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**THERE ARE BOTH ADVANTAGES AND DISADVANTAGES OF USING CAPITAL PUNISHMENT IN THE CRIMINAL JUSTICE SYSTEM. IS THERE A TIME AND REASON FOR IT?**- Nanda Prasad<sup>1</sup>**ABSTRACT**

Death Penalty is another name for capital punishment, which gets its name from the Latin word 'capitalis,' which meaning 'head.' As a last resort, only the most egregious crimes warrant the use of capital punishment.

India's criminal code and the Army Act, 1950 both have a death sentence provision that allows for both hangings and shootings to be used as ways of inflicting it. Since the country's independence in 1947, there have been 755 executions, according to research conducted by the National Law University (NLU).

In March 2020, four convicted gang rapists were hanged in Tihar Prison, Delhi, for the rape of 23-year-old Jyoti Singh.

**KEYWORD-** Death Penalty, Punishment, Criminal, Article 21

**INTRODUCTION**

As previously stated, the death sentence is imposed by the state for very egregious offences. It is also known as a death penalty, and it is meant to be carried out by the criminal's death. Everywhere you look, you'll see crooks and crimes. Crime and punishment go hand in hand, and death punishment is reserved for the most severe of crimes. No nation has a crime rate of zero percent. Using the death sentence not only provides justice to those who have been wronged, but it also creates a precedent that those who commit crimes will be punished. Article 21 of the Indian Constitution states that no person shall be denied his life or personal liberty except in accordance with procedure established by law; however, one must look at the bigger picture here, which is the provision of justice for those who have suffered and the punishment of those who have committed such serious and atrocious crimes, to focus on the bigger picture.

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The Code of Criminal Procedure, published in 1898, dates back to the statutes that established death penalties as punishment for specific offences, as stated in Section 367(5). If judges felt the need to impose a different punishment that did not include the death penalty, they were required to provide a written justification for their decision. Later in 1955, Section 367(5) of the Code of Criminal Procedure was abolished, and as a result, the courts were no longer obligated to provide justifications for not applying the death penalty. Following this, a further modification was made in 1973 that once again mandated that judges must provide justification for any orders imposing the death sentence or life imprisonment for a specific period of time.

The legality of the death penalty.

"No individual shall be deprived of his life or personal liberty unless according to a process established by law," which ideally refers to the "Right to Life," is stated in Article 21<sup>2</sup> of the Indian Constitution. Every natural person has the right to life, which may only be taken away from them via the proper legal channels. The aforementioned article also emphasises that it includes "living" with the highest dignity and respect rather than "living" as in "living like an animal."

In the case of *Jag Mohan Singh v. State of U.P.*<sup>3</sup>, where it was contended that the death penalty was in violation of the position taken by Article 21 in the Indian Constitution, this exact Article was the basis on which the idea of "capital punishment" was challenged in 1973. The case was argued prior to the 1973 amendment, and it was subsequently determined that the judges' extraordinary discretion in failing to provide justification for the death penalty violated Article 14<sup>4</sup> of the Indian Constitution, which states that everyone is entitled to equal protection under the law. On Indian soil, the State is prohibited from depriving anybody of their legal rights to equal protection under the law or on the basis of their race, religion, caste, sex, or place of birth. The top court decided that the death penalty does not contradict Article 21 since it was only imposed in rare circumstances and only after careful examination and review. This conclusion was reached after hearing the arguments raised.

### **The Benefits and Drawbacks of the Death Penalty.**

#### **PROS**

**First and foremost, it serves as a powerful deterrence to potential perpetrators.**

The death penalty is the most effective deterrent because it is used only in the most extreme

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<sup>2</sup> Indian Constitution, Article 21.

<sup>3</sup> *Jag Mohan Singh v. State of U.P.*, 1973 AIR 947, 1973 SCR (2) 541.

<sup>4</sup> Indian Constitution, Article 14.

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circumstances and establishes a precedent that anybody who commits such a horrible conduct will face the death penalty. Helps in establishing an example for others not to conduct crimes by using this deterrence.

**Secondly, there are costs to consider.**

Executing criminals who have committed the most heinous crimes tends to be less costly than maintaining watch of prisoners who are out on parole, since keeping track of convicts in jail may be expensive.

**Prevents crimes from being committed in the future.**

There is a strong likelihood that crime will rise if the death penalty is abolished. In the 1960s, when the death sentence was removed, crime rates rose by 7%, according to reports. When it was reinstated, crime rates fell by 7%. To ensure that these crimes don't continue, a harsh punishment is necessary.

**There is no danger of escaping.**

Criminals like murderers are back on the loose if inmates manage to get out of jail while completing their sentences, and so it is imperative that the killer be brought down as soon as possible. Even if you believe that taking someone's life is wrong, keep in mind that this is the same individual that took the life of someone else.

**CONS**

**The cycle of violence is being perpetuated.**

When someone commits horrible crimes like murder, they're generally sentenced to death. But it's important to remember that even the death penalty involves perpetuating violence. If a murderer is sentenced to death, it doesn't seem to be the right course of action to execute him. Because of this, the death sentence is often compared to other forms of violence.

**Suppose the judiciary is erroneous in its conclusions?**

It is possible that an innocent person be wrongly convicted and sentenced to death owing to insufficient or incorrect evidence. Even if he is later found to be innocent, there is no way to bring him back under the death penalty; however, if the same person had been imprisoned, he could have been released and also applied for compensation for wrongful imprisonment and could continue to live his life as before if he is found to be innocent.

**Rehabilitation is impossible.**

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People who commit crimes without having the mental capacity to understand the consequences of their actions should be given rehabilitation and counselling instead of being executed because if they are executed, it does not do them justice, as they probably did not have any mensrea (guilty mind) while committing the offence. As a result, individuals deserving of the death sentence are deprived of it.

### **Cruel in all its manifestations.**

Even the idea of ending someone's life seems out of the ordinary. In addition to being harsh, this punishment is cruel in its very form. Life imprisonment, rather than the death sentence, is an appropriate punishment for criminals.

### **What the Supreme Court says about the death penalty.**

- Jag Mohan Singh v. State of U.P<sup>5</sup>: As you can see, the idea of the death penalty has been questioned more than once on the grounds that it goes against Article 21 of the Indian Constitution. In this case, the same argument was made. The Supreme Court said that Article 21 clearly says "...procedure established by law," so if an order for the death penalty is made after giving each side a chance to be heard and following the procedure established by law, the order for the death penalty will stand.
- Rajendra Prasad v. State of U.P<sup>6</sup>: Fundamental Rights are given to everyone and can't be taken away. However, in this case, the highest court ruled that an offender's fundamental rights can be taken away if he plans to kill someone and does so in a way that hurts social security.
- The case of Bachan Singh v. The State of Punjab, decided in 1980, set the precedent for what the theory of "the rarest of the rare" instances meant and included when giving an order for the execution of an individual.
- It was in the landmark 1983 decision of Machhi Singh v. State of Punjab, that the Supreme Court established standards for determining whether or not a case falls within the category of "rarest of the rare" and whether or not death sentence is the only punishment available.

### **When is it appropriate to do so, and why is it appropriate?**

At times, "the public's collective conscience is so startled that it expects the holders of the judicial power centre to inflict death sentence regardless of their own judgement on the merits

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<sup>5</sup> Jag Mohan Singh v. State of U.P., 1973 AIR 947, 1973 SCR (2) 541.

<sup>6</sup>Rajendra Prasad v. State of U.P., 1979 AIR 916, 1979 SCR (3) 78.

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of otherwise keeping death penalty," "death penalties should be inflicted." The case of Bachan Singh v. Punjab<sup>7</sup>.

Only in the rarest of circumstances is the death penalty imposed. Only in the "rarest of the rare" circumstances will death punishment be carried out, as stated in Bachan Singh v. State of Punjab, when a 4:1 majority affirmed the legitimacy of capital penalty. Because each situation is unique, it is impossible to define the "rarest of the rare" cases.

**Several variables determine whether the death sentence is appropriate or not, including:  
Not logical.**

The death penalty should be eliminated in India because there are differences between what is declared and what really happens. At least 100 persons were sentenced to death in 2007, 40 in 2006, 77 in 2005, 23 in 2002, and 33 in 2001, according to Amnesty International, a human rights organisation in India. These figures demonstrate that it is preferable to avoid passing such an order that cannot be carried out.

According to SuhasChakma, director of ACHR and organiser of the National Campaign for Abolition of the Death Penalty in India, "India should abolish the death penalty completely and join the comity of civilised countries who have abolished this harsh form of punishment."

**Justified.**

"Many people who live deserve to die. And some people who die don't deserve to. You can give it to them, right? Then don't be too quick to give death when you judge." -J. R. R. Tolkein.

**I think the death penalty is right because of the following:**

1. Future criminals will be scared off by the death penalty. It will serve as a warning and make sure that these crimes don't happen again. It is very important that there are strict laws and punishments, because only then will would-be criminals be scared away.
2. Why should people who take the lives of innocent people on purpose be given a second chance? I believe that the death penalty should only be used for the most horrible and serious crimes. It is only fair to the victim's family and to the victim herself that the person who did this is put to death.

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<sup>7</sup>Bachan Singh v. State of Punjab, AIR 1980 SC 898, 1980 CriLJ 636, 1982 (1) SCALE 713, (1980) 2 SCC 684, 1983 1 SCR 145.

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3. Rationality: An order for the death penalty isn't given out without much thought. Instead, it's given after a thorough review of the evidence, arguments, and opinions of senior judges. This is done only when the case seems right and is the "rarest of the rare."

In *Machhi Singh v. State of Punjab*<sup>8</sup>, the Supreme Court set the following standards for justifying death sentences:

- The method used to accomplish the crime,
- The primary driving force behind the crime's commission,
- The antisocial or disgusting behaviour in society,
- The severity and effect of the crime,
- The crime's victims.

**In light of the above information, I believe that the death sentence is appropriate in certain circumstances.**

**list of criminals hanged in the twenty-first century.**

1. Dhananjay Chatterjee
2. Ajmal Kasab
3. Afzal Guru
4. Yakub Memon:
5. a) Mukesh Singh
6. b) Akshay Thakur
7. c) Vinay Sharma

## CONCLUSION

In light of the above discussion, I believe that the death penalty is justified and should not be abolished in India. However, one must ensure that such a decision is made only after following the legal procedure and taking into account all the facts and arguments. When a death penalty order has been issued, it must be ensured that the sentence is carried out expeditiously and that there is no needless delay between the date of the order and the date of its execution. In addition, it must be ensured that the act is such that the death sentence seems to be the last choice. If the judges believe that life imprisonment is a viable alternative, they must review the facts and circumstances and only then provide a judgement with appropriate care and reason.

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<sup>8</sup>*Machhi Singh And Others v. State Of Punjab*, 1983 AIR 957, 1983 SCR (3) 413.

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Such an order is significant because it not only teaches perpetrators a lesson, but also demonstrates the strictness of the law; it serves as a deterrent to would-be offenders and lessens the likelihood that such horrible crimes will be perpetrated again. Such an order is important to preserve peace and security in the community and to control crime rates.



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