

## Capital Punishment and its Constitutional Validity

Mayank Jain<sup>1</sup>, Jai Prakash Srivastava<sup>2</sup>

<sup>1,2</sup> School of Legal Studies and Governance, Career Point University, Kota

Email: [mayankjain7467@gmail.com](mailto:mayankjain7467@gmail.com)

**ABSTRACT :** *This research article investigates whether all punishments are justified by the same assertion that wrongdoing must be punished. The majority of religious or moral systems teach that poor behaviour has negative repercussions. The majority of the rationale for punishing wrongdoers is to deter others from committing wrong. Because of its extreme and irreversible character, its justice, appropriateness, and efficacy are more open to argument than other sanctions. Death sentence supporters regard it as a powerful deterrent to crime. They are experts in using the death penalty as a deterrent or to discourage or educate crime. They feel it provides the best possible justice to victims of horrible acts.*

*Capital punishment has long been a source of contention, not just in India but also in a number of developed countries. Under its Charter of Rights, the international organisation proclaims death punishment, or execution, to be a crime against humanity and calls on its member nations to abolish it.*

**Key Words:** *Repercussions, Horrible acts, Deterrent , Discourage , Justice , Capital Punishment , Charter of rights .*

### INTRODUCTION

Every punishment is based on the notion that there must be a repercussion for violation. There are two primary reasons for imposing the punishment. One is the idea that punishing someone who has done wrong is both right and just; the other is the idea that punishing wrongdoers deters others from acting similarly. The same premise underlies other penalties and the death penalty as well.

Under the current conditions, the discussion over the death sentence is the most globally relevant. The death penalty is an important part of the Indian criminal justice system. With the growth of the human rights movement, the existence of the death sentence in India is being questioned as immoral. Every punishment is based on the notion that there must be a repercussion for violation. There are two primary reasons for imposing the punishment. However keeping one person alive at the expense of many other people's lives is a strange argument. It is unbelievable and actually immoral for members of the society or potential victims to do such things wrong.

Execution of a person sentenced to death after being found guilty by a court of law of a criminal offence is capital punishment, commonly known as the death penalty. It is important to distinguish between the death penalty and extrajudicial killings that take place without a court order. Although the imposition of the penalty (even when it is sustained on appeal) does not necessarily result in execution, the terms "death penalty" meaning "capital punishment" are sometimes used interchangeably. This is because there is a chance that the sentence could be commuted to life in prison.

The phrase "Capital Punishment or Death Penalty" refers to the harshest type of punishment, it is the penalty for the most egregious, terrible, and abhorrent crimes committed against people. This can be provided by any type of Penal law which is used for providing punishment force in any part of the world. Capital punishment provides the legal rights or authorities to state to end up or finish the life of any person or offender. This process should be done in a legal procedure, according to section 354(5) of Code Of Criminal Procedure that When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead, by fulfilling all the legal formalities because at the time period of the bruisers number of Indians are also put on hang whether before or after trial. Murderers and other violent offenders have long been subjected to the death penalty as an appropriate punishment. It works as a deterrent and a preventative measure. The argument put up in favor of the death penalty is that it is legal to take away the life of someone who takes another person's life. Accordingly, the murderer deserves to be put to death. This form of retribution is legal since it strengthens social solidarity against those who breach the law. Although the nature and severity of these offences differ from nation to nation, state to state, and age to age, the death penalty has always been the result of capital punishment. If the accused person not satisfies with the decision given by the lower court then he can appeal in higher court

The judge according to Section 235 of Code of Criminal Procedure declare the judgment. and court also has to describe that on what reasons court has made this judgment .

After giving the judgement by Lower court the person who is not satisfy can appeal in High Court than the high court look into the matter of fact in case and finalise its decision or High Court can also release its new judgement if it want the any changes and can also ask for new trial of case.

Any person who is not happy or a gave its acceptance to the decision of High court so he or she can also has another option for higher appeal in Supreme Court .

When supreme court give its judgement and someone who also not agree by the decision of the supreme court so he can filed a petition for the review of the judgment of the supreme court under the article of 137 of the Constitution within the prescribed a time period of not more than 30 days from the time of the judgement given by the supreme court.

## **HISTORICAL BACKGROUND**

The death penalty has been used for a long time. Capital punishment has been used throughout history. Individuals have been executed using the death penalty throughout history. Given the circumstances, the sentence was meted out on minor offences. The number of executions will be separated into two categories primitive and ancient. The ancient time consisted of punishing people on an arbitrary basis that was chosen by the King, and the law was oral and not at all formalised. During the primitive time, execution was granted for crimes such as murder, theft, trespass, and misappropriation of valuables. The death sentence has never been employed in any country on the planet. Throughout human history, the death penalty has never been abolished as a form of punishment.

## **REVIEW OF LITERATURE**

Thorston sellin writes that death penalty has failed to be effective even as the measures of social defence and as an instrument of retributive justice many of the condemned prisoners escape death even after the award of this sentence either because they succeed in appeal or are pardoned.

## **RESEARCH OBJECTIVE**

The main objective of this research is to identify that capital punishment or death penalty is the last option to develop fear in the society to not to commit heinous or grievous crime.

And also to study the meaning and determining the principles and to find the reason why the rarest of rare crime philosophy developed.

## **RESEARCH QUESTION**

What are the conditions for imposing the death sentence in India?

Is capital punishment still an appropriate punishment in today's society?

## **RESEARCH METHODOLOGY**

The qualitative research approach used in the research study is based on secondary sources. Secondary sources of information include internet resources, research papers, publications based on the Indian legal code, reports issued by prominent authorities, newspapers, legal databases that aid in the interpretation of various instances, and so on.

The one who commit any offence which comes under the category of heinous or grievous crime for which the punishment of life imprisonment falls short. And also comes under the category of Rarest of Rare cases.

Some of the conditions in which a person is eligible for the death penalty are given in Indian Penal Code are section 121 , section 132 , section 194 , section 195A , section 302 , section 305, section 307(2) , section 364A , section 376A , section 376D , section 376DB , section 376E .

In the present era where the rate of dreadful or terrible crimes increasing day by day, to stop all those crimes a fear of death must be develop in the mind of those persons who are going to commit these types of crime and the capital punishment is the only way to do so .

In capital punishment there is no partiality done between man and women, it is totally an indiscriminate punishment for the crimes either done by man or by women.

To justify this statement there is a case Shabnam v/s Union of India 2015<sup>1</sup>, this was the first case in the history of the judicial system that the women provided the death sentence in this case the lady made an arrangement together with her boyfriend to finish her family member because they didn't allow her to marry her boyfriend .In the madness of love she killed her all family members including her 10 month's nephew .After doing these inhuman practices the court watch all the matters of facts and gave a judgement to hang the lady or awarded the death punishment to the women for the first time .

Capital punishment also not given to minors as they are not eligible for death sentence. It was held in case of Vinay Sharma versus Union of India 2020<sup>2</sup>, this case is also known as Nirbhaya gang rape case .In this case girl was raped by 6 person because of which the girl died .They gang raped her, put the Iron Rod in her private part, they threw the girl on the roadside without her clothes and because of such horrible incident she died . There are six offender who were doing rape in which one a minor so he can't be give death penalty and other one ended his life by committing suicide in jail the court bring judgement after analysing their intention or offence that they should provide an capital punishment and they were hanged on 20 .

In the above case if those persons don't got punished for the offence they had done then it encourage public to do offence , so Capital Punishment must given to those persons who do these type of crimes.

#### CAPITAL PUNISHMENT AND ITS CONSTITUTIONAL VALIDITY:

The first case where the difficulty of constitutional validity of death sentence came before the Supreme Court was Jagmohan Singh V. State of U.P.<sup>3</sup>, Jagmohan had a bad feeling towards the Chhotey Singh because chhotey Singh was the guilty of a death of uncle of Jagmohan Singh. Chhotey Singh was accused but after sometime Court proved not guilty to Chhotey Singh. At that time both are minors, passing of many years there had been a fight between Jagmohan along

---

<sup>1</sup> Writ petition (criminal) No. 89 of 2015

<sup>2</sup> Writ petition (CRL.) No. 65 of 2020

<sup>3</sup> 1973 AIR 947, 1973 SCR (2) 541

with Jagbir Singh against Chhotey Singh regarding the irrigation of field. Next day Jagmohan Singh and Jagbir Singh holding some greivous weapons like lathi and gun and attacking on Chhotey Singh and bajra field, and by these act chhotey Singh led to death. The session court release a judgement by making the Jagmohan as a guilty of Murder of Chhotey Singh, an appeal made against the order of session court and high court also confirms and the Honourable Supreme court also confirm by the special leave.

Section 302 of the Indian criminal code of 1960 (death penalty for murder) was placed on trial for constitutional validity. The majority of reasons made before the Supreme Court were that it breaches numerous fundamental rights that citizens should be guaranteed, particularly Article 14, because in two identical situations, the penalty for murder is jail and, in some cases, execution. The Supreme Court dismissed the suit, saying that the discretion of awarding execution or imprisonment declaring that physical punishment or captivity. Judges must consider the merits of the case, including the circumstances of a criminal act, and so Section 302 of the Indian penal code of 1860 was not declared unconstitutional.

In the case of Bachan Singh vs. State of Punjab<sup>4</sup>, in this Bachan Singh who was already guilty of his wife murder and received a life imprisonment during his period of punishment he release, he was residing at the house of his cousin brother name was Hukum Singh and the hukum's wife and son not like that they have to live with a Bachan Singh. After a few days, he devised a plan to murder Hukum Singh's family members. At midnight, he wanted to kill Meera bai, Hukum's sister, and attempted to kill her with an axe on her face. The entire scene was witnessed by Vidhya bai, who made every effort to stop the appellent, but her face and ear were blown by the axe, causing injuries. Later session court judge make a judgement which was fair and true and announce a sentence to death under Section 302 of Indian Penal Code for being guilty of the murder of Desa Singh, Durga bai and Veeran bai. Later he appeal to the High Court and high court dismiss the appeal and give favour to the judgement of the session court and he made further appeal in Supreme Court and by the special reason in the section 354(3) of Code Of Criminal Procedure 1973.

The topic of the constitutionality of corporal punishment was revisited by the Supreme Court's five-judge Bench, which overturned the previous verdict rendered in the Rajendra Prasad case by a majority of four justices. It stated that the execution as an alternative punishment for murder is not unreasonable and thus does not violate articles 14, 19, and 21 of the Indian Constitution, because "public order," as defined by clause (2) and (4) of Article 19 of the Indian Constitution, differs from "law and order," and also declared that the principle of imposing the capital punishment should be done only in "the rarest of rare cases" within the judgement of Justice Bhagwati, it absolutely was held that "the capital punishment isn't unconstitutional".

---

<sup>4</sup> 1982 (3) SCC 24, 1983 (1) SCR 145 a

In India, there is divided opinion on the issue of physical punishment, with some favouring its continuation and others advocating its eradication. India is one in the 78 retentionist countries that have retained the authority and going to be approved only in "rarest of rare situations" and for "exceptional causes". The lawmakers or the Supreme Court have not yet clarified what constitutes the "rarest of the rare circumstances" or "exceptional causes."

### **DOCTRINE OF RAREST OF RARE:**

The meaning of this Doctrine is an "exceptionally brutal" which means the act or crime, offence can't be accepted by the society and offenders have to be punished with the death penalty. In other words basic meaning of rarest of rare case is a very few cases in which the capital punishment can be awarded but this doctrine doesn't mean a convicted person always received death penalty all the remedies and the judicial system should be considered by all legal principles . This doctrine considered that capital punishment is only Last Resort or we can say last way to reduce the exceptional brutal crime. The principal is not a type of jacket formula which can be easily apply by providing death penalty we have to consider 2 points the nature and seriousness of crime.

In *Machhi Singh v/s State of Punjab*<sup>5</sup>, on the night of 12th August 1977 Many attacks took place in the five villages of the Punjab The Attack was plan and settle by Machhi Singh who was a local man has a fighter with other person whose name is Amar Singh and his sisters Piaro bai and for taking the revenge he wanted to murder the Amar Singh and Piaro bai .through the plan which was made by the Machhi Singh For Revenge, 17 peoples were killed and after than Machhi Singh and including were arrested. after the arrest of the Machhi Singh and he all offenders who participate in crime were put on trial for murder for violating law and order five session of cases were held on Machhi Singh. The order of case was given by judge by considering all the facts and give life imprisonment to nine man and Machhi Singh and three other were given death punishment.

Some criteria as prescribed by Supreme Court for application of doctrine Rarest of the rare case as describe in this case are as follows:

when murder is a committed with the wrongful intention, very greivous in nature, extreme brutal and serious

when a person creating some type of act which can cause death of other.

when convicted person cut a body into small pieces of other person

for the intention of burning alive setting a fire on house

---

<sup>5</sup> 1983 AIR 957, 1983 SCR (3) 413

One person higher a killer for setting or planning a murder of another person due to monetary reward

Murder was done for the thinking to inherit or capture the property by illegal way

When offender commits a murder of innocent child, a public renewed person, or helpless women or person by the reason of old age and infirmity.

When one person kill another person who belongs to backward class or a ruler areas due to the dowry death with also known as bride burning.

When a series of enormous crime are done for the multiple murders.

## **SUGGESTION AND CONCLUSION**

### **Suggestion**

In my opinion Capital punishment is necessary to be in the type of punishments, given to those persons who do the greivous offences. As it develop the terror of death in the mind of the offender and because of that terror perhaps he stops himself from doing the crime, and by this crime rate also decreases. Because if capital punishment is not given to anyone it motivates the public to do the crime as they don't have any type of fear which stops them in committing of crimes.

### **Conclusion:**

In ancient times, even intangible offences were punished by death. Governments gradually phased it out, but India stuck with it for one reason: the people. "An eye for an eye makes everyone blind," Mahatma Gandhi once observed. When the atrocities continue, the conditions are much more horrifying than before.

In the most extreme cases, the death sentence does not violate human rights principles as stipulated by the ICCPR (International Covenant on Civil and Political Rights) for governments that have not abolished it but have imposed specific restrictions on it.

Harsh punishment instills fear in others, stopping them from committing crimes. In India, the deterrence hypothesis is used. In the case of Macchi Singh, the Supreme Court granted the death penalty based on widespread popular demand. Human thought is always evolving. Considering the 2012 Delhi Gang Rape, every citizen of the country came together to fight Damini's terrible rape case.

This sparked a revolution and awoke the judiciary's eyes, and the criminals were condemned to death in March 2020. It is critical to recognise that the accused has legal rights as well. Only when all of the accused person's rights have been exhausted may the death penalty be applied.

**References :**

Jurisprudence

Constitution of India

<https://indiankanoon.org>

<https://www.legalserviceindia.com>

<https://www.scconline.com>

<https://www.livelaw.in>