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RESEARCH PAPER ON

DEATH PENALTY IN INDIA: CONSTITUTIONAL VALIDITY VERSUS SENTENCING ARBITRARINESS

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Abstract

Capital sentence is a quite contested matter, which affects constitutional rights, human rights, and criminal laws, altogether. India is a retentionist country, as it still has retained the colonial punishment of the death penalty. Due to a lack of legislative support, the judiciary itself has created judicial limitation, with the means of the 'rarest of the rare doctrine,' which was articulated as a result of slow judicial progress and blending of human rights jurisprudence into the penological theory. Whereas the indiscriminate and unequal application of the doctrine has raised concerns about its legitimacy and validity. This paper scrutinizes the socio- legal implications of the same statutory framework, and the constitutional rights conflicting with the punishment. While also tracing the origin of the doctrine through judicial pronouncement and the slow amalgamation of human rights in the criminal sentence. The paper adopts doctrinal legal research to delve deeper into the issues, while also proposing pragmatic reforms to ease the conflict of interest and hasten abolition.

Key Words: Capital Punishment, Death penalty, Judicial Discretion, Human Rights, Rarest of the rare, Retribution, Deterrence.

Introduction

The death penalty, also called the 'capital punishment', has roots in the ancient doctrine of 'lex talionis', which translates to 'law of retaliation,' which is "an eye for an eye," as an obsolete tool for establishing the state's power.[1] It was a symbol of dominance and control in ancient times, whereas in modern times, it presents a stark conflict with human rights jurisdiction. In a liberal and globalized world, these extreme ways of the state's control necessitate questioning for the protection of individual rights. India is among 54 retentionist countries around the globe that have retained the procedure of the death penalty; the execution statistics are quite low.[2] Since 1980, when the Supreme Court originated the 'rarest of the rare' doctrine, the number has been negligible; India has witnessed only four instances of capital punishment from 1995 to 2025.

The 262nd report of the Law Commission of India, published in 2015, was the first official document to recommend abolishing the death penalty. Meanwhile, its recommendations haven't been crystallized into any legislation, but the numbers have been substantially brought down with the judicial pronouncements, through landmark judgments such as *Bachan Singh (1980*), Shatrughan Chauhan (2014), and Manoj v. State of Madhya Pradesh (2022).

It has sparked one of the most controversial debates: whether the death penalty has a reformative or retributive effect on society. As there are no official records showing any direct relation between a low crime rate due to fear of the death penalty, on the contrary, the execution rate is also very low. Therefore, it becomes a field of research to find the reason why India has still been a retentionist country despite many cases challenging its constitutional validity.[3] Jurists see it as a tool for 'deterrence' for the delivery of justice for the greater benefit of people, whereas human rights activists think of it as retributive and unconstitutional, which is contradictory to the right to life and humanitarian spirit, hence advocating for its abolition.

This paper delves deeper into the debate over whether the death penalty in modern times is still validated in a democratic nation like India, while also sketching the safeguards created by the

[1] David T. Johnson, *American Capital Punishment in Comparative Perspective*, 36 **Law & Soc'y Inquiry** 1033 (2011).
[2] *Abolitionist and Retentionist Countries*, Death Penalty Info. Ctr., https://deathpenaltyinfo.org/policy-issues/policy/international/abolitionist-and-retentionist-countries
[3] Arghya Sengupta & Ritwika Sharma, *Death Penalty in India: Reflections on the Law Commission Report*, 50 **Econ. & Pol. Wkly.** 12 (2015).

judiciary through various key judgments for Articles 14, 19, and 21 of the Indian Constitution, and exploring broader contours under human rights jurisprudence.

CONSTITUTIONAL LEGITIMACY AND JUDICIAL DOCTRINE

There are several provisions under penal and procedural laws governing capital punishment. Under Section 302 of the Indian Penal Code, now Section 103, BNS. The crime of murder is punishable by the death penalty, though other offences under special laws are also punishable by death, such as terrorism, crimes against children, and drug trafficking. Section 354(3) under the Code of Criminal Procedure, 1973 (CrPC), empowers the court to order the death penalty, only for 'special reasons', and the same needs to be confirmed by the High Court under Section 366. It requires a minimum of two judges to pass the confirmation for the same, as mandated by Section 369. whereas the offices of the Governor and President exercise clemency power to show mercy under Article 72 and 161, respectively.

There are many disparities and inconsistencies in the process, and this is why it is still debated in the 21st century as a crime against humanity. It is solely left to the judge's discretion to choose between 'death sentence' and 'life imprisonment' for 'special reasons' for the set of grave offences under the IPC. Also, it leads to the assumption that ultimately each judge will be dictated by conscience and political views.[4]

Meanwhile, the judiciary has been acting quite mindful about awards of the death penalty; it has recognized its obsolescence and the violation of human rights, which has been reflected in its rulings and judicial pronouncements. In ***Rajinder Prasad v. State of Uttar Pradesh***, the Supreme Court reinstated the rule that the court should state special reasons for imposing a death sentence.[5] The special reason must be related to the criminal but not to the crime, and the crime should be highly intensified so that it has created a shocking effect in the public's mind.[6]

Jagmohan Singh v. State of Uttar Pradesh, 1973

[4] Krishnayan Sen, *On Death Penalty*, 39 **Econ. & Pol. Wkly.** 3762 (2004)..
[5]*Rajendra Prasad v. State of Uttar Pradesh*, (1979) 3 SCC 646.
[6] *Rajendra Prasad v. State of Uttar Pradesh*, (1979) 3 SCC 646.

It was the first case that raised questions on the constitutional legitimacy of the 'death penalty,' as it is a vestige of colonial legislation as a suppressive tool. Then, it was held that capital punishment isn't violative of rights guaranteed under Articles 14, 19, or 21 of the Indian Constitution. The rationale behind the judgment was justified through the narrow interpretation of Article 21, CrPC, which was recognized as a fair and legitimate procedure, established by the law. This interpretative transition was later brought about by cases like Maneka Gandhi v. Union of India (1978), which raised skepticism about the judgment. [7]

Rajendra Prasad v. State of Uttar Pradesh, 1979

This case was centered around Section 354(3) of CrPC, which provided the death penalty as a punishment for 'special reasons.' The Supreme Court in this case clarified the same, to give it a concrete scaffold and scope. The court held that the 'special reasons' need to be specified in accordance with the accused, not just the crime. The gravity of punishment shall be offender-centric, rather than crime-specific. This judgment also put forth the way for the humanitarian ethos into law. [8]

Bachan Singh v. State of Punjab, 1980[9]- The Rarest of the Rare Doctrine

The case of Bachan Singh has been a corrective and judicious precedent decided by the Supreme Court in the year 1980, with a 4:1 majority, where the 'rarest of the rare doctrine' was articulated on the death penalty, as a judicial limitation.

The accused, Bachan Singh, was convicted of several murders, including the murder of his own wife and children. The trial court awarded him the death penalty, which was later upheld by the Punjab & Haryana High Court. He then brought an appeal before the apex court, challenging the constitutionality of the death penalty under Section 302 of IPC as against and in conflict with the fundamental rights, 14, 19 & 21.

The court ruled that the death penalty is a punishment for the most heinous crimes, as it is necessary to create a deterrent effect in society. But it should be restricted to only the "rarest of rare cases" where crime is of such a reprehensible and atrocious nature that any other punishment wouldn't be

[7] *Jagmohan Singh v. State of Uttar Pradesh*, (1973) 1 SCC 20.
[8] *Rajendra Prasad v. State of Uttar Pradesh*, (1979) 3 SCC 646.
[9] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

able to match the gravity of the crime and would be insufficient, as specified under Section 354 (3). As inter alia, with a procedure established. The court thought that, in some cases, post-murder remorse, contrition, and compunction are not enough, and this should not be considered as a tool to seek a lesser penalty. Also, the judges have always been mindful while awarding the death penalty, as evident from the extreme infrequency, which reinstates the fact that caution and compassion have always been taken into consideration in deciding the matters.

Its shortcomings were also jotted down in the Dissenting opinion of Justice P.N. Bhagwati, that it doesn't give the judiciary an arbitrary power to misuse this doctrine as per their own bias, as the exercise of the sentencing discretion is a grave ordeal to be awarded. A very humanitarian and cautious approach should be exercised while discussing such matters where the crime is of the "aggravated" nature, where there is no lesser alternative than the research for the crime, and it is "unquestionably foreclosed". SC reiterated its stance that the death penalty is not unconstitutional and it does not go against Article 21 of the Constitution of India.

Whereas it remained a doubtful confusion in many minds as to what constitutes "the rarest of the rare" doctrine, and what cannot be covered under the ambit of this doctrine. Later, in some subsequent cases, the same question of law followed. [10]

Macchi Singh v. State of Punjab, 1983

A three judges bench, in this case held that rarest of the rare cases will include instances when murder is committed in an exceptionally brutal, gruesome, and monstrous as it has brough intense disgruntlement in the community or when the murder is committed for some extremely mean motive, where the murderer is on a higher and dominating position of trust, or crime committed in course of betrayal of motherland, or against member of Schedule caste or minority, arising out of social frustration not for personal reasons. Or when the crime is heinous in nature, or for multiple murders, or when the victim of murder is an innocent child, a feeble woman, the old, or when the victim is a publicly-adored figure killed for political reasons. [11]

The court laid down the following postulations:

[10] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.
[11] *Macchi Singh v. State of Punjab*, (1983) 3 SCC 470.

i. Awarding the death penalty should be avoided except in cases of grave and extreme culpability.
ii. The circumstantial scenario needs to be taken into consideration along with the condition of the 'offender'.
iii. Life imprisonment is the rule, and the death penalty is the exception.
iv. Aggravating and mitigating circumstances should reach a middle ground. [12]

However, in this case also, the Supreme Court has refused to lay a clear and stark distinction of what constitutes the 'rarest of the rare', and hence it is left at the discretion of the judge adjourning the case, and has to be exercised totally dependent on the facts of the case and the cruelty of the crime. This case has also declined the progressiveness, as initiated through the Bachan Singh judgment, also slowed down.[13]

Santosh Kumar Satishbhushan Bariyar vs State Of Maharashtra, 2009

The Supreme Court held that, evident and perceptible discomfort and inconsistency among judges and benches have led to erratic implementation of the rarest of the rare doctrine. This has given more 'judge- centric' character to the doctrine, destroying the original 'case-specific' character attached to it. The court also tried to shift from retributive to reformative potential, also considering other factors like proper legal representation and sufficiency of the trial. [14]

Later, in ***Shatrughan Chauhan v. Union of India, 2014***, the Supreme Court further added more factors to the doctrine while awarding capital punishment. Apart from the crime, the disproportionate and inexplicable delay in the trial, sentence of solitary confinement, and the mental state of the convict shall be taken into consideration. Whereas the death penalty can also be commuted to lesser stringent crimes like life imprisonment. [15]

Manoj v. State of Madhya Pradesh, 2022

[12] Monica Sakhrani & Maharukh Adenwalla, *Death Penalty: Case for Its Abolition*, 40 **Econ. & Pol. Wkly.** 1023 (2005).
[13] Rajendra Babu, *Sentencing Policy in India*, 26 **J. Indian L. Inst.** 234 (1984)
[14] *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498.
[15] *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

This is the most recent case relating to the constitutionality of the death penalty; the Supreme Court bench presented a sharp organizational critique. It observed the repetitive ignorance of mandatory 'sentencing hearing' by the trial courts and high courts. This is a serious judicial concern and procedural lacuna. It also pointed out the frailty of the defense lawyers appearing for the accused to provide and present extenuating evidence, and the mental and psychological history of the accused, evidences can these can be substantial to bring down the gravity of punishment and its commutation. It also issued directions to establish 'Probation and Correctional Services' to record and evaluate pre-sentence cases and maintain reports. [16]

CAPITAL PUNISHMENT AND FUNDAMENTAL RIGHTS

The major fundamental rights violated by the punishment of capital punishment are Articles under 14, 19, and 21.

Article 14- Right to Equality

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of laws before the State.[17] The accused, belonging to the lower strata of society or economically marginalized sections, often feel a lack of effective legal representation and are awarded capital punishment. A study conducted by Project 39A of the National Law University, Delhi, in 2016, titled 'Matters of Judgment,' also researched the same concern. It found various statistical data, supporting the violation of tight to equality. It shows that people belonging to such classes and minorities are more prone to be tested, without sufficient legal representation. [18]

It also grants supreme and indiscriminate powers to the state and judiciary, which can be used arbitrarily, which is antithetical to equality.[19] Professor K.L. Vibhute, an eminent scholar, debates that the absence of legislative crystallization and the judicial discretion behind the use of the 'rarest of the rare doctrine' is open-ended or a 'lethal lottery.' Its application is quite selective, depending on the judicial discretion and biases, rather than any concrete framework. As there is a risk of conflict of interests, through the process in the judicial hearing, which can lead to divergence in

[16] *Manoj v. State of Madhya Pradesh*, (2022) 6 SCC 129.
[17] India Const. art. 14.
[18] Project 39A, *Matters of Judgment* (Nat'l L. Univ. Delhi 2016).
[19] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3

the ruling, this contingency upon the composition of the bench is dangerous for a vast judicial system like ours[20].

Article 19- Right to Freedom and Dignity

Article 19 guarantees various freedoms to the citizens of India, and it has been expanded to include various other segments of human life. The judgment in Bachan Singh held that capital punishment is excused under reasonable restrictions as a part of Article 19. On the contrary, it is argued that permanent deprivation of life and elimination of all rights cannot be excused as a 'restriction' of the same rights. Rather is a destruction of the whole intent behind the protection shield framed by the Constitution[21]. Hence, pragmatically, it shall not be considered a reasonable restriction that can be imposed. [22]

Article 21- Right to Life and Liberty

Article 21 of the Indian Constitution provides the right to life and personal liberty, which cannot be curtailed except by the procedure established by law.[23] After the Maneka Gandhi v. Union of India, 1978, judgment, the Supreme Court has granted it a larger and broader character, expanding it heavily beyond the literal scope. Any law/ procedure that is established through the instrument of law shall mandatorily follow the 'due process of law', and it should be fair, reasonable, and just.[24]

Capital punishment is a straightforward violation of the fundamental right to live with dignity, which is an indispensable part of human rights jurisprudence too; this raises questions on the legitimacy of the punitive impact. It is also criticized by scholars and critics that no procedure, even if adhering to the due process of law, shall not cause permanent and irreversible dispossession of someone from their life, while violating right to dignity.[25]

Conflict with human rights

[20] K.I. Vibhute, *Choice Between "Death" and "Life" for Convicts*, 59 **J.L. India** 221 (2017).
[21] *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545
[22] India Const. art. 19.
[23] India Const. art. 21.
[24] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[25] *Francis Coralie Mullin v. Union Territory of Delhi*, (1981) 1 SCC 608

With the current punitive trends and human rights jurisprudence brooming, these doctrines are no longer considered valid, and this sort of sentencing is a controversial topic. As people see "killing murderers is the same as murder' and also no legal sanction can justify depriving any human being of humane treatment. It conflicts with their human rights. Keeping murderers' lives depicts the sanctification of human life. On the other hand, killing murderers alive just cheapens the value of human lives, and it belittles murder.[26]

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Around the globe, the abolition of the death penalty has been a quite controversial debate, it is tangled with the subjects of human rights jurisprudence. India is a signatory to many humanitarian and progressive international treaties and is bound to follow them. India is also a signatory to the International Covenant on Civil and Political Rights (ICCPR) since 1979. Article 6 of the treaty is concerned with capital punishment. The sub-section (2) directs the countries that haven't abolished the punishment to implement the death penalty as the final recourse when the crime is extremely heinous, while maintaining consonance with the principles of natural justice.[27] It further motivates the retentionist countries to move towards the complete abolition of the same. But India isn't a signatory to the Second Optional Protocol, which motivates towards absolute termination of the same.[28] It also presents a stark contradiction to the humanitarian commitments and human rights advocacy.

To stand true to its stance, India has reaffirmed it time and again. Since 2007, the United Nations General Assembly (UNGA) has been passing proposals for a permanent embargo at regular intervals, and India has always stood strong and voted against it. The justification is domestic sovereignty and autonomy to ascertain criminal punishments, which again contrasts intending to preserve human dignity under the constitution of India.[29]

[26] Economic and Political Weekly, 'the case against death sentence: whatever the crime, there is no place in a civilized society for capital punishment', (2010), Vol. 45, No. 20, p.8 https://www.jstor.org/stable/27807013 accessed on 11 October 2025.
[27] International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.
[28] International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.
[29] G.A. Res. 62/149, *Moratorium on the Use of the Death Penalty*, U.N. Doc. A/RES/62/149 (Dec. 18, 2007).

This selective and conditional involvement with international humanitarian rights presents a tensed and strained contradiction between its commitments and constitutional inclination.

CONCLUSION AND RECOMMENDATIONS

The analysis presented in this paper is centered around the framework and the inconsistencies revolving around it. The rarest of the rare doctrine offers a flexible criterion, but at the same time, it is an obstacle for the Supreme Court and the Judiciary to ensure a just and fair trial. It originated with noble concerns, but due to its selective permeability ii prone to many concerns. Its subjectivity results in inconsistent applicability of the same, whereas it has indeed brought down real differences in the whole system, but inculcating a human-centric approach in a sentencing framework.

It should shift its focus to a 'principal-centric' approach rather than a 'judge-centric' approach. There should be an already standardized set of rules and standards for offences inviting the death penalty; it would bring more uniformity into the system, and this set of guidelines would eliminate the disparities. The laws should be based on 'crystallized principle' rather than a different set of standards and should not be subject to any sort of bigoted views. The judicial process has to be governed by the rule, not through humor; it shall not be arbitrary, vague, and fanciful, but should be legal and regular.[30] Judges, when left free, will formulate pleasure. Therefore, they should follow the sanctified and pre-destined precedents. He must not give in to sudden emotions or to unclear and uncontrolled acts of kindness.[31] Whenever judges are left free to exercise their discretion, they tend to be guided by their own prejudice and perceptions, social philosophy, and values, especially when there are no pre-declared guiding principles, and this peculiarity of judicial arbitrariness has given it a nature of 'lethal lottery.'[32] Such colonial remnants in the criminal law system also diminish the aspiration of India to be a democratized republic.

[30] *Ramji Dayawala & Sons (P) Ltd. v. Invest Import*, (1981) 1 SCC 80.
[31] Benjamin N. Cardozo, *The Nature of the Judicial Process* 114 (Yale Univ. Press 1921).
[32] K.I. Vibhute, *Choice Between "Death" and "Life" for Convicts*, 59 **J.L. India** 221 (2017).