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RATIONALE BEHIND DEATH PENALTY IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

Capital punishment, or the death penalty, remains one of the most debated forms of punishment within the Indian criminal justice system. While it is justified on the grounds of deterrence, retribution, justice and protection of the society, its compatibility with the fundamental right to life and personal liberty under Article 21 of the Constitution continues to raise significant legal and moral questions. This research paper critically examines the rationale behind the retention of the death penalty in India, tracing its development from the pre-Independence legal framework to its present constitutional position. It analyses the evolution of judicial approaches through various landmark judgements while particular emphasis is placed on the “rarest of rare” doctrine and the requirement to consider aggravating and mitigating circumstances while determining whether the death penalty is warranted. The study argues that although capital punishment represents an exceptional deprivation of life, its limited retention may be justified in the most heinous cases where alternative punishment is unquestionably inadequate and the interests of justice and societal protection demand its imposition.

KEYWORDS: Capital Punishment, Death Penalty, Rarest of Rare Doctrine, Article 21, Constitutional Validity, Deterrence, Retributive Justice, Judicial Discretion.

INTRODUCTION

“A real and abiding concern for the dignity of human life postulates resistance to taking a life through law’s instrumentality.” - Justice P. N. Bhagwati¹

Punishment is one of the fundamental mechanisms through which a legal system responds to wrongdoing. It is generally founded upon two broad considerations, first, that a person who has committed a wrong ought to be held accountable for it, and second, that the imposition of punishment may discourage the commission of similar offences by others. Punishment serves not merely as a consequence of criminal conduct, but also as an instrument for maintaining

¹ Bachan Singh v. State of Punjab (1980) 2 SCC 684

social order, protecting society and reinforcing the authority of law. Capital punishment, being the most severe form of punishment known to the criminal justice system, rests upon these same principles, but takes the debate to its most consequential point that is the State's authority to take the life of a person who has been convicted of a crime.

The death penalty, therefore, has always occupied a unique and controversial position in criminal jurisprudence. Unlike imprisonment or other forms of punishment, it is irreversible. Once carried out, an error cannot be corrected and the life taken cannot be restored. In India, capital punishment forms part of the criminal justice framework, although its application has been deliberately restricted by judicial interpretation. The constitutional validity of the death penalty was upheld by the Supreme Court in *Jagmohan Singh v. State of Uttar Pradesh*², and its subsequent jurisprudence has sought to impose safeguards on its application.

The debate surrounding capital punishment becomes particularly significant when viewed through the constitutional guarantee of the right to life and personal liberty under Article 21 of the Constitution of India. The question is not simply whether a person who has committed a heinous crime deserves punishment, but whether the State should possess the authority to deliberately bring that person's life to an end as a consequence of that crime. This debate also raises important questions concerning the purposes of punishment. Does capital punishment actually deter crime? Is it primarily a form of retributive justice? Can it be justified as a means of protecting society from offenders who are considered incapable of reformation? Or does the irreversible nature of the punishment make its use incompatible with the principles of a humane and constitutional criminal justice system? These questions have shaped the development of Indian death penalty jurisprudence and continue to generate considerable judicial and academic discussion.

MEANING AND EVOLUTION OF CAPITAL PUNISHMENT

Capital punishment, commonly referred to as the death penalty, is the most severe form of punishment imposed by the State. It refers to the execution of an offender pursuant to a sentence of death imposed by a competent court after conviction for an offence punishable with death. Unlike other forms of punishment, it is irreversible, as the execution permanently terminates the life of the offender. It is generally associated with offences considered exceptionally grave,

² (1973) 1 SCC 20

heinous or threatening to society.³ The rationale behind capital punishment is traditionally associated with retribution, deterrence and incapacitation. While retribution seeks to ensure that punishment corresponds with the gravity of the offence, deterrence aims to discourage the offender and others from committing similar crimes, while incapacitation seeks to protect society by permanently preventing the offender from committing further offences.

The history of capital punishment in India predates the Constitution and can be traced to the colonial criminal justice system. During British rule, the death penalty was recognized as a lawful punishment for several serious offences, and the Indian Penal Code, 1860, recognized death as one of the punishments that could be imposed under specified circumstances. The question of abolition was nevertheless raised during the colonial period. In 1931, an attempt was made in the Legislative Assembly to introduce a Bill seeking abolition of the death penalty for offences under the IPC, however the proposal was rejected.⁴ India consequently inherited a legal system in which capital punishment was already an established statutory punishment at the time of Independence.

The legal position gradually changed after Independence. In 1955, Parliament repealed Section 367(5) of the Code of Criminal Procedure, 1898, which had required courts to record reasons when imposing a sentence other than death for an offence punishable with death.⁵ This marked an important shift away from treating death as the normal punishment in capital cases. The CrPC further strengthened this approach through Section 354(3), which required courts to record “special reasons” for imposing a death sentence. This safeguard has been retained under the present procedural framework through Section 393(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Similarly, the substantive criminal law has transitioned from the IPC to the Bharatiya Nyaya Sanhita, 2023 (BNS). Section 4(a) of the BNS continues to recognize death as a punishment, while Section 103(1) prescribes death or imprisonment for life for murder.

The constitutionalization of capital punishment further transformed its legal character. In *Jagmohan Singh v. State of Uttar Pradesh*, the Supreme Court upheld the constitutional validity of the death penalty. Subsequently, in *Bachan Singh v. State of Punjab*, the Court upheld its

³ Law Commission Of India, Thirty-Fifth Report on Capital Punishment, Vol. I (1967)

⁴ Law Commission Of India, Thirty-Fifth Report on Capital Punishment, Vol. I (1967)

⁵ Code of Criminal Procedure, 1898, S. 367(5), repealed by the Code of Criminal Procedure (Amendment) Act, 1955

validity while evolving the “rarest of rare” doctrine, holding that death should be imposed only where the alternative punishment of life imprisonment is unquestionably foreclosed. The Court also emphasized on consideration of both aggravating and mitigating circumstances relating to the crime and the offender. Thus, capital punishment in India has evolved from a recognized punishment under the colonial legal system into an exceptional punishment governed by constitutional safeguards and judicial restraint. While the BNS continues to retain the death penalty, its imposition is subject to stringent procedural and constitutional requirements, forming the basis for examining its present legal position and judicial interpretation in India.

JUDICIAL APPROACH TOWARDS CAPITAL PUNISHMENT IN INDIA

The constitutional validity and application of capital punishment in India have been shaped largely through judicial interpretation. The Supreme Court has, over time, attempted to balance the State’s authority to punish exceptionally grave offences with the constitutional protection of life, liberty, equality and human dignity. The judicial approach has therefore evolved considerably from initially upholding the validity of the death penalty and recognizing broad sentencing discretion, to imposing progressively stricter safeguards on its application.

- **Jagmohan Singh v. State of Uttar Pradesh (1973)**

The first significant constitutional challenge to capital punishment came before the Supreme Court in *Jagmohan Singh v. State of Uttar Pradesh* (1973). The appellant, Jagmohan Singh, had been convicted of murder under Section 302 of the IPC and sentenced to death. The challenge was not against the individual sentence but against the constitutional validity of the death penalty itself. The appellant contended that capital punishment violated Article 14, 19 and 21 of the Constitution. A Constitution Bench of the Supreme Court rejected these arguments and upheld the constitutional validity of capital punishment. The Court held that the Constitution itself recognized the death penalty as a permissible punishment through provisions concerning appeals, reprieve and clemency. The Court interpreted Article 21 to mean that deprivation of life is constitutionally permissible when carried out according to a procedure established by law.

- **Rajendra Prasad v. State of Uttar Pradesh (1979)⁶**

The judicial approach began to move towards greater restraint in *Rajendra Prasad v.*

⁶ (1979) 3 SCC 646

State of Uttar Pradesh (1979). The case arose from a dispute between two families, in which the appellant had been convicted for the murder of a member of the opposing family and sentenced to death. The principal issue before the Court concerned the circumstances in which the extreme penalty of death could legitimately be imposed. Justice V. R. Krishna Iyer adopted a strong humanistic and constitutional approach to sentencing. He emphasized that the deprivation of life is too fundamental to be permitted except on the gravest grounds and subjected to the strictest scrutiny. The judgement treated life imprisonment as the normal punishment for murder and death as an exception. The significance of Rajendra Prasad case lies in its attempt to place human rights and constitutional values at the centre of sentencing discretion.

The evolution of these decisions demonstrates that the Supreme Court has not treated capital punishment as an ordinary sentencing option. Instead, Indian death penalty jurisprudence has progressively moved towards exceptionalism, proportionality and individualized sentencing. The judicial approach to capital punishment has evolved from simply asking whether the death penalty is constitutionally permissible to examining the much more difficult question of when, and under what circumstances, the State is justified in taking a person's life.

THE "RAREST OF RARE" DOCTRINE

The "rarest of rare" doctrine is one of the most significant principles developed by the Supreme Court of India in relation to capital sentencing. It emerged from the Constitution Bench decision in *Bachan Singh v. State of Punjab*, which examined the constitutional validity of the death penalty. The Court emphasized that a genuine concern for the dignity of human life requires resistance to taking life through the instrumentality of law, and that capital punishment must therefore remain an exception rather than the norm. In determining whether a case falls within this exceptional category, courts must consider both the crime and the criminal, balancing aggravating circumstances against mitigating circumstances. Factors such as the age and mental condition of the offender, the possibility of reform and rehabilitation, the circumstances in which the offence was committed and the nature of the offender's participation may therefore assume significance.

The principles laid down in *Bachan Singh* were subsequently elaborated in *Machhi Singh v.*

State of Punjab (1983).⁷ The case arose from a violent family feud in which seventeen persons, including men, women and children, were killed in a series of five incidents in different villages in Punjab. Four accused were sentenced to death by the Sessions Court and the High Court, and the Supreme Court ultimately upheld the death sentences of three of them. the Court attempted to provide more practical guidance for determining when a case could be regarded as falling within the rarest of rare category. It identified five broad considerations:

- The manner of commission of the murder
- The motive for the commission of the murder
- The anti-social or socially abhorrent nature of the crime
- The magnitude of the crime
- The personality of the victim

These factors were not intended to constitute a rigid formula but to assist courts in assessing the gravity of the offence alongside the circumstances of the offender. The decision therefore reinforced the principle that the death penalty requires a careful and individualized sentencing exercise rather than an automatic response to the seriousness of the crime.

The constitutional limitations on capital punishment were further strengthened in *Mithu v. State of Punjab* (1983)⁸. The case concerned Section 303 of the IPC which mandated the death penalty for a person already undergoing a sentence of life imprisonment who committed murder. The Supreme Court declared the provision unconstitutional and void, holding that its mandatory nature violated Article 14 and 21 of the Constitution because it denied the court the opportunity to consider the individual circumstances of the offender and the offence before imposing the ultimate punishment. The Court's reasoning reinforced the principle of individualized sentencing and demonstrated that even in cases involving extremely serious offences, the legislature cannot completely eliminate judicial consideration of relevant circumstances. Under the present criminal law, the corresponding situation is addressed by Section 104 of the Bharatiya Nyaya Sanhita, 2023, which provides for death or imprisonment for life, meaning imprisonment for the remainder of the person's natural life, where a person already undergoing life imprisonment commits murder. The shift from a mandatory death sentence under the former Section 303 IPC to judicially determined alternatives under Section 104 BNS reflects the continuing constitutional preference for sentencing discretion and

⁷ (1983) 3 SCC 470

⁸ (1983) 2 SCC 277

proportionality.

The development from Bachan Singh through Machhi Singh and Mithu case demonstrates the Supreme Court's continuing attempt to reconcile the State's interest in punishing exceptionally grave crimes with the constitutional protection of life and human dignity. The brutality of magnitude of a crime, the suffering of victims and the impact on society may constitute relevant aggravating factors, but they must be weighed against mitigating circumstances concerning the offender and the possibility of reformation.

RATIONALE BEHIND CAPITAL PUNISHMENT

1. Deterrence of Heinous Crimes

One of the principal arguments advanced in favour of capital punishment is its potential deterrent effect. The underlying rationale is that the severity and irreversibility of the punishment may discourage individuals from committing offences for which the death penalty is prescribed. The Law Commission of India has historically recognized deterrence as one of the principal objectives of punishment and as an important justification advanced for retaining capital punishment.⁹ The effectiveness of the death penalty in deterring crime remains contested, and the absence of definitive empirical evidence makes it difficult to claim that execution necessarily prevents more crime than life imprisonment.

2. Retributive Justice, Proportionality and the Interests of Victims

A second justification behind capital punishment arises from the principle of retributive justice, understood not as vengeance but as the idea that punishment must correspond proportionately to the gravity of the offence. Where an offender intentionally commits an exceptionally grave crime resulting in the irreversible loss of innocent life, the State may legitimately consider whether the most serious offences warrant the most serious punishment. This principle is connected with the constitutional commitment to justice embodied in the Preamble, as well as the sentencing principle that punishment should be proportionate to the culpability of the offender and the harm caused. It recognizes that the criminal justice system must account not only for the offender but also for the victim, the victim's family and the wider interests of the society.

3. Protection of Society and Incapacitation

⁹ Law Commission of India, Report No. 262: The Death Penalty (August 2025), para 4.2.1-4.2.2

Capital punishment is also justified on the grounds of societal protection. the argument, however, must be applied cautiously because Indian constitutional jurisprudence places considerable importance on the possibility of reformation and rehabilitation. Recent Supreme Court decisions demonstrate that even in cases involving multiple murders, the Court has considered factors such as the absence of previous criminal antecedents, conduct in prison, mental health and prospects of reform while determining whether the death penalty should be retained.¹⁰ Therefore, the societal-protection rationale supports retention of capital punishment only in those exceptional cases where the offender's circumstances, the gravity of the offence and the possibility of reformation collectively demonstrate that no lesser punishment would adequately protect the interests of society.

4. The State's Duty to Protect Life and Maintain the Rule of Law

Finally, capital punishment may be justified from the perspective of the State's positive obligation to protect the lives and security of its citizens. The right to life under Article 21 is not concerned solely with the rights of an accused or convicted person, the State also has a responsibility to maintain an effective criminal justice system capable of protecting individuals from serious threats to their life and security. The imposing of capital punishment can be viewed as an exceptional exercise of the State's duty to protect life, uphold justice and safeguard society.

CHALLENGES IN THE APPLICATION OF CAPITAL PUNISHMENT

The most important challenge in the application of capital punishment is its irreversible nature and the possibility of wrongful conviction. While an erroneous conviction resulting in imprisonment can potentially be corrected through appellate or review proceedings, an execution cannot be undone. The Law Commission of India, in its 262nd Report, recognized the possibility of miscarriage of justice and wrongful conviction as significant concerns in the administration of capital punishment.¹¹ The central objection is not that courts are incapable of reaching correct decisions, but that an irreversible punishment leaves no room to correct an irreversible mistake.

A second concern relates to the arbitrariness and inconsistent application of the death penalty.

¹⁰ "Capital Punishment and Exception; Even in cases of Multiple Murders, Avoid Death Sentence if there's Possibility of Reform: Supreme Court", LiveLaw, 29th January 2025; "Supreme Court Commutes Death Penalty of Man Convicted for Killing Wife, Four Children; Cites Mental Health & Good Conduct in Jail", LiveLaw, 22nd April 2025

¹¹ Law Commission of India, Report N0. 262: The Death Penalty (August 2015)

In *Santosh Kumar Bariyar v. State of Maharashtra* (2009)¹², the Supreme Court expressed concerns regarding inconsistency in capital sentencing and emphasized the need for a principled assessment of aggravating and mitigating circumstances. The deterrent value of capital punishment is another contested issue. The available empirical evidence does not conclusively establish that the death penalty has a greater deterrent effect than life imprisonment. Serious offences are not always committed after a rational calculation of consequences. Therefore, while deterrence may support retention, its uncertain empirical foundation makes it difficult to treat it as a conclusive justification for taking life.

Finally, capital punishment raises concerns relating to human dignity and the possibility of reformation. Modern criminal jurisprudence recognizes that punishment is not solely retributive but may also serve reformative purposes. The Supreme Court has emphasized the importance of considering the offender's background, conduct, mental condition and prospects of rehabilitation while determining whether death is warranted.

CRITICAL ANALYSIS

the question of capital punishment in India involves a complex interplay between the objectives of criminal justice, constitutional safeguards and the protection of human life. The traditional justifications of deterrence, retribution, proportionality and protection of society provide a basis for retaining the death penalty in cases involving exceptionally grave offences. However, these justifications must be examined against concerns relating to wrongful convictions, arbitrariness and the absence of conclusive empirical evidence establishing that capital punishment has a greater deterrent effect than life imprisonment. The irreversible nature of the death penalty makes these concerns particularly significant, as an erroneous execution cannot subsequently be remedied.

A critical examination of capital punishment also requires consideration of the competing interests involved in sentencing. While the gravity of the offence and the suffering of victims cannot be disregarded, criminal justice cannot be governed solely by the demand for retribution. The offender's possibility of rehabilitation and potential for reform are equally relevant to determine whether the ultimate punishment is justified. At the same time, excessive emphasis on the rights of the offender without adequately recognizing the interests of victims

¹² (2009) 6 SCC 498

and the safety of the society may undermine public confidence in the justice system.

Ultimately, the constitutional legitimacy of capital punishment in India rests upon the exceptional nature of its application. Capital punishment can be justified only where the gravity of the offence, culpability of the offender, interests of society and assessment of reformation collectively establish that no lesser punishment would adequately meet the ends of justice.

CONCLUSION

Capital punishment remains one of the most difficult issues in contemporary justice system because it requires a delicate balance between the state's duty to protect society and the constitutional value attached to human life. While the death penalty may appear justified in cases involving the most serious crimes, the irreversible nature of the punishment cannot be ignored. The debate is whether taking a human life is necessary to achieve justice.

In the Indian context, the death penalty may continue to have a place in the criminal justice system, but only as an exceptional punishment and not as a routine response to heinous crimes. The strength of the system lies not in how readily it takes a life, but how carefully and fairly it decides when such an irreversible step is truly necessary.

