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CAPITAL PUNISHMENT: A CRITICAL ANALYSIS **UNDER CRIMINAL LAW IN INDIA**

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Abstract

Capital punishment remains one of the most debated issues in India's criminal justice system, involving questions of constitutional validity, human rights, deterrence, and judicial discretion. This paper examines the legal and constitutional framework governing the death penalty in India, with particular emphasis on Article 14, Art. 21, Art. 72, and 161 of the Constitution. It traces the historical development of capital punishment from the colonial period to the present legal framework and analyses significant judicial decisions, including *Jagmohan Singh v. State of Uttar Pradesh*, *Bachan Singh v. State of Punjab*, and *Machhi Singh v. State of Punjab*. The paper focuses particularly on the “rarest of rare” doctrine, which restricts the imposition of the death penalty to exceptional cases while requiring consideration of aggravating and mitigating circumstances. It also examines arguments in favour of capital punishment, including deterrence, retributive justice, and prevention of recidivism, alongside concerns regarding wrongful convictions, socio-economic disparities, arbitrariness, human dignity, and the questionable deterrent effect. The role of Articles 72 and 161 in the exercise of clemency powers and the impact of delay in mercy petitions are also considered. Finally, the paper discusses the 262nd Report of the Law Commission of India, which recommended abolition of the death penalty except for terrorism-related offences and waging war against the State. The study concludes by examining whether the existing safeguards adequately address the irreversible nature of capital punishment.

Keywords: Capital Punishment, Death Penalty, Rarest of Rare Doctrine, Article 14, Article 21, Constitutional Validity.

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Introduction

“Capital Punishment is against the better judgement of modern criminology, and, above all against the highest expression of love in the nature of god”

- Martin Luther King, Jr.

India is a vast country we all know that on a day to day basis it leads to the several amount cases of the criminal cases and criminals therefore in India all other the punishments are though lead to the motive to penalize the wrongdoer. Capital punishment or we can say a Death penalty derived from word “capitals” which means – “regarding the head” The punishments leads to the round between the two of the aspects as one of them is that wrongdoer suffer and realize the wrong and the other aspect the punishment equivalent to his/her crime. In India the punishments comprise of the several formats i.e imprisonment, life imprisonment, fine etc therefore here we have goes into the deep extents of capital punishment or we can say penalty. Capital punishment² is sounds to, be the important part in the Indian criminal justice system. Capital punishments or death penalty leads to the burden on the one and other wrongdoer as it is sentenced by the forms of court of law by referring each terms of the offence as therefore the death penalty processed the award for the grievous crimes made by the offender. As Blackstone’s commentary leads to the probability standard of the proof beyond the reasonable doubts that ***“It is better than that of the ten guilty persons escape then that of one innocent suffer”***³ Death penalty states itself different from the place to the place, state and country it itself create a differentiation though there are many of the systems though organizations and human Rights that are argued for the capital punishment which effect person’s right. Therefore, in India capital punishment is awarded for the most of the serious offence and the grievous offence it is all basically given for murder, robbery with murder waging for shall against the government and also the abetting mutiny etc.

In the era 54 numbers of the countries are retain capital punishment and among them all 107 countries who have completely states the abolishment of the death penalty. It is always a controversial terms in the several numbers of country and the state it is populated though the ideologies of the political relations where somehow it is very obvious that capital punishment are a sense of debate part that whether the victim⁴ suffer or the accused but one has to

² CAPITAL PUNISHMENT – The legally authorised killing of someone as punishment

³ Blackstone’s perspective of defining

⁴ Victim- a person harmed or injured or killing as the crime or accident and the order event or action.

suffer though capital punishments are a sense of setting up the certain examples in the public communities that no other person did choose the path of crime to get their aggression off on sometimes the discriminatory part, educational lacking and sometimes it is the hatred that spread over the society.

Definition of Capital Punishment

The term of capital has itself a Latin word of origin from the term capitalist which means “regarding the head”⁵ A capital punishment is all a process of legal where the person is set to be in a death by the state as the punishment creates on the individual for the crime he has done or committed by him. The judicial decree of the court that one should be punished in the manner is said to be the capital punishment, while physically or we can say the most of it the process of the killing of the culprit or the person committed a crime are called the execution. The crimes that are considered in a death penalty are known as the capital crimes or we can say the capital offenses. It also refers to the punishments or sentences of death that condemn a convicted defendant to the death. It is also an affliction or the situation that is being considered to be as fatal; and also a prognosis of the death.

Historical Background of Death Penalty in India

The history of capital punishment in India dates back to the colonial era. U/s 53 of the IPC, 1860, death is listed as a punishment, while murder attracts either death penalty or life imprisonment under Section 302.⁶ Post-independence India continued with the death penalty in its legal framework. Nonetheless, the imposition of capital punishment gradually changed from being an ordinary punishment to exceptional punishment. In the Code of Criminal Procedure, 1898, death sentence was normally imposed, but reasons were to be stated if a lesser sentence was imposed. The Criminal Procedure (Amendment) Act, 1955, abolished the above requirement, thereby providing for more discretion on whether to impose death sentence or life imprisonment. Further, the CrPC 1973⁷ provided that life imprisonment was the normal punishment, and special reasons had to be stated before death was imposed. In *Bachan Singh v. State of Punjab* (1980),⁸ the Supreme Court affirmed the constitutional validity of the death penalty and the “rarest of rare” principle.

⁵ Referred to as the state of beheading

⁶ The Indian Penal Code, No. 45 of 1860, §§ 53, 302 (India)

⁷ Code of Criminal Procedure 1973, §§ 354(3).

⁸ (1980) SC 898.

Legal Framework Governing Capital Punishment in India

The Indian constitution is one of the largest constitutions in the world. It is because it is a blend of various constitutions of different countries around the globe, namely the United States, Japan, the U.K., and Canada; the list is not exhaustive. The right to life is borrowed by the US and Japanese constitution. This right has substantial evidentiary significance and is acknowledged as essential and fundamental. The right to life and liberty is protected by constitutional norms, giving residents a significant amount of personal freedom.⁹ All people of India are guaranteed the right to life by the Indian Constitution, although this right may be curtailed by legal processes.¹⁰

“Article 14¹¹ of the Indian Constitution promises 'Equality before law and equal protection of the laws, meaning that no one will face discrimination unless it is necessary to accomplish equality.’ The soul of preamble could be found in Article 14 of the Indian Constitution.

“Article 21¹² guarantees everyone the fundamental 'right to life that is, the right to life with dignity' under which no one can be deprived of his life until the legally mandated process is followed.”

Despite the Indian Constitution's many provisions, such as the preamble, fundamental rights, and guiding principles for state policy, the constitutionality of the death penalty might be questioned. There are two main ways to classify its constitutionality in India. First and foremost, the essential topic to be addressed is whether the death penalty as a whole is unlawful and whether it should never be applied in any situation by enacting any kind of legal procedure. The second concern that comes up is whether the laws regarding the death penalty found in the IPC are unconstitutional since they might violate certain constitutional principles, even though the death penalty itself might not be illegal.

Rather than legislative constraint, judicial interpretation has played a major role in the evolution of the death penalty's constitutional legitimacy in India. The Apex Court took a procedural stance in *Jagmohan Singh v. State of UP*¹³, stressing adherence to legal protections

⁹ Allan Gledhill, *The Life and Liberty in First Ten Years of Republican India*, 2 JILI 241, 266 (1959-60).

¹⁰ Art. 21, Constitution India, 1950.

¹¹ INDIAN CONSTITUTION. art.14.

¹² INDIAN CONSTITUTION. art. 21.

¹³ (1973) 1 SCC 20.

rather than challenging the morality of the death penalty. As long as sentencing discretion was used within the parameters of recognized legal procedures, this early judicial position established the precedent for seeing the death sentence as constitutionally permissible.

Bachan Singh v. State of Punjab.¹⁴ The Apex Court established the “rarest of rare” doctrine. Although this framework aimed to limit the use of the death penalty to extraordinary circumstances, its implementation has remained mostly arbitrary. The doctrine's efficacy as a safeguard against arbitrariness has been limited by subsequent judicial practice, which shows that courts have had difficulty developing consistent standards for identifying cases that fall within this category. In *Machhi Singh v. State of Punjab (1983)*¹⁵, the Court endeavoured to establish illustrative categories for distinguishing “rarest of rare” circumstances, further examining the question of sentencing discretion. Despite this attempt, there has been a great deal of variety in court decisions due to the lack of strict sentence criteria. Because of this, similar offenders have frequently gotten different penalties, which raises questions about equality before the law under Article 14 of the Constitution.

When taken as a whole, these rulings show that Indian courts have chosen a model of constitutional compromise over outright support or opposition to the death sentence. Despite efforts to humanize capital punishment, judicial notions like the “rarest of rare” criterion and delay-based commutation have not allayed worries about arbitrariness and inconsistency. These unresolved judicial tensions take on new significance in the current context, especially in light of the expansion of capital offenses under the *BNS, 2023*.

This calls for a revaluation of whether judicially imposed limitations alone are adequate to protect constitutional morality.

“The president of India and state governors are authorized by Articles 72¹⁶ and 161¹⁷ of the Indian Constitution to ‘grant pardon, reprieve respite or remission of punishment suspend, remit or commute a sentence of punishment’ for any accused person found guilty of a crime.

- a) In each and every instance when a court martial is used to impose a penalty or punishment

¹⁴ (1980) SC 898.

¹⁵ (1983) 3 SCC 470.

¹⁶ INDIAN CONSTITUTION. art. 72.

¹⁷ INDIAN CONSTITUTION. art. 161.

- b) In every situation in which the penalty or sentence for breaking any law pertains to a subject over which the union has executive authority
- c) In every situation in which the punishment carries a death sentence.”

According to the constitution, a convicted person may submit a last request for clemency to the president following the Supreme Court's verdict, provided that all appeals have been denied. The principles of a prompt trial and the timely consideration of mercy pleas were established by the cases of *Madhu Mehta v. Union of India*¹⁸ and *Triveni Ben v. State of Gujarat*.¹⁹ The court agreed to reduce the death sentence to life in prison, citing a lack of logical cause for the nine-year delay in the final disposition of a mercy petition in these situations.

Doctrine of “Rarest of Rare”

The doctrine of “Rarest of Rare” is central to India’s approach to capital punishment.

Meaning and scope

The doctrine limits death sentences to the gravest crimes, where aggravating factors—such as cruelty, premeditation, or scale of harm—far outweigh mitigating factors, including age, mental health, personal history, and potential for reform. Importantly, it is not solely the crime’s nature but also the offender’s circumstances that determine eligibility for capital punishment.

Challenges and Criticisms

Despite its foundational role, the doctrine faces several critiques:

- **Subjectivity:** Interpretation of “rarest of rare” varies across benches, leading to inconsistent sentencing.
- **Ambiguity:** Mitigating factors, such as remorse or background, can dramatically alter sentencing outcomes even in severe crimes.
- **Transparency:** The lack of clear guidelines sometimes results in perceived arbitrariness and unequal application of the death penalty.²⁰

¹⁸ 1989 SC 2299.

¹⁹ AIR 1989 SC 1335.

²⁰ Sovi Devasia & George K.O., Capital Punishment in India: Legal Framework, Contemporary Critique, and Global Perspectives, 7(5) Indian J. L. & Legal Rsch. (2025).

Argument in Favour of Capital Punishment

- **Deterrence:** Advocates argue that the threat of execution prevents heinous crimes more effectively than life imprisonment.
- **Retributive Justice:** The death penalty satisfies society's moral demand for retribution in the face of atrocities.
- **Closure for Victims' Families:** Execution may provide emotional closure, affirming the value of human life and societal norms.
- **Preventing Recidivism:** Execution ensures that convicted offenders cannot commit further crimes.

Arguments Against Capital Punishment

- **Risk of Wrongful Convictions:** Investigative errors, coerced confessions, or poor legal representation can result in innocent individuals being executed.
- **Socio-Economic and Systemic Bias:** Wealth, caste, religion, and legal access affect sentencing outcomes, raising concerns of fairness and equality.
- **Human Rights and Ethical Concerns:** Many view the death penalty as incompatible with the inherent dignity of human beings.
- **Questionable Deterrence Effect:** Empirical evidence on deterrence is inconclusive; social, economic, and policing factors often play a larger role in crime prevention.
- **Psychological Trauma:** Extended periods on death row can cause severe mental anguish, known as the "death row phenomenon."
- **Global Trends:** Increasingly, nations are abolishing or severely restricting capital punishment under international human rights pressure.

Critical Analysis

Death sentence is perhaps one of the most debated questions related to India's criminal justice system. Proponents of capital punishment suggest that execution is a justified form of punishment for extremely grave offenses and can also act as a deterrent in society. Capital punishment can also be justified by some as a form of justice given to the victims and their families. Mostly significant issue in the debate on capital punishment revolves around the right to life and the possibility of judicial mistakes. Once an innocent person is executed, such a mistake cannot be undone. There is also debate regarding the effectiveness of capital punishment compared to life imprisonment as a measure of deterring crime. However, there is

no empirical evidence that shows that capital punishment acts as a stronger deterrence in the crime rate compared to life imprisonment. The Indian judiciary has tried to limit the application of capital punishment. *Bachan Singh v. State of Punjab* is one of the cases in which the Apex Court introduced the “rarest of rare” principle.

Human rights are one of the most pressing issues when we talk about the death penalty. The Indian Constitution guarantees the right to life under Article 21²¹. Hence, there is a need for proper proceedings and hearing before imposing capital punishment. This means that there are a lot of different factors which need to be taken into account in India when talking about capital punishment.

Recommendations

The Law Commission in its 262nd Report²² abolished held that the death penalty should be abolished in all the cases excluding those related to terrorism. This happened in the wake of the death sentence which was meted out to Yakub Abdul Razak Memon who was hanged on 30th July 2015. His advocates had tried hard to convert it into a case of life imprisonment. Legislations put forward by the Tripura Assembly had also favoured the abolishment of death penalty in India. Certain recommendations have to be entailed as the execution warrants within a specified time limit. Except in the cases of terror, if there is any unconditional delay, then provision must be stipulated whereby considering the mental condition of the convict, his death sentence shall be converted into life imprisonment.

Conclusion

Capital punishment in India remains legally valid but is tightly constrained by constitutional principles and Apex Court jurisprudence. The doctrine of “rarest of rare” combined with emphasis on procedural fairness and mitigation, ensures that death sentences are rare and exceptional. However, serious criticisms persist regarding arbitrariness, risk of wrongful convictions, mental suffering, and moral considerations. Global trends and human rights standards increasingly favor limited or abolished capital punishment, urging India to carefully reconsider its approach. Ultimately, the debate is not merely about whether India can have the death penalty, but whether it should—balancing constitutional values, human rights, societal expectations, and the irreversible nature of execution.

²¹ INDIAN CONSTITUTION. art. 21.

²² Law Comm’n of India, The Death Penalty, Report No. 262 (2015).