
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

A STUDY OF CAPITAL PUNISHMENT IN INDIA- Stuti Garg¹**PREFACE**

- For a long time, capital punishment was just the way things were done. Rulers and citizens alike believed it was necessary and unavoidable. No one seemed to doubt it deterred crime or questioned its wider impact on society. This was especially true for those directly involved in the justice system.
- However, times have changed. Today, we're re-evaluating this practice. Does capital punishment still make sense in a society that prioritizes human dignity, freedom, and equality (the hallmarks of a welfare state)? Critics argue it's often used to silence political opposition, unfairly targeting the poor and minorities. Article 21 of the Indian Constitution provides that, 'The State shall not deprive a person's right to life and personal liberty except in accordance with the procedure established by law.'²
- The Indian Constitution stipulates that the right to life can only be deprived through a fair, just, and reasonable legal process. The Indian Penal Code (IPC) is the primary criminal law in India and includes provisions for Capital Punishment. The Criminal Procedure Code (CPC) outlines the procedures for carrying out Capital Punishment. However, the state, as the executor of capital punishment, engages in illegal actions.
- Capital punishment, sanctioned by the state, entails the deliberate killing of a human being. While this practice was once widespread globally, with only a few countries abstaining, it is now widely condemned by organizations like the United Nations and Amnesty International. Various methods, such as gassing, shooting, hanging, and

¹ Student at Amity University Noida

² Article 21 in Constitution of India

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

electrocution, have been employed. Article 3 of the Universal Declaration of Human Rights guarantees everyone the rights to life, liberty, and personal security.³

- Article 6 of the International Covenant on Civil and Political Rights⁴ affirms the right to life for every individual, protected by law, and prohibits arbitrary deprivation of life. Even in times of national emergency, such as those posing a threat to national life, no derogation from this right is permitted. The Human Rights Commission, established under the International Covenant on Civil and Political Rights, emphasizes that the right to life is inviolable.⁵
- Criticism of Capital Punishment is widespread, both in developed and developing countries, viewing it as an exceptionally cruel, inhuman, and degrading form of punishment. The stance of the Indian judiciary on capital punishment remains ambiguous, with judicial decisions indicating a divergence of opinion among judges.
- Globally, there is a growing momentum within the abolition movement against capital punishment. Human rights advocates and organizations are actively campaigning for the abolition of the death penalty. Given these contemporary concerns, the aim of this study is to evaluate the continued relevance of capital punishment amidst evolving socio-economic conditions and emerging human rights principles. The researcher has endeavored to explore the historical roots of capital punishment and its developmental trajectory. Additionally, the study examines the disparities in legal frameworks and judicial attitudes toward capital punishment across different nations. The scholar underscores the significance of repealing capital punishment laws in multiple countries.

INTRODUCTION

“There is just no way I could conclude that the way we do this makes any sense. I have concluded that we apply Death Penalty in a very arbitrary manner” –VIRGINIA ATTORNEY GENERAL - WILLIAM BROADUS

³ Article 3 of the UDHR

⁴OHCHR. Available at: <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/GCArticle6/HRW.pdf> (Accessed: 29 March 2024).

⁵Bisset, Alison. *‘Blackstone’s International Human Rights Documents’*.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

“Death sentence is imposed in the rarest of rare cases. Life imprisonment is the rule and death sentence is the exception”. JUSTICE ARIJIT PASAYAT⁶

- Capital Punishment has a longstanding history dating back to ancient times. In the Western world, one of the earliest recorded instances can be found in "The Law of Moses," which prescribed death as punishment for blasphemy. In 1179 B.C., the act of murder had attained the status of a capital offense within both Egyptian and Greek civilizations.
- Similarly, in India, references to capital punishment can be found in ancient texts such as the Mahabharata and the Ramayana, where offenders faced punishment such as Vadha-danda, which involved gradual amputation.
- Initially, violations against religion and morality were met with capital punishment. However, as societies evolved into kingdoms, criminal laws underwent rapid changes.
- In the modern era, capital offenses have expanded to include crimes such as drug trafficking, hijacking aircraft, bribery, and more. In some Muslim-majority countries like Saudi Arabia, there are even proposals to include "artificial insemination" as a capital offense.
 - Capital Punishment, also referred to as the Death Penalty or execution, is a legal measure enforced by the state as a form of punishment for specific offenses. Offenses that warrant the possibility of the Death Penalty are commonly known as capital crimes or capital offenses.
 - The term "Capital Punishment" specifically denotes the imposition of death as a sentence. It represents the most severe form of punishment, as it results in the termination of human life. This irreversible penalty is reserved for exceptionally heinous, atrocious, and abhorrent crimes that pose a significant threat to humanity and society⁷.

⁶PremSagarV/s.DharambirandOthers,20038JT76

⁷ Hood, Roger. "Capital punishment", Encyclopedia Britannica available at: <<https://www.britannica.com/topic/capital-punishment>> (Last Visited on Feb 20, 2024)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

- While the definition and severity of these egregious crimes vary across different countries and eras, Capital Punishment has always entailed the imposition of the death sentence. The practice of the death penalty has persisted throughout history.
- The debate between abolitionists and retentionists has endured over the years, yet consensus remains elusive. Presently, 108 nations have abolished the death penalty for all crimes, while 7 have abolished it specifically for ordinary crimes. Additionally, 29 countries are considered abolitionist in practice, while 54 still maintain it as part of their legal system. This categorization results in a total of 142 countries classified as either abolitionist in law or practice. Despite this trend, India has chosen to retain the death penalty rather than abolish it⁸.
- The fundamental purpose of punishment has always been to safeguard society from criminal and antisocial elements. Punishment serves as a deterrent, instilling fear and apprehension in potential wrongdoers. It should not be motivated by vengeance but should be viewed as a necessary sacrifice for the collective safety of society.
- The history of Capital Punishment in India dates back to the medieval period, primarily aimed at eliminating criminals. However, by the 19th century, public sentiment shifted against its use for offenses other than the most heinous crimes. The irreversible nature of Capital Punishment led to societal concerns and calls for abolition.
- Capital Punishment is reserved for specific cases of brutal murder and grave offenses against the state.⁹ Discussions surrounding the retention or abolition of the death penalty continue globally, involving a range of stakeholders such as social activists, legal experts, judges, jurists, lawyers, and administrators. Criminologists and penologists are actively conducting research and studies to tackle persistent questions regarding the effectiveness and ethical considerations of Capital Punishment.

⁸ Amnesty International, Report on Death Sentences and Executions 2020 (January, 2021)

⁹Ratanlal and Dhirajla, The Indian Penal Code, 604 (LexisNexis, New Delhi, 35th edn., 2017)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

- The risk of facing penalty for an offense represents the cost incurred by the offender for their actions. When this cost is sufficiently high, relative to the severity of the crime, it serves as a deterrent for a significant number of individuals¹⁰.
- Several schools of criminology argue in favor of Capital Punishment, contending that it is warranted only in extreme scenarios characterized by a profound level of culpability and presenting a substantial risk to society.
- Assessing an offender's culpability for capital punishment goes beyond solely considering the dangerousness of the act to society. Factors such as the individual's characteristics, circumstances, and the gravity of the offense must also be taken into account. Capital Punishment is typically reserved for cases where the offender knowingly commits a heinous and brutal crime without any mitigating circumstances. Such instances are observed in the criminal laws of India and other countries.
- Throughout history, the death sentence has been viewed as an effective means of retributive justice. It is argued that those who take another person's life forfeit their own and must be removed from society. Additionally, the execution of such individuals serves as a deterrent and sets an example for society. While vengeance may play a role in the justification for the death penalty, it also reinforces social solidarity and provides an alternative to uncontrolled acts of revenge.
- During British rule, the Privy Council and Federal Courts were more liberal in awarding the death penalty. However, in contemporary times, courts tend to reserve this punishment for the "rarest of rare cases¹¹". India, despite having the death penalty in its statutes, utilizes it sparingly. Nevertheless, inconsistencies in its application arise due to judges' discretion, leading to criticisms and international scrutiny of arbitrary decisions.

¹⁰ Amnesty International India and People Union for Civil Liberties, Report on "Lethal Lottery: The Death Penalty in India", pp. 56 (Tamil Nadu & Puducherry, May 2008)

¹¹BachanSinghv.StateofPunjab, AIR19802684.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

- This prompts a comparison with the legislative framework of developed nations such as the United States. In the landmark case of *Furman v. Georgia*¹², which occurred forty-eight years ago, the Supreme Court deliberated on whether the death penalty contravened the Eighth Amendment, which prohibits "Cruel and Unusual Punishment." The court determined that the absence of consistent criteria for the application of the death penalty led to arbitrary and discriminatory sentencing, thereby violating the prohibition on cruel and unusual punishment outlined in the Eighth Amendment.
- In addition, India's practices diverge from the guidelines established by various international bodies aimed at limiting the use of the death penalty. In **1966**, the international community adopted its first convention aimed at regulating the use of capital punishment, followed by subsequent conventions advocating for its abolition.
- In **1976**, the United Nations ratified The International Covenant on Civil and Political Rights (ICCPR), which, in Article 6, acknowledges the death penalty as an exception to the right to life.¹³
- In **1989**, the UN General Assembly introduced the second optional protocol to the ICCPR, targeting the Abolition of the Death Penalty.¹⁴ Additionally, in **1984**, the UN General Assembly passed a resolution titled "Safeguards Guaranteeing Protection of the Right of those facing Death Penalty." While this document does not explicitly call for the abolition of the death penalty, it establishes safeguards such as the right to due process, the right to appeal, and the imposition of capital punishment only after final judgment by a competent court following a fair trial.
- However, in India, the exercise of Judicial Discretion often makes it challenging to adhere to the guidelines set forth by international bodies. This discretion can be

¹² *Furman v. Georgia*, 408 U.S. 238 1972.

¹³ International Covenant on Civil and Political Rights | Ohchr, www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights. Accessed 01 Apr. 2024.

¹⁴ United Nations General Assembly. (1989).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

traced back to the evolution of the "rarest of rare case" test, notably established in the landmark judgment of the **Bachan Singh case**¹⁵.

- In contemporary times, instances abound where diverging opinions among judges have resulted in death penalties. A notable case is **Devender Pal Singh Bhullar v. State (NCT) of Delhi**¹⁶. Here, two individuals were accused under TADA for orchestrating a bomb blast aimed at assassinating a political leader. While one accused, Daya Singh Lahoria, was acquitted, Devender Pal Singh was sentenced to death by the trial court, primarily based on an extra-judicial confession that was later retracted. Upon appeal before a division bench of the Supreme Court, a dissenting opinion was expressed by the senior-most judge, leading to the acquittal of the accused. However, the other two judges upheld the conviction, considering the case as falling within the ambit of the "rarest of rare" category.
- Similarly, in **Krishna Mochi v. State of Bihar**¹⁷, four individuals accused of a group massacre stemming from a caste conflict were sentenced to death. Upon approaching the Supreme Court, the senior-most judge expressed a minority opinion, acquitting one accused and commuting the sentence of the others. However, the majority of judges upheld the death sentence for all accused, deviating from established principles to classify the case as "rarest of rare." These cases underscore how differences of opinion among judges can lead to divergent outcomes regarding the death penalty.
- Various laws in India provide for Capital Punishment as a means of delivering a stern message of social security and ensuring justice for victims. The severity of punishment in a given case is determined by factors such as the heinousness of the crime, the conduct of the offender, and the impact on the victim. Courts must respond to society's demand for justice and reflect public abhorrence towards

¹⁵ (1980) 2 SCC 684

¹⁶ JT 2002 10 377/ (2013) 6 SCC 195

¹⁷ JT 2002 4 186 / (2002) 6 SCC 81

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

crime by imposing fitting punishments. Courts must take into account not only the rights of the offender but also those of the victim and the broader society.

India occupies a middle ground between global trends advocating for the abolition of the death penalty and nations advocating for its continuance. In the last twenty years, there has been a decrease in the number of executions conducted in India. Several provisions within the Indian Penal Code of 1860 and other legal statutes empower the imposition of the death penalty.

THEORIES OF PUNISHMENT:

HLA Hart outlined five essential elements that must be present in any punishment:

1. The punishment inflicted should induce unpleasantness or bring awareness to the wrongdoing committed against others.
2. Punishment should only be meted out if an individual has violated the legal rules of the state.
3. The recipient of the punishment must be the actual perpetrator of the crime for which the punishment is being administered.
4. Punishment must be determined by human authorities; offenders cannot select their own punishment.
5. Only a legal authority established within the state's legal system can administer punishment. According to Westemarch, punishment entails suffering inflicted upon a criminal in the name of the society to which they belong.

➤ Theories of Punishment-

1. Deterrent Theory of Punishment:

- a. The essence of the deterrent theory lies in imposing punishments that are sufficiently challenging to dissuade individuals from committing crimes in the future. This concept of deterrence aims to discourage potential offenders by

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

making the consequences of their actions undesirable.

b. Ultimately, the objective of punishment under the deterrent theory is to instill a sense of fear in the minds of wrongdoers. This can be achieved through various means, including imposing penalties or providing exemplary punishment that serves as a deterrent for future criminal behavior.

c. The deterrent theory seeks to establish penal discipline, thereby ensuring that both offenders and other members of society refrain from committing similar crimes due to the fear of facing severe consequences.

d. Deterrence theory is crucial in the realm of criminal justice as it not only aids in crime control but also safeguards societal interests by creating a deterrent effect. By instilling fear of punishment, this theory aims to prevent individuals from engaging in serious criminal acts in the future.

e. Historically, the deterrent theory was extensively applied during the medieval period in England, where harsh punishments were meted out even for minor offenses. Similarly, in India during the Mughal period, petty offenders often faced severe punishments like death or mutilation as a means of deterrence.

2. Theory of Retribution:

a. The retributive theory is among the oldest justifications for punishment, rooted in the concept of balancing justice.

b. This theory operates on the principle of reciprocity, where punishment is seen as a proportional response to the wrongdoing committed by the offender.

c. Retribution seeks to uphold social order by administering punishment that not only serves justice but also sets an example for potential offenders, deterring them from similar actions.

d. By adhering to the retribution theory, legal systems ensure a sense of equilibrium, where punishments are commensurate with the severity of the crime, thus achieving a form of moral restitution.

e. Proponents of this theory argue for punishments that mirror the suffering endured by

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

the victim, aiming to prevent vigilantism and maintain trust in the justice system.

f. The primary objective of retributive punishment is to quell the urge for personal vengeance within both the victim and society at large, promoting legal recourse over individual retaliation.

g. Retribution legitimizes punitive measures within the framework of the law, preventing the cycle of revenge and maintaining societal order.

h. However, in modern times, retributive punishment has faced criticism from legal scholars and practitioners due to concerns about its effectiveness and ethical implications, as it may perpetuate cycles of violence and fail to address underlying causes of crime.

3. Preventive Theory of Punishment:

a. The preventive theory of punishment focuses on deterring future crimes rather than seeking retribution for past offenses.

b. Its primary objective is to safeguard society from potential harm by incapacitating offenders through measures such as imprisonment.

c. By implementing preventive measures, such as imprisonment or exile, the state aims to prevent recidivism and protect the public from further harm caused by the offender.

d. Critics argue that the preventive theory may not effectively deter future crimes, as imprisonment can sometimes exacerbate criminal behavior by exposing offenders to negative influences within correctional facilities.

e. However, proponents of the theory suggest that imprisonment effectively removes offenders from society, thereby reducing the likelihood of them committing additional crimes and contributing to public safety.

4. Reformativetheory:

a. In modern criminological research, the reformatory theory has gained prominence, emphasizing the analysis of social, economic, and other contextual factors that contribute to the commission of serious crimes.

b. Proponents of this theory argue that understanding the individual circumstances of a

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

criminal is essential, as they remain human beings despite their criminal actions. Therefore, it is crucial to explore the underlying reasons that led them to commit the crime.

c. Critics of the reformatory theory argue that if individuals convicted of serious crimes are sent to jail with the intention of rehabilitation, prisons may lose their punitive function and instead become centers for rehabilitation.

d. Critics further contend that the significance of imprisonment as a form of punishment will diminish if prisons are perceived as places for rehabilitation rather than punishment, potentially undermining deterrence efforts.

e. Supporters of the reformatory theory advocate for the idea that criminals should undergo sentence with the aim of rehabilitation and personal transformation. They believe that punishment should focus on reforming the individual and fostering positive changes in their behavior and mindset, even if this approach is not universally supported among legal scholars or researchers.

THE CONCEPT OF RAREST OF THE RARE DOCTRINE

- The "rarest of rare" principle in capital punishment cases involves a nuanced evaluation of the circumstances to determine the most exceptional cases warranting the death penalty. It does not adhere to a rigid formula but rather assists in distinguishing cases where the death penalty may be appropriate, as well as those where it may be commuted. The Supreme Court, in the landmark case of *Bachan Singh*¹⁸, underscored the importance of balancing mitigating and aggravating factors. Mitigating factors are those that favor the accused and may lead to a lesser penalty, while aggravating factors support the imposition of the death penalty and work against the accused.
- In *Bachan Singh's* case, the Court emphasized the uniqueness of each case and stressed the necessity of evaluating the individual facts and circumstances. While the Court

¹⁸ *Bachan Singh vs State of Punjab* on 9 May, 1980, indiankanoon.org/doc/1235094/. Accessed 03 Apr. 2024.
For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

declined to establish standardized or categorized offenses eligible for the death penalty, it affirmed that sentencing discretion remained unfettered. This approach acknowledges the complexity of capital cases and the need for careful consideration of the specific details involved in determining the appropriate penalty. Instead, it supported the ruling in Jaggmohan that *“sentencing discretion is to be exercised judicially on well- recognised principles.... crystallised by judicial decisions illustrating as to what were regarded as aggravating or mitigating circumstances in those cases¹⁹.”* Bachan Singh²⁰ established the framework for courts to ascertain whether a case qualifies as the "rarest of rare" by considering judicial principles derived from precedent. It introduced the concept of individualized yet principled sentencing, emphasizing the assessment of aggravating and mitigating factors. However, as the SC has recognized in the case of SantoshBariyar v. State of Maharashtra²¹, below demonstrate, *“although the court ordinarily would look to the precedents, this becomes extremely difficult, if not impossible, [since] here is no uniformity of precedents, to say the least.”*

- The current approach to Capital Punishment, reflective of the aspirations of a civilized legal system, is to employ it sparingly, specifically in the "Rarest of Rare" cases. The prevailing system in India is to retain the death penalty within the statute books but to employ it exceptionally sparingly. This compromise is the stance adopted both by the Court and by the nation as a whole. In Panchhi v. State of Uttar Pradesh²², the court observed that- *“Brutality of how a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the ‘rarest of rare cases’.”*
- Bachan Singh v State of Punjab²³ significantly constrained the application of the death penalty to only the "rarest of rare cases," a provision enshrined in the new Criminal Procedure Code (CrPC) of 1973. The impact of the Bachan Singh ruling was profound, leading to a widespread understanding that the death penalty should be reserved only for the

¹⁹ Supranote 8

²⁰ Ibid

²¹ (2009) 6 SCC 498

²² AIR 1998SC2726

²³ Supra note 8

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

most extreme cases. However, despite this precedent, certain court benches handed down death sentences without due consideration of aggravating and mitigating circumstances. For instance, in cases like *Gayasi v. State of U. P.*²⁴ and *Mehar Chand v. State of Rajasthan*²⁵, there was no reference to the *Bachan Singh* judgment or the "rarest of rare" doctrine whatsoever.

- In the *Machhi Singh and Ors. v. State of Punjab*²⁶ case, the bench affirmed three death sentences in a multifaceted case involving five distinct incidents occurring in a single night, culminating in the murder of 17 individuals by the defendant Machhi Singh and 11 of his associates. This verdict was widely interpreted as supporting the death penalty, as it appeared to expand the "rarest of rare formulation" beyond the aggravating factors delineated in the *Bachan Singh* case to situations where the collective conscience of a community might be significantly disturbed. The judgment outlined several scenarios where such sentiment could arise:
 - a) When the murder is perpetrated in an exceptionally brutal, grotesque, diabolic, revolting, or dastardly manner, causing intense and extreme distress and anger within the community. Examples include attempting to set the victim on fire by burning their house, inflicting cruel acts to cause death, or dismembering the victim's body in a fiendish manner.
 - b) When the murder is driven by motives demonstrating utter corruption and cruelty, such as killings carried out by hired assassins for financial gain, cold-blooded murders committed for property or by someone in a position of trust, or murders perpetrated in treachery against the homeland.
 - c) Murders perceived as anti-social or socially reprehensible, such as dowry-related deaths or killings driven by infatuation with another individual, targeting a member of a scheduled

²⁴ (1981) 2 SCC 712

²⁵ (1982) 3 SCC 373

²⁶ *Supra* note. 42

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

tribe or caste based on their caste/tribe, or offenses aimed at intimidating people into surrendering property and other privileges to rectify past injustices and restore social balance.

d) Instances involving multiple murders of individuals from a specific family, caste, community, or locality.

e) Cases where the victim is an innocent child, a vulnerable woman, an elderly or infirm individual, or a public figure whose murder is committed for reasons other than personal motives.

- The judges contended that the Bachan Singh guidelines should be construed within the context outlined above. They stressed the significance of formulating a comprehensive assessment of aggravating and mitigating factors, affording due consideration to mitigating circumstances, and attaining an equitable and just equilibrium between aggravating and mitigating factors prior to determining the suitable penalty. Moreover, the bench suggested two inquiries to contemplate before imposing the death penalty²⁷:
 - a. Is there something extraordinary about the crime that makes a life imprisonment sentence inadequate and warrants a death sentence?
 - b. Do the circumstances and particulars of the crime necessitate the imposition of the death penalty, even upon careful consideration of the mitigating factors in favor of the offender?
- While the idea of balancing aggravating and mitigating factors and the suggested questions for judges seem practical, the expansion of the Bachan Singh guidelines in Machhi Singh and others v State of Punjab²⁸ is questionable. This expansion occurred in a case heard by a regular three-judge bench, unlike the Bachan Singh case, which was heard by a five-judge constitutional bench. Despite this, subsequent cases indicate that the expanded guidelines

²⁷ Amnesty International India and People Union for Civil Liberties, Report on “Lethal Lottery: The Death Penalty in India”, pp.72 (Tamil Nadu & Puducherry, May 2008)

²⁸ Supranote.42

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

were frequently relied upon by subsequent benches to uphold death sentences, even in situations where they may not have been justified otherwise.

CONSTITUTIONALITY OF DEATH PENALTY IN INDIA

- Capital Punishment, or the Death Sentence, has been a contentious issue, sparking debates not only among the general public but also within the judiciary. There are two contrasting viewpoints: abolitionists argue that the death penalty is degrading, violates human dignity, and is irreversible, advocating for its abolition as it conflicts with modern penological principles. Conversely, retentionists argue that Capital Punishment serves as a social necessity, acting as an effective deterrent against heinous crimes.
- The Indian Constitution is regarded as a blend of various constitutions from around the world, including those of America, Britain, Canada, and France. It was crafted by studying the best practices of governance from different nations to suit the needs of one of the largest democracies. “The Constitution of India guarantees the Right to Life, a principle drawn from the constitutions of America and Japan, recognizing it as an inherent and indispensable right with evidentiary value. Constitutional conventions safeguard the right to life and liberty, ensuring citizens enjoy a significant degree of personal freedom.”²⁹
- Under the Indian Constitution, every citizen is guaranteed the Right to Life, subject to deprivation through a lawful procedure.³⁰ Article 14 ensures Equality before the law and Equal Protection of the laws, prohibiting discrimination unless it is necessary to achieve equality. Moreover, the Constitution prohibits discrimination on any grounds, as reflected in its preamble.³¹“Article 21 provides the fundamental right to life, ensuring that no one can be deprived of their life except through lawful procedures, thereby upholding the right to life with dignity.”³²
- Capital Punishment has long been a subject of constitutional debate, with questions raised

²⁹ Allan Gledhill, "The life and liberty in first ten years of republican India", 2. J.I.L.I. 241 at 266 (1959-60)

³⁰ The Constitution of India, Art.21

³¹ The Constitution of India, Arts. 14, 15

³² Ibid

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

regarding its compatibility with the Indian Constitution. While the Constitution does not explicitly declare Capital Punishment unconstitutional, certain clauses like Article 21, which mandates deprivation of life only through established legal procedures, may suggest a tacit acceptance of the possibility of the death penalty. However, provisions such as the preamble, fundamental rights, and Directive Principles for State Policy provide grounds for challenging the constitutional validity of the death penalty.

- The constitutionality of Capital Punishment in India can be examined from two perspectives. Firstly, whether Capital Punishment as a concept violates Articles 19 and 21, rendering it unconstitutional under any circumstance. Secondly, even if Capital Punishment itself is not unconstitutional, whether the specific provisions in the IPC, 1860, supporting Capital Punishment are violative of certain constitutional provisions.
- The Supreme Court has consistently upheld the constitutional validity of Capital Punishment as provided under the IPC, 1860, as long as it is administered according to established legal procedures. In *Jagmohan Singh v. State of Uttar Pradesh*³³, the Court ruled that the Right to Life, not being part of Article 19, does not render the death penalty unreasonable to public policy. Moreover, provisions like Article 72(1)(c) and Article 134 indicate that the framers of the Constitution recognized Capital Punishment as a permissible form of punishment, provided it follows due process.
- In *Mohd. Kasim Mohd Hasim Shaikh v. State of Maharashtra*³⁴, the Bombay High Court upheld the constitutionality of Section 376E of the IPC, 1860, which provides for punishment of life imprisonment or death for repeat offenders of certain sexual offenses. The Court reasoned that imprisonment for life, as defined in Section 376E, does not constitute a novel form of punishment but rather involves imprisonment for the entirety of the convict's natural life, in accordance with established legal principles. It further held that the provision serves the objective of ensuring the safety and security of women and children, without being arbitrary or violative of Articles 14 and 21.
- In conclusion, the provisions of Capital Punishment under Indian laws do not violate constitutional provisions under Articles 14, 19, or 21, as the Constitution itself permits

³³ (1973) 1 SCC 20

³⁴ 2019 SCC Online Bom 2508

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

deprivation of life through fair, just, and reasonable legal procedures. This stance has been reaffirmed through various judgments of the Supreme Court.

CONCLUSION

- Capital punishment, also known as the death penalty, represents the most severe form of punishment that can be imposed on a criminal. The term "Capital" originates from the Latin word 'Capitalis,' meaning "pertaining to the head" or "of the topmost importance." Capital punishment historically referred to the act of "removing the head" or beheading. It is reserved for the most egregious and heinous crimes committed against the laws of the land.
- Once the final authority, following due legal procedure and affording the offender ample opportunity to defend themselves, determines the sentence, the death penalty is scheduled for execution on a predetermined day. The method of execution is specified in the execution order.
- Various methods of execution have been practiced worldwide, with modern judicial systems opting for more humane approaches such as the gas chamber, electrocution, lethal injection, shooting, and hanging. In India, hanging has been traditionally favored, even endorsed by the SC. For instance, in the case of "Deena v. Union of India"³⁵, the constitutionality of section 354(3)³⁶ was affirmed, stating that hanging by neck until death is the preferred method. Conversely, the United States favors lethal injection, considering it the most humane, expeditious, and straightforward method.
- The 187th Law Commission report advocated for alternative execution methods, suggesting lethal injection and recommending amendments to "section 354(5) of The Code of Criminal Procedure, 1973"³⁷, which currently mandates hanging until death as India's primary mode of execution. The Supreme Court has consistently acted as the guardian of the constitution, delivering numerous judgments to safeguard the fundamental human rights of India's populace, particularly the poor and illiterate. The

³⁵ (1983) 4 SCC 645

³⁶ The Code of Criminal Procedure, 1973 (Act 2 of 1947)

³⁷ Ibid

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

judiciary has played an active role in enhancing the quality of life and curbing the arbitrary exercise of power by authorities. Over time, substantial developments in India have reoriented Article 21, with the judicial approach focusing on improving the interaction between individuals and the state, thereby advancing societal conditions.

- Capital punishment, commonly referred to as the death penalty, is undeniably subject to arbitrariness in its application. The decision to impose death or not often hinges on various highly variable and subjective factors, including the quality of legal representation and the personal characteristics of the judges presiding over the case. The "Rarest of Rare Doctrine" is established to justify capital punishment without infringing upon anyone's rights.
- In the landmark case of "Bachan Singh v. State of Punjab"³⁸, the judiciary stipulated that the death penalty should only be invoked in the rarest of rare cases. However, the challenge for the Indian judiciary lies in determining which cases meet this criterion. The judgment outlined several points aimed at striking a balance between the rights of the victim and the accused, serving as guidelines for courts to follow when considering the imposition of the death penalty. These points, while indicative, are not exhaustive and may vary from case to case. The subsequent case of Machhi Singh v. State of Punjab³⁹, pronounced three years later, altered the application of the "rarest of rare" doctrine.
- The arbitrariness of judicial decisions becomes apparent when judges deviate from the guidelines established in Bachan Singh's case, indicating that the fate of the accused is ultimately determined by the subjective discretion of the judges. This arbitrariness, while fatal, is also selective and discriminatory, disproportionately affecting individuals with less influence. Justice Bhagwati observed in Bachan Singh that the death penalty tends to target the poor and marginalized, highlighting its discriminatory and unconstitutional nature.
- Chapter 3 exemplifies how the death penalty is subject to the whims of judges, with different judges reaching contrasting conclusions on whether a case meets the criteria of the rarest of rare guidelines. For instance, in the cases of Rahul Raosaheb v. State of

³⁸ Supra note 8

³⁹ Supra note 43

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Maharashtra⁴⁰ and Dhannajoy Chatterjee alias Dhana v. State of West Bengal⁴¹, despite similar circumstances, one defendant received the death penalty while the other had their sentence commuted to life imprisonment, showcasing the arbitrary nature of judicial decisions regarding death sentences.

- Despite arguments against its efficacy as a deterrent, capital punishment is advocated for based on its perceived deterrent effect and the principles of retribution and incapacitation. However, in contemporary society, capital punishment is increasingly viewed as failing to deter crime, with criminals committing more heinous acts knowing the consequences. The issue of judicial discretion further complicates matters, particularly when judges disagree, leading to inconsistent application of the rarest of rare doctrine. In such cases, where unanimity among judges is lacking, the death sentence should be commuted to life imprisonment, as per the principles established in Bachan Singh's judgment.

⁴⁰ (2005) 10 SCC 322

⁴¹ (1994) 2 SCC 220

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in