own image**” implicit the justified killing of the person, who has been culpable of killing an innocent. The Pope Innocent III²¹, also quoted a phrase “*The secular power can, without mortal sin, exercise judgment of blood, provided that it punishes with justice, not out of hatred, with prudence, not precipitation.*” Implying the need of Capital Punishment required for fulfilling the justice with prudence, without any biased arising from hatred or personal needs.

¹⁸ The Bhagawad Gita is a synthesis of various strands of Indian religious thoughts and philosophies towards the duty of an individual and Dharma, dictated by Shri Krishna to Arjuna on the battlefield of Kurukshetra

¹⁹ The term "satvic" refers to qualities associated with sattva, a Sanskrit word meaning "light," "goodness," and "purity."

²⁰ The Bible is a collection of religious texts that are central to Christianity, written by various saints and preachers of Christianity.

²¹ Pope Innocent III born ‘Lotario de’ Conti di Segni’; was the head of the Catholic Church.

There are multiple faiths and religion practiced in the world, every religion (including abovementioned) preaches the idea that Capital Punishment is BEFITTED FOR GUILTY ONLY. However, there are also some religions which maintain and holds the belief against Capital Punishment and condones it even against the Violators or Criminals, as their religious core beliefs prompts them to believe that NO MAN SHALL HARM ANOTHER MAN.

Colonial Influence Modern Times: -

As the society progressed and the time stepped into advancement, the laws become codified in nature and a proper enforcement authority to uphold and administer it. As the crimes increased in the society, the laws were enforced to challenge and prevent it. The death penalty as a codified sanction was introduced by Britishers during the colonial rule. The Indian Penal Code or IPC was legislated during British colonial rule in 1860 on the recommendations of the first Law Commission of India and was led by Thomas Babington Macaulay²² to enforce a uniform law throughout their jurisdiction in Pre-Independence India.

The Section 302 of the Indian Penal Code states that any person who commits murder shall be punished with the **death penalty** or imprisonment for life, thus Capital Punishment was a codified punishment justified by the Law. However there have been multiple instances in the Struggle of India's Independence that the Death Penalty was used as an instrument to target and inflict the punishment against Indians who raise their voice against injustice inflicted by Britishers. The Death Penalty became a default punishment, Judges were required to record their reasoning in their judgment if they adjudicated Life Imprisonment rather than Death Penalty, thus the British Judges used it as a 'justifiable weapon' to eradicate the voice of freedom by exploiting the use of Capital Punishment by punishing anyone who contempt the tyranny. It became a tool to suppress and control the public, and it led to mass execution of many freedom fighters.

Post Independence

The post-independence, the punishment was retained by and still enforceable, such as the Hanging of Nathu Ram Godse²³ for brutally Killing Mahatma Gandhi²⁴. However, due to its

²² Thomas Babington Macaulay was a British historian, poet and Whig politician who served as the Secretary at War.

²³ Nathuram Vinayak Godse was an Indian Hindu nationalist and political activist who assassinated Mahatma Gandhi.

²⁴ Mahatma Gandhi, born Mohandas Karamchand Gandhi on October 2, 1869, was a pivotal leader in India's struggle for independence from British rule, renowned for his philosophy of non-violence and civil disobedience.

controversial cold philosophy, it led to collate a conflict with the Article 21²⁵ of the Indian Constitution, which states, 'No person shall be deprived of these rights except according to a procedure established by law'. thus, it becomes debatable that whether the State has the right to enforce Death Penalty or not, However the Constitution does allow the Death Penalty to be granted to the criminals if their act was considered unlawful and violates certain laws which has the corresponding punishment of Capital Punishment, implying that CAPITAL PUNISHMENT WAS JUSTIFIABLE IF DONE WITHIN THE DUE PROCESS OF LAW.

some offences in which capital punishment was justifiable in Indian Penal Code were such as:-

- **Section 121** ²⁶ - Waging, or attempting to wage war, or abetting the waging of war, against the Government of India.
- **Section 132** ²⁷ - Abetment of mutiny, if mutiny is actually committed in consequence thereof.
- **Section 194** ²⁸ - Giving or fabricating false evidence with intent to procure conviction of a capital offence, if an innocent person is convicted and executed in consequence of such false evidence.
- **Section 302** ²⁹ - Punishment for Murder.
- **Section 396** ³⁰ - Dacoity with Murder.

²⁵ No person shall be deprived of his life or personal liberty except according to procedure established by law.

²⁶ Waging, or attempting to wage war, or abetting waging of war, against the Government of India: -
Whoever, wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.

²⁷ Abetment of mutiny, if mutiny is committed in consequence thereof: -
Whoever abets the committing of mutiny by an officer, soldier, sailor or airman in the Army, Navy or Air Force of the Government of India, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

²⁸ Giving or fabricating false evidence with intent to procure conviction of capital offence: -
Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law for the time being in force in India shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

If innocent person be thereby convicted and executed: -
and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

²⁹ Murder: -
Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—
— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—
— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—
— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

³⁰ Dacoity with murder: -

In 1973, '**Jagmohan Singh vs. State of Uttar Pradesh**'³¹, the Supreme Court upheld the **constitutionality of capital punishment** by implicitly ruling that the punishment did not violate **Article 21**³². The Court adjudicated and ensured a fundamental rationale that the death penalty *could only be punishable after following the due procedure of law*, ensuring that the offender's right to life was not snatched arbitrarily.

Following an amendment was incorporated in **Code of Criminal Procedure (CrPC)**³³, implicating that **LIFE IMPRISONMENT IS RULE** and **DEATH PENALTY AN EXCEPTION**.

In 1979, the case of '**Rajendra Prasad vs. State of Uttar Pradesh**'³⁴ brought a renovated perspective regarding the Capital punishment, the court affirmed the rule of the maxim 'LIFE IMPRISONMENT IS RULE and DEATH PENALTY AN EXCEPTION' while giving an emphasis for a shift from Retributive approach to a Compassionate, Reformation approach to consider the convict's rehabilitation, and capital punishment only be granted in heinous, brutal circumstances.

THE CONCEPTION OF THE DOCTRINE RAREST OF RARE

In 1980, the landmark judgment of '**Bachan Singh vs. State of Punjab**'³⁵, the court gave a revolutionary verdict regarding the adjudication of Death Penalty, where the issues were raised regarding that the Death Penalty does not provide Deterrence and rather is an evil, sinister, cruel, inhumane, insidious and superfluous practice. However, the Supreme Court bench by the majority of 4:1 did not accept this contention and affirmed the constitutional validity of death sentence by the assistance and birth of a **DOCTRINE OF RAREST OF RARE**, as that the Death Penalty can only be adjudicated if the offence falls in the category of this newly conceived Doctrine. The court held that the adjudication will be propounded by all the aggravating and mitigating factors behind the crime, motives, magnitude, societal impact and the behaviour of the convict.

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

³¹ INSC 241

³² No person shall be deprived of his life or personal liberty except according to procedure established by law.

³³ Enacted on January 25, 1974

³⁴ 1979 AIR 916

³⁵ [1980] 2 SCC 684

DOCTRINE OF RAREST OF RARE & ITS CONSTITUTIONALITY

The judicial position on capital punishment in India is that it is considered constitutionally valid, but correspondently it must be applied under the most stringent guidelines. Those guidelines are categorized under the Doctrine of Rarest of Rare. The Doctrine is an application to impose Death Penalty on the convict, first established in *Bachan Singh Vs. State of Punjab*³⁶ (1980), the doctrine requires court to deeply analyse the details and dues of the case to be able to impose death sentence on the guilty. As the Indian Legal System is fairly faithful to the belief '*LIFE IMPRISONMENT IS THE RULE, DEATH PENALTY IS THE EXCEPTION*', the courts have to consider Death Penalty as the last or final resort ONLY for the cases which are exceptional in nature and cause greater harm to common consciousness of the society. After the revolutionary judgment in *Bachan Singh* case, the doctrine borne from dilemma of death sentence soon became a *Ratio – Decidendi*³⁷ and a strict judicial precedent to be followed mandatorily in the courts. As the Doctrine is a judicial precedent with no legislation or codification, it is still mandatory in nature while imposing the Death Sentence.

PROSPECTIVE JUDGMENT IN REGARDS TO DOCTRINE RAREST OF RARE

In *Machhi Singh Vs. State of Punjab*³⁸ (1983), the application of constitutionality of Rarest of rare was highly criticized and was brought into question by its legal and ethical consequences along with its 'chain-reactive' flaw regarding no codified structure to formulate while imposing Death Penalty. As there were no clear guidelines on when a case metamorphize into a Rarest of Rare, implying that judges had wide discretion to decide. Hence, the Supreme Court provided a framework for the application of 'rarest of rare' doctrine.

The Court instructed five categories that a crime should fulfil to be able to categorise as 'rarest of rare': -

a) Manner of committing the crime

When the murder is committed in a cruel or inhumane manner which are quite rebellious in nature and revolt against the usualness for such like incidences.

³⁶ [1980] 2 SCC 684

³⁷ Ratio decidendi is a Latin term meaning "the reason for the decision," referring to the legal principle or rationale that underpins a court's judgment.

³⁸ 1983 AIR 957

b) Motive of the perpetrator

The mental state or the intention or the objective of the offender while committing the act and the compulsion behind the offence.

c) Socially abhorrent nature of the crime

When the crime is done on the basis of the societal or customary norms differences, like when a person belonging to a backward class is murdered.

d) Magnitude of the crime

The magnitude of the crime refers to the gravity or the depth of the offence. The proportion of the crime is measured to transcribe the intent and manner.

e) Personality of the offender

The evaluation of the psyche and the mental capacity is viewed to empathize for understanding the relation between the mental state of the perpetrator and the crime committed.

While the Supreme court has given a certain structure or principles to abide to classify the cases as 'rarest of rare', but the ambiguity and the unclear still prevails. Doctrine's reliance on the individual's discretion of the judges has resulted in a very unpredictable outcomes, no proper guidelines and framework has been provided in handling over the power to judges to decide what constitutes rarest of rare at their discretion which has resulted disparities in cases. The universally agreed-upon definition for what qualifies as 'rarest of rare' is still subject to the judicial discretion.

The Rarest of Rare does not violate the provisions of Article 21 of the Indian Constitution as it states that the right to life and personal liberty shall be granted to every citizen of India so much as not to violate the rights of other people.

-ARGUMENTS ON DEATH PENALTY-

ARGUMENTS AGAINST THE ENFORCEABILITY OF DEATH PENALTY

1- Risk of executing the life of an Innocent- English Jurist **William Blackstone**³⁹ propounded a Maxim also commonly known as '*Blackstone Ratio*' which expresses the idea that no innocent shall be punished by quoting, "*it is better that ten guilty persons escape than that one innocent suffer*" implicating that State should prioritize the safety of innocents than punishing the guilty. The risk of executing a Death Sentence on an

³⁹ Sir William Blackstone, was an English jurist, justice, and Tory politician most noted for his Commentaries on the Laws of England,

Innocent is a shameful adjudication and an insult to the legal system which sole norm is to protect the innocents. The chance of executing an innocent is a graver crime than the one Court punishes to its subject. There have been numerous unfortunate cases in which the Individuals punished under the capital punishment were later exonerated and found innocents and with no sins committed in their life and yet they were treated and executed as monsters. This judicial error in convicting and executing an innocent demonstrates the fallibility and risks of a proper legal system.

- 2- **‘No man shall hurt others’**- This quote by the Christian Son Of God, Jesus⁴⁰ depicts the society has no claim to punish or execute or inflict any injury to others. The phrase is also supported by a quote by Mahavira⁴¹, *“Live and allow others to live; hurt no one; life is dear to all living beings”*. This quote questioned the stress of the *‘right of punishing someone’* ; as the common belief of the people follows that the God is an exclusive deity, the only executioner, the sole jury, the lone adjudicator with the PEREROGRATIVE CLAIM to punish or weigh someone’s act. The law or its enforceable authority shall have no power over this exclusive claim of God. The phrase deals as how every human are equal to one another, none has any insight to judge one another, so even if someone does kill an innocent, the society should never hold vengeance or should hurt the guilty, as the act of inflicting a harm to guilty signifies you also being guilty. When society say someone ‘deserves death’, society make themselves “ARBITERS OF HUMAN WORTH”, a title no one shall possess. When we kill to show that killing is wrong, we become what we oppose, forfeiting our moral authority to condemn in the first place. Capital punishment forces society into a paradox where it commits the same act, it condemns.
- 3- **Violation of Human rights** – every person born into the absurdness of life, is bestowed with human rights to ensure or preserve their liberty to live happily or at least shall have the privilege to cherish it, hence that basic right is nourished and enriched as the basic right designated for every person regardless of nationality or customs etc. The Human Rights are immutable and Universal in nature for comparison to Fundamental Rights⁴²

⁴⁰ Jesus, also referred to as Jesus Christ, was a 1st-century Jewish preacher and religious leader

⁴¹ Mahavira, also known as Vardhamana, was the 24th Tirthankara of Jainism, renowned for his teachings on non-violence, truth, and asceticism, and is considered a pivotal figure in Indian spiritual history.

⁴² Fundamental rights are essential human rights guaranteed by the Constitution, outlined in Part III of the Indian Constitution in Articles 12 to 35.

or Bill of rights⁴³ or Magna Carta⁴⁴. The opponents of Death Penalty argues that Death Penalty violates the universal right to life and considers the Death Penalty as a chaotic agent or an anarchist to usurp and trample upon the serenity of human rights. Many International Treaties and conventions such as *Universal Declaration of Human Rights*⁴⁵(UDHR ,1948) or *Declaration of Human Duties and Responsibilities*⁴⁶ (UNESCO, 1998) have formed a Pact, which constitutes the State to strictly provide certain Human rights to criminals unconditionally.

- 4- **Lack of Deterrence** - The research has failed to provide the statistics on that the Death Penalty has established a symbol of deterrence and instilled a barrier to prevent the transcend of laws, using rigorous statistical and experimental methods, lot of criminal justice studies have consistently found that there is no evidence for deterrence of violent crimes in states that allow capital punishment. An article Published in **Amnesty International USA**⁴⁷ demonstrates that *“The results reveal that most experts do not believe that the death penalty or the carrying out of executions serve as deterrents to murder, nor do they believe that existing empirical research supports the deterrence theory. In fact, the authors report that 88.2% of respondents do not think that the death penalty deters murder. At the same time, only 9.2% of surveyed experts indicated that they believed the death penalty results in a significant drop in murder cases”*.
- 5- **Discriminatory Biases** – The issue of racial or any kind of discriminatory bias in death penalty has long been a significant concern in the administration of capital punishment. The biased or discriminatory applications such as prejudice or bigot to any race, socioeconomic, place of birth or stereotypes can cause the miscarriage of justice by swiftly punishing Death Penalty to the convict regardless of the crime or the circumstances of the crime due to the case proceedings being infected by marginalization biasness or prejudice or maybe due to *‘Audi Alteram Partem’*⁴⁸, that the other side didn’t get the chance or a fair hearing to prove his/her contention due to the prejudice. This is backed by several studies which supports the notion that many of capital punishments are based on discriminatory prejudice.

⁴³ The Bill of Rights is the first ten amendments to the U.S. Constitution that protect the rights of individuals and limit the powers of the government.

⁴⁴ The charter of rights granted by King John to his barons in 1215.

⁴⁵ The Universal Declaration of Human Rights (UDHR) is an international document adopted by the United Nations General Assembly that codifies some of the rights and freedoms of all human beings.

⁴⁶ The Declaration of Human Duties and Responsibilities (DHDR) was written for reinforcing the implementation of human rights to commemorate the 50th anniversary of the Universal Declaration of Human Right.

⁴⁷ <https://www.amnestyusa.org/blog/a-clear-scientific-consensus-that-the-death-penalty-does-not-deter/>

⁴⁸ Latin term meaning, ‘NO ONE SHALL BE CONDEMNED UNHEARD’.

- 6- Proportional magnitude of Punishment** – There have been several opponents which does not support the practice of *Death Penalty as the equal punishment for weighing the depth of crime*, considers the parallel as to ‘*WHY THE RAPIST ARE NOT RAPED*’ or ‘*WHY THEIFs ARE NOT DEPRIVED OF THEIR GOODS*’. The modern justice has improved in delivering the equitable justice and has abandoned the primitive ‘*EYE FOR AN EYE*’ mentality or as the **Philosopher Martha Nussbam**⁴⁹ calls the ‘*The Ancient Logic of Equivalence*’. The human dignity surpasses all the other legal principles for precisely this reason. The Buddhist⁵⁰ teachings on **Ahimsa**⁵¹ suggest that executing criminal perpetuates interminable cycles of violence thus resulting in endless bloodshed.
- 7- Bureaucratic Machinery of Death** – If we could trust the law to execute the subject correctly, why do we witness decade of appeals in the higher courts? If killing is wrong, why does State get a pass? This prolonged uncertainty of process creates exactly the bureaucratic machinery of death that corrupts everyone involved. As French **Philosopher Albert Camus**⁵² quoted in his essay ‘**Réflexions sur la peine capitale**’⁵³ stating, “*Capital punishment is the most premeditated of murders, to which no criminal's deed, however calculated can be compared. For there to be an equivalency, the death penalty would have to punish a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months. Such a monster is not encountered in private life*” implying as to how the capital punishment is more torturous and incites more brutality, inhumane than the receptivity from the act of the offender. The Death Penalty doesn't just punish a crime; it elevates killing into a ‘Principle’. The systematic killing becomes a routinely normalized through Bureaucratic procedures like the **NAZI**⁵⁴ began by executing ‘Mentally Defective’ and eventually expanded to Mass

⁴⁹ Martha Nussbaum is an American philosopher and the current Distinguished Service Professor of Law and Ethics at the University of Chicago.

⁵⁰ Buddhism is a religion and philosophy founded by Siddhartha Gautama, known as the Buddha, and its followers are called Buddhists.

⁵¹ Ahimsa (अहिंसा) is an ancient Indian principle of nonviolence that applies to actions towards all living beings. It is a key virtue in Indian religions such as Jainism, Buddhism, and Hinduism, where it is considered an ethical standard by which all actions are judged.

⁵² Albert Camus was a French philosopher, novelist, author, dramatist, journalist, world federalist, and political activist, known for his novels such as ‘Stranger’ and the essay ‘The myth of Sisyphus’.

⁵³ A 1957 essay on the death penalty two writers, Albert Camus and Arthur Koestler. The essay delves into the human condition from an existentialist perspective.

⁵⁴ The Nazi Party, officially known as the National Socialist German Workers' Party (NSDAP), was a far-right political party in Germany that ruled from 1933 to 1945 under Adolf Hitler, leading to significant historical events including World War II and the Holocaust.

genocide resulting in countless death of millions. As a society that compromises its intrinsic moral values in the pretext of pragmatism, has already lost what it claims to be protecting.

- 8- Execution inciting Violence-** The media spectacle surrounding execution often creates the Martyrdom these convicts seek, which stirs the public opinion to justify the act of the offender as a struggle and the administration as the ‘real culprit. The execution often backfires by creating Martyrs, symbols that inspires more violence. The media speculation about these execution gives these offenders exactly the platform and notoriety they crave. Executing criminals only perpetuates the CYCLE OF HATRED AND VIOLENCE.

LANDMARK JUDGEMENTS AGAINST ‘DEATH PENALTY AS THE PUNISHMENT’

1- Mithu v. State of Punjab ⁵⁵

Issue Raised - The Constitutional validity of **Section 303**⁵⁶ of the **Indian Penal Code (IPC)**⁵⁷ was impugned, which mandated the death penalty for a person who committed murder while already serving a life sentence.

Court Held - The Supreme Court **unanimously struck down Section 303 of the IPC** as unconstitutional. The Court held that the mandatory nature of the death penalty in this section was arbitrary, unjust, and unfair, thus violating Articles 14 and Article 21 of the Constitution. The judgment held that judicial discretion is essential for the judgment.

2- Shatrughan Chauhan v. Union of India ⁵⁸

Issue Raised - A challenge concerning about the delay in deciding mercy petitions by

⁵⁵ AIR 1983 SC 473

⁵⁶ Sec 303 - Punishment for murder by life-convict, Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

⁵⁷ Official criminal code enacted by the Indian Legislative Council on October 6th, 1860, it became effective from January 1st, 1862 and later repealed and replaced by Bhartiya Nyaya Sanhita on July 2024.

⁵⁸ (2014) 3 SCC 1

the **President**⁵⁹/**Governor**⁶⁰ to issue commute in related to the mental health of death row convicts as a valid ground for commuting the death sentence.

Court Held - The Supreme Court laid down detailed guidelines for the commutation of the death sentence and the Court ruled that inordinate and unexplained delay in executing the death sentence is a valid ground for commuting the death sentence to life imprisonment. Furthermore, the court held the notion that prisoners suffering from mental illness or insanity should not be executed as they are incapable of being penalised with Death Penalty. This judgment emphasized that procedural fairness and human dignity, even for a condemned prisoner is still protected and secured by Article 21 ⁶¹ of the Indian Constitution.

3- **Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra** ⁶²

Issue Raised – The arbitrary, inconsistent and uncodified application of the "Rarest of Rare" doctrine established in Bachan Singh⁶³, leading to a violation of constitutional due process for punishing the convict.

Court Held - The Court noted the extreme unevenness in the application of the "rarest of rare" principle and stressed on the constitutional regulation of capital punishment was failing. The Court effectively cautioned against an over-reliance on the heinous nature of the crime and mandated that the Court must also consider the life history, character, and other mitigating circumstances of the convict to truly determine if the life imprisonment is "unquestionably foreclosed."

⁵⁹ ARTICLE 72 - (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force

⁶⁰ ARTICLE 161 - The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

⁶¹ No person shall be deprived of his life or personal liberty except according to the procedure established by law.

⁶² (2009) 6 SCC 498.

⁶³ AIR 1980 SC 898, 1980

ARGUMENTS IN FAVOUR OF THE ENFORCEABILITY OF DEATH PENALTY

- 1- Retribution Theory** – Philosopher **Immanuel Kant**⁶⁴ quoted, “*If an offender has committed murder, he must die. In this case, no possible substitute can satisfy justice. For there is no parallel between death and even the most miserable life, so that there is no equality of crime and retribution unless the perpetrator is judicially put to death.*”. When a person commits the act against the society by violating or injuring someone innocents’ life to death, which is irreversible, they cross a moral threshold that demands absolute consequences. The death penalty is considered to be the only proportional reaction for the most heinous crimes. The need for retributive theory is to criminal can feel the same terror of predicament as the victim felt when the crime happened, because that will be the only SANE way a criminal can feel the depth of his act and if possible, can feel remorse and pity for his act. The Bureaucratic process or the judicial death penalty actually represents civilisation Triumph over barbarism. As the stoic philosopher **Seneca**⁶⁵ said, “*he who spares the wicked injures the good*”
- 2- Constitutionally Valid** – While the Constitution of India guarantees the Right to Life under Article 21⁶⁶ of the Indian Constitution, it correspondently allows for the deprivation of this right as due “by procedure established by law”. Through Article 21, the State is given the power to take away the life of a person through a just and fair procedure established by law. This means that though there is a procedure established by law, the State can deprive a person of his life. Several Landmark cases like **Bachan Singh vs state of Punjab**⁶⁷ or the **Machhi Singh vs. State of Punjab**⁶⁸ has also showcase that the validity of Death Penalty is constitutional and is still prevalent under the Doctrine ‘Rarest of Rare’.

Capital punishment codified in various legislation in India

Capital punishment is prescribed as a valid punishment in various provisions of: -

- The Arms Act, 1959,⁶⁹
- The Narcotic Drugs and Psychotropic Substances Act 1985,⁷⁰

⁶⁴ Immanuel Kant was a German philosopher whose work in epistemology, ethics, and aesthetics significantly shaped modern Western philosophy.

⁶⁵ Lucius Annaeus Seneca, usually known as Seneca, was a Stoic philosopher of Ancient Rome, a statesman, a dramatist.

⁶⁶ No person shall be deprived of his life or personal liberty except according to the procedure established by law.

⁶⁷ AIR 1980 SC 898, 1980

⁶⁸ 1983 AIR 957

⁶⁹ Act No.54 Of 1959

⁷⁰ Act No. 61 Of 1985

- The Air Force Act, 1950,⁷¹
- The Army Act, 1950,⁷²
- The Navy Act, 1957,⁷³
- Bhartiya Nyaya Sanhita, 2024,⁷⁴
- The Scheduled Caste and Scheduled Tribes Act, 1989,⁷⁵
- The Commission of Sati Act, 1987,⁷⁶
- and etc.

3- Closure for victim's families - "*A society that is not willing to demand a life of somebody who has taken somebody else's life is simply immoral*"; When the law show mercy towards the criminals by preserving their lives, we show cruelty and ignorance of suffering to the victims' families who has just lost an innocent soul which was a precious member of all their life. For some families of the suffered victim, the finality or the capital punishment provides them a sense of closure and justice that allows them to move forward with their grief and trauma, with a sense of pride that the ultimate wrong has been rightly addressed. The feeling of the guilty convict NOT being deprived of life but the innocent victim is brutally killed feels unjust. The victim's worth feels ignored, hence it is the need for an emotional closure to deliver the justice to the victim's families and all those who feel grief with the victim.

4- Death Penalty as an ultimate consequence - The death penalty represents the society's most solemn and sacred oath, that some acts are so fundamentally evil, they forfeit the perpetrator right to continue existence in the same breath as in the society of civilised people, unlike torture which corrupts both victim and torturer, swift sanction preserves the dignity while catering the moral boundaries should never be crossed by punishing capital punishment. The State doesn't lose moral authority by executing the guilty, rather demonstrates moral courage by enforcing *ultimate consequences for ultimate crimes* as justice isn't about preserving criminal's CONTINGENCE POSSIBILITY for reformation but rather about proportional response to their choices and protection of the society. True justice honours victims by affirming that their

⁷¹ Act No. 45 Of 1950

⁷² Act No. 46 Of 1950

⁷³ Act No. 62 Of 1957

⁷⁴ Act No. 45 Of 2023

⁷⁵ Act No. 33 Of 1989

⁷⁶ Act No. 03 Of 1988

despair cries while being 'killed' or while suffering injuries were not ignored or neglected.

- 5- Customary Prevalence** – Most religion practiced in the world unitedly agree that any coherent justice system must recognize that some crimes violate divine and human order and it demands the society's ultimate sanction. Therefore, many of religious texts condemn the criminal act with a death warrant, phrases from holy scriptures of **Bhagawad Gita**⁷⁷ or the **Manusmriti**⁷⁸, **Quran**⁷⁹, **Hebrew Bible**⁸⁰ or the **Christian Bible**⁸¹ have often placed capital punishment as the final ultimate penance for the person guilty of committing certain crimes. Even Buddhist⁸² traditions recognize the importance of the State or the Rulers must use sometimes force to protect Dharma⁸³, the practice of imposing Capital Punishment has been practiced throughout the history as a customary punishment undisputedly against certain criminal acts that fundamentally destroys the morality of the society.
- 6- Deterrence** – *"If justice perishes, there is no further point in men living on earth."* This phrase by **Immanuel Kant**⁸⁴ unravels the moral philosophy behind the delivery of justice. For **Kant**, justice is not merely a social construct but a moral necessity. Punishment, therefore, is not about deterrence or but about upholding the moral order. He believed that failing to punish a crime proportionately would undermine the very fabric of justice, rendering society morally incoherent; When a criminal deliberately transcends the law and chooses to violate the fundamental right of RIGHT TO LIFE which is guaranteed to every citizen, the criminal's act of trespassing the barriers or legal sanctions implies his act challenging rule of law and hence *that revolt should never go unpunished* so that punishment stands as the symbol to deter and prevent crimes. The theory of deterrence is predicated on the idea that if state-imposed punishment costs

⁷⁷ The Bhagawad Gita is a synthesis of various strands of Indian religious thoughts and philosophies towards the duty of an individual and Dharma, dictated by Shri Krishna to Arjuna on the battlefield of Kurukshetra

⁷⁸ The Manusmṛti, also known as the Mānava-Dharmaśāstra or the Laws of Manu, is one of the many legal texts and constitutions among the many Dharmaśāstras of Hinduism.

⁷⁹ The Quran, also Romanised as Qur'an or Koran, is the central religious text of Islam, believed by Muslims to be a revelation directly from God.

⁸⁰ The Hebrew Bible is also known as the Tanakh. It is an important part of Jewish culture because it is a collection of the sacred texts of the ancient Jews.

⁸¹ The Bible is a collection of religious texts that are central to Christianity, written by various saints and preachers of Christianity.

⁸² Buddhism is a religion and philosophy founded by Siddhartha Gautama, known as the Buddha, and its followers are called Buddhists.

⁸³ Dharma refers to the moral, ethical, and religious duties and responsibilities that govern an individual's behavior and actions.

⁸⁴ Immanuel Kant was a German philosopher whose work in epistemology, ethics, and aesthetics significantly shaped modern Western philosophy.

are sufficiently severe, certain, and swift, criminal activity will be discouraged. When a person realised that the cost of the punishment for committing an offence is greater than the perceived benefits, crime will soon diminish. There have been various studies which showcase the contrary but there have also been studies which supports the notion. Countries such as Singapore and Japan have showcased deterrence of crime due to their retaining the need for Death Penalty.

- 7- Preventing the possibilities of more crime** - Some crimes are so inhumane and diabolical in nature that they warrant the ultimate restriction. Death penalty prevents escape; it's the ultimate consequences. When some psychopath **Bachan Singh**⁸⁵, who was sent to prison after killing his wife brutally without penalising death sentence, life imprisonment allowed him to continue the same violent behaviour and manipulating the justice system, corresponding with admirers and after escaping from the claws of justice system, he deceived the same legal system by killing more innocent life. Capital punishment ensures and preserves incessant incapacitation while affirming society's commitment to protecting and security of future victims. Each preserved life of a criminal becomes a **possible beacon** for future crimes. True mercy towards potential future victims requires ultimate punishment for perpetrators.
- 8- Mitigating Resources** – If we avoid executing criminals, we're allowing them to become a burden of the resources of the state. It's like being given a free bed, free room and three-time free meals per day as a reward for being sent to prison after killing an innocent person at the State's expense, while the country's homelessness and hunger keep incessantly increasing. The person who crossed the limits of being in a society by violating the prestigious laws should not have just their right's being snatched but the society's resources also. The cost of giving imprisonment signify how the lives of criminals are protected and fostered with free resources in a prison while the innocent lives of the state are trivialized and are forced to endure hard struggles to pay taxes to the state, so the state could fund the comfort for the same perpetrator who terrorise the subject of the state. Society OWES NOTHING to those who deliberately choose to harm innocents.

⁸⁵ [1980] 2 SCC 684

LANDMARK JUDGEMENTS FAVOURING 'DEATH PENALTY AS THE PUNISHMENT'

1- **Bachan Singh v. State of Punjab**⁸⁶

Issue Raised - Whether the death penalty in Indian Penal Code violated the Article 14⁸⁷, 19⁸⁸ and 21⁸⁹ of the Indian Constitution and whether the Courts have the authority to impose Death Sentence without adequate safeguards against arbitrary sentencing

Court Held - The Court affirmed the death penalty's constitutionality valid and with the 4:1 majority of the Bench, the court introduced Doctrine of Rarest of Rare, holding that the death penalty only be imposed in the rarest of rare cases where the alternative punishment doesn't fit satisfied with the act. This Doctrine became the guiding standard for all capital sentencing for all the prospective cases.

2- **Deena v. Union of India**⁹⁰

Issue Raised – That whether the mode or method of execution "hanging by the neck

⁸⁶ [1980] 2 SCC 684

⁸⁷ The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

⁸⁸ (1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions or co-operative societies;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

(g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

⁸⁹ No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁹⁰ 1983 SCC (4) 645

until death" (prescribed by **Section 354(5)⁹¹ CrPC⁹²**), 1973 was a cruel, barbarous, and inhuman procedure that violated Article 21 of the Indian Constitution.

Court Held – The court held the method of Hanging as Constitutional. The Court rejected the petition, holding that the prescribed method of hanging was a fair, just, and reasonable procedure under Article 21⁹³, and concluded with the quote that hanging is “as painless as is possible in the circumstances”, it was quick and caused the least suffering compared to other methods of execution.

3- **Mukesh v. State for NCT of Delhi⁹⁴**

Issue Raised - The final appeal against the death sentence for the convicts responsible for the 2012 Nirbhaya gang-rape and murder case, that whether the death sentences awarded to the Petitioner was justified under the Doctrine of Rarest Of Rare.

Court Held - Supreme Court confirmed the death penalty for the convicts, explicitly stating that the case fell into the "rarest of rare" category by calculating all the aggravating and mitigating factors and weighing their circumstances with the nature and gravity of the crime. The judgment re-affirmed the principles of Bachan Singh⁹⁵ and Machhi Singh⁹⁶, emphasizing that the extreme brutality, inhumanity was of Diabolical nature which shocked the common consciousness of the society and thus must be awarded with Death Penalty.

Methods of execution in INDIA

In India, there are currently two methods practiced for executing a capital punishment: -

1) **Execution by hanging**

Hanging was an ancient method of execution which was a part of the Roman law, Anglo-Saxon law, English law, French law, and German law. This traditional method of execution involves that the convict stands on a trapdoor and when the trap is released, he falls a couple of meters until stopped by the rope tied around his neck until he/she breathes his last breath or a knot in the noose helps jerk back the victim's head sharply enough to break the neck.

⁹¹ When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

⁹² The code of criminal procedure, 1973, act no. 2 of 1974

⁹³ No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁹⁴ (2017) 6 SCC 1

⁹⁵ [1980] 2 SCC 684

⁹⁶ 1983 AIR 957

Deena v Union of India⁹⁷

The constitutionality of execution by hanging was impugned and challenged on ground that it was inhumane and insidious and barbarous in nature and thereby infringed the right to life of the person, however the Court held the method constitutional.

2) Execution by shooting

This execution is allowed under the Indian law, which is provided for under the Army Act, Navy Act, and Air Force Act. Section 34 of the Air Force Act, 1950 empowers the court martial to impose the death sentence for the offences mentioned in Section 34 (a) to (l)⁹⁸ of The Air Force Act, 1950. Section 163⁹⁹ of the act provides for the form of the sentence of death as

"In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hung by the neck until he is dead or shall suffer death by being shot."

LEGAL MAXIMS FOR PHILOSOPHICAL FRAMES

The deafening quarrel surrounding the death penalty is often framed and backed by philosophical and legal maxims, which solidifies and supports the contention, such as : -

Lex Talionis

Meaning – “An eye for an eye, a tooth for a tooth.”, This is the ancient, foundational principle

⁹⁷ 1983 SCC (4) 645

⁹⁸ Sec – 34, Any person subject to this Act who commits any of the following offences, that is to say,-

(a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit any of the said acts; or

(b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or

(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or

(d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or

(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or

(f) treacherously or through cowardice sends a flag of truce to the enemy; or

(g) in time of war or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or

(h) in time of action leaves his commanding officer or his post, guard, picquet, patrol or party without being regularly relieved or without leave; or

(i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or

(j) knowingly harbours or protects an enemy not being a prisoner; or

(k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or

(l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces; shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

⁹⁹ "In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hung by the neck until he is dead or shall suffer death by being shot."

of retributive justice which is also known as Ancient Logic of Equivalence. The proponents of Capital Punishment argue that the punishment of the offence must be proportional to the act, however it also raises a question as to why the 'RAPIST ARE NOT RAPED', but the proponents further support their argument by that the proportionality is not literal equality but rather the moral blameworthiness, ensuring that the offender 'pays their debt' to the society.

Noxiae Poena Par Esto

Meaning- 'Let the punishment be equal to the offense', that the punishment should be of the same moral gravity as the punishment, like the killing of an innocent must be met with the sanction of Death penalty. **Immanuel Kant**¹⁰⁰ in his concept of '**Categorical Imperatives**' from his book "**Groundwork of the Metaphysics of Morals**" quoted, "*Act only according to that maxim whereby you can at the same time will that it should become a universal law.*" - The foundational principle of the categorical imperative, suggesting that one should only act in ways that could be universally applied, and it further justifies that the capital punishment should be imposed to the person culpable of committing such a heinous, brutal act towards the society, as all the crimes are considered against the State rather than individual (RIGHT IN REM).¹⁰¹

Ubi Jus Ibi Remedium

Meaning- "Where there is a right, there is a remedy.", This maxim is used as a profound instrumental argument against the use of death penalty. If a person is wrongfully executed, and thus later proven innocent, their fundamental right to life (jus) has been violated and owing to the irreversible nature of the punishment, there is no possible or legal way to provide a remedy to the dead. The finality of death makes the justice system's failures irreparable and fallible.

Dubio Pro Reo

Meaning- "In doubt, for the accused.", This reflects the requirement that the prosecution must prove the guilt beyond a reasonable doubt. As given the finality and irreversible nature of the death penalty, the risk of executing an innocent person is considered to be an unacceptable violation of this fundamental tenet of law.

¹⁰⁰ Immanuel Kant was a German philosopher whose work in epistemology, ethics, and aesthetics significantly shaped modern Western philosophy.

¹⁰¹ A Right in Rem is a legal right that is enforceable against the entire sovereign State or the public.

Audi Alteram Partem

Meaning: "No one shall be condemned unheard", This undermines the strict standards of due process required in capital cases, where the potential for error and the severity of the punishment demand that the accused be given every fair opportunity to be heard, including multiple levels of appeal and review in case of any miscarriage of justice.

CONCLUSION

The Capital Punishment, also commonly known as Death Penalty or the Death Sentence has always remain a controversial topic due to its ethical and legal complications. This research thoroughly examines the need and disregard for the same. Its debatable contention creates an enigma about its purposes and its application. Granted the 'moral' of the civilization is to produce a tame and civilized individual, a human, it follows unquestionably that we must regard the laws as the primary form of a behaviour to adopt in the society. We must regard and abide by the ideals for a peaceful solidarity society. However certain 'exceptions' or the 'paradoxes' who revolts against this narrative not only disrupts the peace of the remaining, but also inspires and incite further violence, to restrict this lawlessness, the society needs to either eradicate the contaminated exception to further prevent it or to banish this sickness from the livelihood of the healthy society. This dilemma remains a double-edged mystery, as the both the choices or the options have their pros and cons, but let's not forget the main aim of the society is to ensure the safety and security of the society. So, the conclusion for the abolishment of capital punishment proves highly questionable, but also its continuous practice fosters major ethical issues.

However, due to its cruel nature and application of execution, there have been various sanctions on the practice of death sentence in various countries to abolish it, like: -

Canada declared the Death penalty as unlawful and repealed it in 1976

Australia abolished the death penalty in 1973.

Italy abolished the death penalty in 1947.

However, there are countries which considers death penalty as an effective measure against crimes and stand locked in, like: -

China has a strict policy for imposing death sentence and is one of the most active executioners.

Saudi Arabia allows execution by death penalty for several crimes like apostasy, murder etc

Meanwhile **INDIA**, also favours but restricts the favourability towards it due to the exercise

use of the Doctrine Rarest of Rare, as the ultimate tension between the State's desire for ultimate justice requires the need of certain restriction on the legal right (encompassing the right to life).

Currently, there has been no codified framework regarding the discretion of Rarest of rare, however the supreme court led down some groundwork for calculating the case to be considered as rarest of rare.

The Capital Punishment is still retained in various legislative acts and also gain its rejuvenating stance from judicial precedents like Bachan Singh¹⁰² and Machhi Singh¹⁰³, and remains constitutionally valid.

From the overall, the implementation and application of the due process of imposing of capital punishment under doctrine rarest of rare is just and fair, and superlatively aligns with the legal consideration requisite for constitutional validity

To conclude with my opinion, certain offences does require the need to impose death penalty to the guilty, as the deliberate choice of crossing the seraphic lines of laws, must be met with the sanction to deter the inspiring public and to also to instil an emblem of that the society must be remained safe. A person who does not value the life of its fellow brothers and sister should be treated with the same contempt. Therefore, if doing nothing allows slaughter then inaction becomes tragic. However, the imposing of Death Penalty must surely be proceeded through with the natural justice and due procedure of law. Capital punishment should be imposed to the most heinous crimes with the strongest evidences. A state that spares the killers betrays the innocence. When the law executes a guilty, it makes a symbolic victory for the lives of innocents and the consequences of injuring it.

*“Act only according to that maxim whereby you can at the same time will that it should become a universal law”*¹⁰⁴

¹⁰² [1980] 2 SCC 684

¹⁰³ 1983 AIR 957

¹⁰⁴ Quote stated by Immanuel Kant in his book "Groundwork of the Metaphysics of Morals"