

## **Study on the Constitutional Validity of Capital Punishment in India**

Raman Nehra, H.No. 123A/14 Kirpal Nagar, Rohtak – 124001 Email - [rnehra39@gmail.com](mailto:rnehra39@gmail.com)

### **Abstract**

Capital punishment or death penalty have always been a topic of contradiction not only in India but also in several developed countries. In India, the motive for providing punishment is based on two aspects; the first being that the offender should suffer for the pain and injury he/she casted upon the victim and another motive is to discourage others from committing wrongs by sanctioning punishments. This paper focuses on Capital Punishment in India which is also known as the death penalty which is awarded by the court in very rare cases. Furthermore, this paper also explores the constitutional validity of capital punishment in the context of Indian Judiciary. To understand the present status of Capital Punishment in India, it is important to know the history of advent of capital punishment and why is it given only in certain crimes, making it a contradictory topic from a moral point of view. Therefore, this paper shall deal with the history of Capital Punishment, followed by landmark cases decided by the Indian Courts. In order to acquire clarity of Capital Punishment on a large scale, it is essential to have the knowledge of differentiating ideologies of other countries as well. So, this paper will also briefly define methods used by different countries for giving capital punishment, including India. This paper extols the opinions as to why this sort of punishment is a formidable question on morality and its aspects while delivering at the same time, arguments for the veracity of its need.

**Keywords: Constitutional Validity, Validity, Punishment, India**

### **Introduction**

All punishment are based on the same proposition that is there must be a penalty for wrongdoing. Most systems of religion or ethics teach that bad action lead to bad consequence. There are two main reason for inflicting punishment on wrongdoers discourage others from doing wrong. The death penalty also rests on the same proposition as other punishment. Because of its drastic and irrevocable nature, It is even more open to debate over its fairness, appropriateness and effectiveness than other punishments. The proponents of death penalty believe that it is an effective way to stop crime. They focus on the death penalty as a deterrent or something that will stop or lesson crime. They believe that the death penalty brings the most justice to the victim of a heinous crime.

Death penalty has been a mode of punishment since time immemorial. The arguments for and against has not changed much over the years. Crimes are well as the mode of punishment correlate to the culture and form of civilization from which they emerge. At this point of time when the issue [whether capital punishment must be abolished or not is still raging, It will be appropriate to remind ourselves as to how the legislatures and apex court have dealt with this issue every time it has come up before them. Another issue is regarding the extent of judicial discretion.

The crime rates in the world we live in today are constantly increasing. The number of murders, abductions, rapes, terrorist attacks, and child abuse cases has increased. According to the World Population Review of 2018, the overall crime rate in India is 44.43. In such a situation, the legislation and penalties to deter and prevent crime must be put into effect immediately. Punishment, which is one of the main pillars of contemporary civilisation, is the use of coercion to uphold the law of the land. The state must punish offenders in order to maintain law and order in society. There was no specific law or order that governed these crimes in the past, and the severity of the punishment was entirely up to the king of the state. Over time, modern theories of punishment emerged, and the state was given voluntary control over our rights and the power to maintain law and order. The punishments range from fines and imprisonment to death and life imprisonment. ‘Capital punishment’, also known as the ‘death penalty’, is the harshest or most severe punishment of the present time.

The purpose of the death penalty is to deter people from doing something by instilling fear in them about the consequences. This punishment applies to heinous and traumatising offences

to society as a whole, such as murder, rape, rape with murder, etc. The death penalty is used when a crime is so serious that it has the potential to terrorise society as a whole, but not all of the crimes mentioned above necessarily warrant the death penalty. The death penalty is only applied to crimes that fall under the ‘rarest of rare doctrine.’

### **What is capital punishment**

The term ‘capital’ is derived from the Latin word ‘*capitalis*’, which means concerning the head. Thus, to be subjected to capital punishment means to lose one’s head.

Capital punishment, also known as the death penalty, is the execution of a criminal who has been sentenced to death by a court of law for a serious felony. It is known as the most severe form of punishment. It serves as punishment for the most heinous, grievous, and abhorrent crimes against humanity. Even though the definition and scope of such crimes vary by nation, state, and age, the death penalty has always been the result of such crimes.

According to Encyclopedia Britannica, the death penalty is the execution of a person who has been given a death sentence after being found guilty of a crime by a court.

### **Constitutional validity of capital punishment**

The issue of death penalty has been debated, discussed, studied from a prolonged time but till now no conclusion can be drawn about the retention or abolishment of the provision. Death penalty has been a mode of punishment from time immemorial which is practiced for the elimination of criminals and is used as the punishment for the heinous crimes.

Various countries have different outlook towards crime in different ways. In Arab countries they choose the retributive punishment of “an eye for an eye” others have deterrent punishment. Of late there has been a shift towards restorative and reformist approaches to punishment, including in India.

India is one of the 78 retentionist countries which have retained death penalty on the ground that it will be awarded only in the “rarest in the rare cases” and so far “special reasons”. Though what constitutes a rarest of rare case or special reason has not been answered either by the legislature or by the Supreme Court.

The constitutional validity of death penalty was challenged from time to time in numerous cases starting from JAGMOHAN SINGH VS STATE OF U.P where the Supreme Court rejected the argument that the death penalty is the violation of the “right to life” which is guaranteed under article 19 of the Indian constitution. In another case Rajendra Prasad vs State of U.P., Justice Krishna Iyer has empathetically stressed that death penalty is violative of articles 14, 19 and 21, But year a later in the landmark case of Bachan singh vs State of Punjab, by a majority of 4 to 1 (Bhagwati J. dissenting) the Supreme Court overruled its earlier decision in Rajendra Prasad. It expressed the view that death penalty, as an alternative punishment for murder is not unreasonable and hence violative of articles 14,19, and 21, of the Constitution of India, because the “public order” contemplated by clauses (2) to (4) of article 19 is different from “law and order” and also enunciated the principle of awarding death penalty only in the “rarest of rare cases”. The Supreme Court in Machhi singh vs State of Punjab laid down the broad outlines of the circumstances when death sentence should be imposed.

Similarly in various other cases Supreme Court has given its views on death penalty and on its constitutional validity. But the punishment of death penalty is used in India, some time back the death penalty was given to Mohammed Ajmal Kasab. The Pakistani gunman convicted in 2008 Mumbai attacks was sentenced to death by hanging and after a long discussion, politics and debate was finally hanged on 21 November 2012. Next in the row is Afzal Guru, convicted in 2001 Parliamentary attacks was also hanged after a huge political discussion on 9 February 2013. The next convict in the death rows is Devendra Pal singh Bhullar, convict of 1993 car bombing will be hanged in the coming days as his mercy petition was rejected by the Supreme Court by holding that in some terror crime cases pleas of delay in execution of death sentence cannot be a mitigating factor.

Article 21 of the Constitution, as we all know, guarantees the fundamental right to life and personal liberty. While this article guarantees the right to life and personal liberty to every person, is it absolute? The answer is no because, despite the fact that everyone has the right to

live with dignity, the state has the authority to take away or limit even this right for maintaining law and order.

But as determined in the case *Maneka Gandhi v. Union of India (1978)*, the procedure must be a due procedure as it takes away a person's sacred life and must be fair, reasonable, and devoid of any bias. It implies that the state may restrict or revoke a person's right to life by enacting laws, provided that there is a fair and valid procedure. However, the death penalty is not a punishment for all crimes; rather, it is only applied to the most heinous offences.

The issue of capital punishment has long been debated and discussed by our legislators. Nonetheless, despite years of debate and disagreement, Indian legislators have yet to reach a firm decision on whether the death penalty should be retained or abolished. The majority of nations have different perspectives on crime and different methods for punishing offenders. However, India, like many other nations, takes a reformatory approach to punishment, meaning they think that changing the criminal's behaviour and attitude toward society is a better way to deal with crime. India is one of the 78 nations that have retained the death penalty. Moreover, 'rarest of the rare' and 'special reasons' are two grounds for imposing the death penalty in India.

The constitutionality of the death penalty has occasionally been challenged. In the case of *Jagmohan Singh v. State of Uttar Pradesh (1973)*, the death penalty was first challenged on the grounds that it violated a person's right to life under Article 21 of the Indian Constitution, an important fundamental freedom. The five-judge bench of the Apex Court issued its ruling, stating that the death penalty is constitutionally valid and does not violate any of the Articles of the Constitution. It also found that the choice between the death penalty and life imprisonment was made after taking into account all the pertinent facts and the nature of the crime as they were presented during the trial.

In *Rajendra Prasad v. State of Uttar Pradesh (1979)*, Justice Krishna Iyer asserted that the death penalty was a clear violation of Articles 14, 19 and 21 provided by our Constitution. Two requirements for imposing the death penalty on any offender were highlighted in this case. First, the specific reason or circumstance for which the offender was given this punishment must be recorded. Second, it can only be applied in extraordinary circumstances.

The "rarest of rare doctrine" was established by the landmark *Bacchan Singh v. State of Punjab (1980)*, decision, which also mandated the death penalty in certain circumstances. By a majority of 4:1, the Supreme Court upheld the constitutionality of the death penalty in this particular case, but it also established a rule requiring that it only be applied in the most extreme instances. Even though it was determined that the death penalty is an exception and life imprisonment is the rule, the Supreme Court's decision did not define or restrict the use of the phrase 'rarest of rare.'

The constitutionality of the death penalty was once again challenged in *Deena Dayal v. Union of India (1983)*, on the grounds that hanging by a rope violates Article 21 because it is barbaric, inhumane, and cruel. The Supreme Court determined that hanging is an appropriate and fair method of execution within the constraints of Article 21 and is therefore constitutional.

In the case of *Mithu v. State of Punjab (1983)*, it was determined that the death penalty under Section 303 IPC is unconstitutional because it infringes on the safeguards enumerated in Articles 14 and 21 of the Constitution. As a result, it was omitted from the Indian Penal Code. In the later decisions of *T. V. Vatheeswaran v. Tamil Nadu (1983)*, the Supreme Court was faced with a conundrum regarding the execution of the death sentence and whether a significant delay was a justifiable reason to commute the death sentence to life imprisonment. Further, the three-Judge Bench in the case of *Macchi Singh & Others v. State of Punjab (1983)*, upheld Bachan Singh's ruling and stated that the death penalty can only be awarded in the rarest of rare cases when the community's collective conscience is such that it will expect those who hold the judicial authority to impose it. Under these circumstances, the following prerequisites must be satisfied:

1. When the murder is committed in a manner that is particularly gruesome, revolting, or morally dubious in order to elicit a strong and extreme sense of outrage from the community.
2. In the incident of bride burning or dowry death.
3. When the crime is massively proportionate.
4. When a Scheduled Caste member is murdered, which sparks outrage in society.
5. When the murder victim is an innocent child, a vulnerable woman, or a person rendered helpless due to advanced age or illness.

The Supreme Court further stated that the rarest of rare cases only serve as guidelines imposing the provisions mentioned in Section 354(3) of the CrPC and entrench the policy that life imprisonment is the rule and death punishment is an exception in the case of *Santosh Kumar Satishbhushan v. State of Maharashtra (2009)*.

In the well-known case of Ajmal Kasab, who was held guilty of 80 offences, including murder, possessing explosives, and waging war on India. The Bombay High Court pronounced a death sentence against him, asserting that it was the only appropriate punishment for the 166 deaths caused by the Bombay attacks on November 26, 2011. The death penalty was also upheld by the Supreme Court.

In the case of *Mukesh and Anr. v. State (NCT of Delhi) (2017)*, the Supreme Court upheld the death penalty for four prisoners, describing it as “the rarest of rares” and stating that the crime committed was horrifying to humanity. Later, the inmates’ requests for reviews were denied by the Supreme Court.

#### **CONCLUSION:-**

All penalties are based on the same statement that misconduct must be punished. Most religious or moral systems teach that bad behaviour leads to bad consequences. The main reason for punishing wrongdoers is to prevent others from doing wrong. Because of its intense and irrevocable nature, its fairness, appropriateness, and effectiveness are more open to debate than other penalties. Supporters of the Capital punishment see it as a powerful tool to stop crime. They focus on the capital punishment as a deterrent or something to deter or teach crime. They believe that it brings the greatest justice to victims of heinous crimes. The practice of capital punishment has changed over time in India. In the past, capital punishment was used more frequently, and it was more severe in terms of the crimes for which it was applied. For example, in the 1950s and 60s, capital punishment was used for a wide range of crimes, including rape, attempted murder, and drug-related offenses. However, since the 1990s, capital punishment has been reserved for more serious crimes, and it has been less frequently used. In 2010, for example, there were only 8 executions in India, compared to 151 in 1995. Capital punishment has always been a topic of conflict not only in India but also in several developed countries. The United Nations declares the death penalty, or the death penalty, a crime against humanity in its Charter of Rights and calls on its member states to abolish the death penalty. Death penalty has already been abolished 139 countries and India also should join the majority of nations that have abolished the death penalty. Death penalty is against the Human rights and it violets the article 21 of constitution of India. There can be various alternative methods for punishing the convict such as rigorous life imprisonment without any possibility of parole and no protection of good behavior relief which is provided for in the prison manual.

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