

THE DEATH PENALTY IN INDIA: EXAMINING ITS CONSTITUTIONAL VALIDITY AND CONTEMPORARY RELEVANCE

Dr. Nisha Jindal

Assistant Professor, University Institute of Laws, PURC, Ludhiana, Punjab

Abstract

As the nation's highest court, the Supreme Court of India has occasionally rendered authoritative rulings on a range of legal issues. The Supreme Court has reviewed the method, constitutionality, and numerous other aspects of the death penalty and provided its views the decision on multiple occasions during the past 60 to 70 years. The death penalty's validity has been contested multiple times before the Supreme Court on the grounds that it violates clauses included in the Indian Constitution. According to Bhagwati, J., however, Sec. 302 of the I.P.C. (now section 103 BNS) does not conflict with the ultimate law of the land, as the Court has often stated. Since it does not establish any legislative guidelines regarding when life should be allowed to be extinguished by the imposition of a death sentence, its provision that allows the death penalty to be applied as an alternative to a life sentence is ultra vires and void as a violation of Articles 14 and 21 of the Constitution. Through a variety of case laws, the views of distinguished jurists, and the opinions of honorable judges, the author of this research paper will address the constitutionality of the death penalty and current trends surrounding it. Finally, the author would like to offer recommendations regarding the constitutionality of the death penalty.

Keywords: Death Penalty, Constitutional Validity, Capital Punishment in India, Human Rights, Judicial Interpretation, Contemporary Relevance

Introduction

The premise behind all penalties is the same: misconduct must have a consequence. The punishment is being administered for two primary reasons. One is the idea that punishing wrongdoers deters others from committing wrongdoing, while the other is the idea that it is both just and just for someone who has done wrong to suffer as a result. The same idea that underpins other forms of punishment also underpins the death penalty¹.

Given the circumstances of today, the debate over the death penalty is the one that is most broadly pertinent. An essential component of the criminal justice system in India is the death penalty. As India's human rights movement gains momentum, the death penalty is being questioned as unethical. However, this is a strange argument because it is implausible and, in fact, immoral to keep one person alive at the expense of the lives of many other members or prospective victims of society².

¹ Available at

<https://newindialaw.blogspot.com/2012/11/constitutional-validity-of-capital.html> accessed on 24-11-24

² *Ibid*

There are ongoing discussions over the morality, effectiveness, and compliance of the death penalty with human rights norms in India. Though *Bachan Singh v. State of Punjab*³ established that the death sentence has been affirmed in the "rarest of rare" situations, worries about its capricious implementation, judicial inconsistency, and socioeconomic biases still exist. The public has called for harsher punishments in response to the growing number of death sentences in sexual violence cases, like the Nirbhaya case⁴, but detractors contend that these measures may actually undermine the criminal justice system's rehabilitation principle rather than deter crime.

Furthermore, as acknowledged in *Shatrughan Chauhan v. Union of India*⁵, the protracted delay in the execution of death sentences, which frequently causes prisoners to endure protracted mental anguish, raises concerns about cruel and inhuman punishment. The stark contrast between retributive justice and the changing norms of human dignity is highlighted by India's resistance to abolishing the death sentence in spite of international trends and human rights organizations' recommendations.

Meaning of Death Penalty

Death penalty, also called Capital Punishment, execution of an offender sentenced to death after conviction by a court of law for a criminal offense. Capital punishment should be distinguished from extrajudicial executions carried out without due process of law. The term death penalty is sometimes used interchangeably with capital punishment, though imposition of the penalty is not always followed by execution

(even when it is upheld on appeal), because of the possibility of commutation to life imprisonment⁶.

"Capital Punishment" refers to the harshest type of punishment. It is the penalty meted out for the most horrible, egregious, and abhorrent acts against humanity. The death sentence has always been the connotation of the death penalty, even though the definition and scope of these offenses differ from nation to nation, state to state, and age to age. According to popular usage in criminology, penology, and jurisprudence, a capital sentence is a sentence of death⁷.

History of the Death Penalty in India

When Shri Gaya Prasad Singh tried to introduce a bill in 1931 that would have abolished the death sentence for IPC offenses, it was an early attempt to do so in pre-independence India. This was defeated, though. Around the same time, in March 1931, after the British government executed Bhagat Singh, Sukhdev, and Rajguru, the Congress passed a resolution in its Karachi session calling for the death sentence to be abolished⁸.

India's Constituent Assembly Debates between 1947 and 1949 also raised questions around the judge-centric nature of the death penalty, arbitrariness in imposition, its discriminatory impact on people living in poverty, and the possibility of error⁹.

⁶ Available at <https://www.britannica.com/topic/capital-punishment> 24-11-24

⁷ Subhash C. Gupta, *Capital Punishment in India* 1 (Deep & Deep Publications, 2000)

⁸ Constituent Assembly Debates on 3 June, 1949, Part II available at <http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm> (last viewed on 28.11.2024).

⁹ See Constituent Assembly Debates on 3 June, 1949, Part II available at <http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm> (last viewed on 28.11.2024)

³ (1980) AIR 898 (SC)1

⁴ *Mukesh & Anr. v. State for NCT of Delhi & Ors.*, (2017) 6 SCC 1.

⁵ (2014) 3 SCC 13

For example, on the possibility of error, Pandit Thakur Das Bhargava said¹⁰:

It is quite true that a person does not get justice in the original court. I am not complaining of district courts. In very many cases of riots in which more than five persons are involved, a number of innocent persons are implicated. I can speak with authority on this point. I am a legal practitioner and have been having criminal practice for a large number of years.

An issue of much debate had to do with the right to appeal a death sentence. In this context, Prof. Shibban Lal Saksena said¹¹:

I do feel that the people who are condemned to death should have the inherent right of appeal to the Supreme Court and must have the satisfaction that their cases have been heard by the highest tribunal in the country. I have seen people who are very poor not being able to appeal as they cannot afford to pay the counsel. I see that article 112 says that the Supreme Court may grant special leave to appeal from any judgment, but it will be open to people who are wealthy, who can move heaven and earth, but the common people who have no money and who are poor will not be able to avail themselves of the benefits of this section.

Dr. Ambedkar was personally in favour of abolition saying¹²:

¹⁰ Constituent Assembly Debates on 3 June, 1949 Part II, available at <http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm> (last viewed on 24.10.2010)

¹¹ Constituent Assembly Debates on 3 June, 1949 Part II, available at <http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm> (last viewed on 24.10.2010).

¹² Constituent Assembly Debates on 3 June, 1949 Part II, available at <http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm> (last viewed on 24.10.2021).

My other view is that rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather support the abolition of the death sentence itself. That, I think, is the proper course to follow, so that it will end this controversy. After all, this country by and large believes in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether.

However, he suggested that the issue of the desirability of the death penalty be left to the Parliament to legislate on. This suggestion was eventually followed.

Death Penalty Under the Bharatiya Nyaya Sanhita, 2023 (BNS)

The death sentence is still available for the most serious crimes under the Bharatiya Nyaya Sanhita, 2023 (BNS), which seeks to replace the colonial-era Indian Penal Code, 1860. This shows the legislature's dedication to striking a balance between justice, deterrent, and public safety. Crimes including terrorism that results in death, treason, extremely violent murder, and some sexual offenses that cause the victim's death are all punishable by death under the BNS. One Notably, Section 302 of the IPC and Section 103 of the BNS both stipulate that murder carries a death sentence or life in prison.

Reflecting current societal concerns, the BNS further broadens the use of the death penalty to include strict prohibitions against acts of terrorism and mob lynching. In keeping with the

guidelines established by the Supreme Court of India in the *Bachan Singh v. State of Punjab* case, which created the "rarest of rare" doctrine, the BNS also highlights the significance of judicial discretion, permitting courts to consider both mitigating and aggravating circumstances prior to imposing the death penalty.

Thus, by guaranteeing that the death sentence is applied only in extreme situations where alternative punishment is judged insufficient for the offense committed, the BNS upholds the constitutional obligation under Article 21—the right to life. Although the death penalty is being used in the BNS, there has been a noticeable change toward judicial supervision and human rights awareness, which is in line with international movements that advocate for the use of the death penalty sparingly.

Procedure Relating to Death penalty in The Bharatiya Nagarik Suraksha Sanhita, 2023

The BNSS 2023 simplifies processes and increases certainty while closely resembling the Criminal Procedure Code's approach to the death penalty. Only Sessions Judges, Additional Sessions Judges, or High Courts have the authority to impose death sentences, and any sentence imposed by a Sessions Judge needs to be approved by the High Court prior to execution¹³. Following confirmation of a death sentence by the High Court the Sessions Court issues a warrant, allowing execution to take place, subject to the required postponements during the appellate process¹⁴.

The High Court must postpone execution until final resolution if an appeal to the Supreme Court is available, specifically under Article 134, or if petitions under Articles 132 or 136 are pending¹⁵. The prisoner must be given a 30-day opportunity

to petition the governor for mercy before an execution warrant is issued. The petition may subsequently be referred to the President if the Governor rejects it. The President has a specified amount of time to make a decision, but there is no deadline, and the jail is informed of the decision within 48 hours¹⁶. The President's clemency decision is final and cannot be disputed in court once the President takes action, as section 473 of the BNSS notably eliminates any judicial review of the decision¹⁷.

Section 456 requires that a death sentence be converted to life in prison for pregnant women. Furthermore, in order to maintain accountability and transparency, Section 393 mandates that any judgment that imposes the death penalty state the "special reasons" that support the punishment¹⁸.

All things considered, the BNSS 2023 introduces more stringent deadlines and restricts post-clemency court control while maintaining established channels of judicial review, appeal protections, and mercy petition procedures.

Constitutionality of Death Penalty

The constitutional validity of capital punishment in India has been upheld by the Supreme Court, affirming that it does not violate Articles 14, 19, and 21 of the Constitution. The judiciary applies the "rarest of rare" doctrine to ensure that the death penalty is imposed only in exceptional cases, maintaining a balance between justice, deterrence, and human rights. The cases in which Constitutionality of Death Penalty have been examined by the judiciary can be analyzed as under-

¹³ The Bharatiya Nagarik Suraksha Sanhita, 2023, Ss. 22–23,

¹⁴ *Ibid*, Ss. 454–455

¹⁵ *Ibid*, S. 455,

¹⁶ *Ibid*, S. 472 (mercy petitions), S. 473 (timelines), communication within 48 hrs

¹⁷ *Ibid*, S. 473, finality of President's decision—no judicial review S. 456 (pregnant women)

¹⁸ S. 456 (pregnant women), S. 393 (special reasons in judgment)

Jagmohan Singh v. State of U.P.

The first case to bring the constitutionality of the death penalty before the highest court was *Jagmohan Singh v. State of U.P.*¹⁹. The constitutionality of Section 302 of the IPC, 1960 (the death sentence for murder) was examined. The primary argument presented to the Supreme Court was that it violated numerous fundamental rights granted to citizens, particularly Article 14, citing the fact that in two comparable cases, the punishment for murder is life in prison and in other cases, the death penalty. The Apex court rejecting this contention held that the discretion of awarding death penalty or giving life imprisonment. The judges have to look into the merits of the case and even the circumstances of the crime and thus Section 302 of The Indian Penal Code, 1860 was not held to be unconstitutional.

Rajindra Prasad v. State of U.P

The Supreme Court considered whether the death penalty was constitutional in *Rajindra Prasad v. State of U.P.*²⁰. The court was asked to evaluate the grounds and circumstances under which the death penalty can be applied, even though the primary question was not whether the death penalty was constitutional. When delivering the court's majority ruling, Justice Krishna Iyer covered a wide range of topics related to the death penalty. Justice Iyer pointed out that *"Section 302 of Penal simply gave discretion to the judges to impose either death sentence or life imprisonment on the persons convicted for the offence for murder, without giving any guidelines as to the exercise of that discretion"*²¹. He stated that *"unguided discretion in this matter even in the hands of the judges was grave risk as the question is of life and death. The matter should be reviewed because of the irrevocable nature of the death penalty. The error committed by the*

*Judges in sentencing a person to death was beyond correction"*²².

The Doctrine of "Rarest of Rare"

In *Bacchan Singh v. State of Punjab*²³, the Supreme Court addressed the legitimacy of the death penalty once more in 1980. It focused on two issues to be taken into consideration: Was there anything unusual about the crime? The severity of the offense is demonstrated by the circumstances to the point where the accused must be executed.

By a vote of 4 to 1, the Supreme Court overturned Rajendra Prasad's ruling, ruling that the death sentence, which is an alternative punishment for murder under Section 302 of the I.P.C., does not violate Article 21. The Constitution's Article 21 acknowledges the State's authority to deny someone their life or personal freedom in conformity with a fair, reasonable, and just process set forth by lawful authority. The death sentence under Section 302, I.P.C., either in and of itself or because it is carried out by hanging, cannot by any means be considered an unreasonable, harsh, or unusual punishment in light of the constitutional clause. The death penalty for murder does not contravene any fundamental constitutional provisions. The death penalty is not always abolished by the International Covenant on Civil and Political Rights, to which India acceded in 1979. The death sentence should only be applied to the most heinous crimes and should not be applied arbitrarily. Therefore, the guarantees and restrictions found in Articles 20 and 21 of our Constitution are equivalent to the provisions of the International Covenant. The death penalty is only permitted by the I.P.C. as an alternative form of punishment for extremely serious offenses. As a result, Indian penal laws fully comply with international agreements.

¹⁹ AIR 1973 SC 947

²⁰ AIR 1979 SC 916

²¹ *Ibid*

²² *Ibid*

²³ AIR 1980 SC 898

The Supreme Court has clearly formulated the dictums and circumstances in which death sentence should be given. In *Bachan Singh* the Court observed “*a real and abiding concern for the dignity of human life postulates resistance to taking life through law’s instrumentality. That ought not to be done save in ‘rarest of rare’ cases when the alternative option is unquestionably foreclosed.*”

The doctrine of the rarest of rare cases is further explained by the honorable court in the seminal ruling in *Macchi Singh and ors v. State of Punjab*²⁴, which illustrates the savagery of criminal activity. In a case of exceptional violence, Macchi Singh and eleven other persons massacred seventeen people in one night by raiding several homes without cause because of a family quarrel. The court is in a position to support the general public, whose reaction is so outraged that they want the accused to be executed by the judiciary's power holder regardless of their own personal beliefs¹⁰⁶. Also court in this judgment mention the condition to be fulfilled for awarding of death penalty along with illustration those are²⁵:-

- a) When the murder was extremely brutal in nature which arouse intense and extreme indication of the community.
- b) When the murder is committed for a motive which evinces total depravity and meanness.
- c) Dowry deaths or killing due to infatuation with another woman, of a member of a scheduled tribe or scheduled caste on grounds of his caste/tribe; offences to terrorize people to give up property and other benefits in order to reverse past injustices and to restore the social balance.
- d) In cases of multiple murders of a members of a particular family, caste, community or locality.

- e) Where the victim is an innocent child, helpless woman, aged or infirm person, a public figure whose murder is committed other than for personal reasons.

According to court the five category of murder through which the doctrine of rarest of rare case shall be considered are²⁶:

- a) Motive
- b) Manner of commission
- c) The extent of crime
- d) Anti social or repugnant nature of crime
- e) Personality of victim

On the above provided guideline court will decide the punishment.

Since Jasbir Singh and Kuljeet Singh were cold-blooded killers and the murder was a heinous, savage, and heinous act, they were found guilty and given the death penalty in *State v. Jasbir Singh & Kuljeet Singh*²⁷, also known as The Chopra Children Murder Case. There were aggravating circumstances in the homicide.

In *Attorney General of India v. Lachma Devi*²⁸, it has been held that the execution of death sentence by public hanging is barbaric and violating Article 21 of the Constitution. It is true that the crime of which the accused have been found to be guilty is barbaric, but a barbaric crime does not have to be visited with a barbaric penalty such as public hanging.

In *Smt. Shashi Nayar v. Union of India*²⁹, and others, decided in 1991, a Supreme Court bench once more affirmed the death penalty's constitutionality. The court did not address the merits of the argument against it, stating that the nation's law and order situation had gotten worse

²⁴ AIR 1983 SC 957

²⁵ *Ibid*

²⁶ *Ibid*

²⁷ 17 (1980) DLT 404

²⁸ AIR (1992) SC 395

²⁹ (1983) Cri. L.J. 811(S.C.)

and that the time was not right to abolish the death penalty. Such circumstances are addressed by an argument that presumes executions.

Two capital case customs that had been followed for many years have been overturned by the Supreme Court. In cases when the judges hearing the case could not agree on a sentence or guilt, the first practice was to not inflict the death penalty. The second was not to execute someone who had already been found not guilty by a lesser court. It considers that anyone convicted of homicide while serving a life term in jail will be executed as punishment.

The Supreme Court's Full Bench considered the validity of Section 303 in *Mithu v. State of Punjab*³⁰. According to the majority, this clause infringes upon both the right outlined in Article 21 of the Constitution and the guarantee of equality included in Article 14. It was believed that the part was intended to deter lifers from attacking prison workers, but the lawmakers chose wording that went well beyond that goal. Furthermore, it was decided that the part is based on an assumption that has no scientific backing. It primarily breaches Article 21 of the Constitution, according to the majority opinion.

This section has been ruled illegal in *Bhagwan Bux Singh and others v. State of U.P.*³¹ due to its violation of Articles 14 and 21 of the Indian Constitution. It can no longer be used to convict any criminal. Section 302 will be used to change a conviction under this section. However, it must be proven that the case is extremely exceptional in order to grant a death sentence under section 302. The sentence would become a life sentence if the case could not be classified as rarest of rare.

Law Commission Report of 2015

India's Law Commission in its 262nd Report (August 2015) recommended that the concept of

death penalty should be abolished for all crimes other than terrorism related offences to safeguard national security³².

The Law Commission in its previous review in the year 1967, the commission concluded that India couldn't risk the "experiment of abolition of capital punishment". But in 2015 the Commission stated that "the commission feels that the time has come for India to move towards abolition of the death penalty"³³.

Despite the fact that death sentences are rarely executed in India, still the commission suggested that the penalty should be abolished. The commission gave following reasons:- 1.) Times have changed. 2.) It's not a Deterrent. 3.) India's justice system is flawed.

Concluding Remarks

The question of retaining or abolishing capital punishment in India remains deeply contentious, reflecting a complex interplay of legal, moral, and societal considerations. While the Supreme Court of India continues to uphold the constitutionality of the death penalty, its application is restricted to the "rarest of rare" cases as established in *Bachan Singh v. State of Punjab*. This doctrine reflects judicial attempts to balance the demands of justice with respect for human dignity.

Based on human rights jurisprudence, there is a noticeable movement worldwide to abolish the death penalty³⁴. However, it has been maintained in India because to political discourse, public feeling, and the seriousness of some egregious crimes. Critics contend that the death sentence disproportionately impacts the underprivileged, is

³⁰ (1983) 2 SCC 27

³¹ (1977) MANU/SC/0079

³² Report No. 262, The Death Penalty, Law Commission of India, 2015.

³³ *Ibid*

³⁴ Roger Hood, *The Death Penalty: A Worldwide Perspective* 8-15 (Oxford University Press, 2008)

arbitrary, and is prone to judicial error³⁵. Furthermore, empirical research has not demonstrated that it has a deterrent effect on crime³⁶.

India must now consider whether the death penalty is consistent with the principles of justice, equality, and human rights outlined in its constitution. India's international human rights commitments and the slow but rising worldwide consensus towards abolition demand a reexamination of this harshest form of punishment. The sanctity of life may be preserved while the goals of justice and rehabilitation are better served by a move toward life in prison without the possibility of release.

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³⁵ Surya Deva Batra, "Death Penalty in India: A Law in Search of Justice", Vol. 4, No. 1, *Indian Journal of Human Rights and Justice* 45-62 (2010)

³⁶ Michael L. Radelet, and Marian J. Borg, "The Changing Nature of Death Penalty Debates", Vol. 26, *Annual Review of Sociology* 43-61 (2000)