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# A Study of Capital Punishment in India

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## ABSTRACT

*In the world we live in today, crime rates are steadily rising. There have been more homicides, kidnappings, rapes, terrorist attacks, and incidents involving child abuse. Because the Nirbhaya Rape Case belonged to the category of the rarest of the rare crimes in India, the court imposed the death penalty for the most severe or heinous crimes, capital punishment. Executions for these offences typically include hanging. However, it's crucial to note that it's a rather rare phenomena in India. Both the Indian Penal Code and the Code of Criminal Procedure address the death punishment. Since its inception, the death penalty has been used in India, albeit less frequently currently. Execution, sometimes known as capital punishment, is "the state's sanctioned death penalty for certain crimes," according to one definition. The arguments in favor and against have not substantially altered over time. The type of crime and the method of punishment are related to the culture and civilisation from which they originate. The methods of capital punishment have undergone tremendous humanization as civilization has advanced. However, there hasn't been much discussion in India about the method used to carry out death sentences.*

*This paper explains the modes of capital punishment in India and talks about the rarest of the rare cases. The main focus of this paper is on capital punishment-related substantive and procedural laws. It is also suggested to talk about the executive's ability to commute a death sentence to life in prison, as permitted by the Indian Constitution.*

**Keywords:** Capital Punishment, Death Penalty, Indian Penal Code, India, Rarest of Rare.

## I. INTRODUCTION

Every punishment is based on the notion that there needs to be a penalty for transgression. There are two primary justifications for applying the penalty. One is the idea that it is fair and just for someone to pay for their wrongdoing, while the other is that punishing offenders deters others from committing crimes. The same premise underpins all punishments, including capital punishment.

Given the circumstances of today, the debate over capital punishment is the one that is most universally pertinent. Capital punishment is a crucial component of the Indian criminal justice system. The presence of the death penalty is questioned as immoral due to the growing power

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of the human rights movement in India. This is a strange argument, though, as it is morally wrong to protect one person's life at the expense of the lives of many other members of society or potential victims.

The death penalty is a long-established punishment. The death penalty has historically been used in almost every nation in the world. The history of human civilization demonstrates that the use of the death penalty as a form of punishment has never been discontinued. Under the rules of Draco (c. 7th century BCE), capital punishment for crimes like murder, treason, arson, and rape was frequently practiced in ancient Greece, despite Plato's contention that it should only be reserved for the truly evil. Although citizens were exempted for a brief period of time during the republic, the Romans also used it for a wide variety of offences.

China, which carries out more than 1000 executions a year, is a nation where the death penalty is most commonly used. In nations like Iran, Malaysia, the Philippines, and Singapore, the possession of illegal drugs carries the death penalty as a required punishment. Only a few nations execute people for economic crimes like bribery, theft of public funds, and corruption of public officials, among others. This type of punishment is also applied to sexual offences in some Islamic countries. The United States of America also permits this penalty, and on average, 75 individuals are executed there each year.<sup>2</sup>

## **II. WHAT IS CAPITAL PUNISHMENT**

The Latin word "capitalis," which means "concerning the head," is the source of the English word "capital." Therefore, receiving the death penalty entails losing one's head. The term "Capital Punishment" denotes the most severe kind of punishment. It is the penalty for the most egregious, terrible, and abhorrent crimes committed against people. Even though the parameters of such crimes vary by country, state, and age, the death penalty has always been the consequence of such crimes.

## **III. HISTORY OF CAPITAL PUNISHMENT IN INDIA**

The four sections below are used to organize the history of the death penalty in India:

### **(A) Death Penalty Under Hindu Law-**

Since the dawn of civilization, punishment has been a fundamental component. The two simple techniques of eliminating the delinquent elements of society—the death sentence and exile—existent and served as society's best models of punishment and deterrence. Death penalty trials have existed for as long as the Hindu community. In the ancient scriptures and books, the death

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<sup>2</sup> Ishaan Tyagi, Capital Punishment: A Critical Study, 6 Int'l J Legal Devts. & Allied Issues 143, 143 (2020)

penalty is mentioned. The Hindu judicial system did not consider the death penalty to be cruel, and it was instead replaced with as much torture as possible to have a draconian effect on society. Capital punishment dates back to the fourth century, according to certain recent discoveries.

Kalidas has eloquently illustrated the need for the death penalty. The Ramayana and Mahabharata, historical and mythological epics, have also argued for the necessity of the death sentence by declaring that the king's top goal is to protect society from threats of all types, which may be accomplished by putting the wrongdoer to death. Brahaspati and Katyayana were also in favor of the death sentence.

Ashoka did not believe that the death penalty was unfair even in the Buddha's time, when Ahimsa was the moral law. Deterrence and mental wellness were the core principles of the Dand Niti in India. There is no denying that the Hindu criminal justice system is heavily influenced by the ideas of social security and non-correctional philosophy. Manu has done a great job of recording both the objective and subjective circumstances. Manu Smriti, one of his well-known works, illustrates the crime and the frailty of the culprit. Kautilya wrote on the death sentence in his writings because, in his view, it is an essential tool for protecting public safety.

### **(B) Death Penalty Under Muslim Law-**

Sharia law, which governs Islam, was created based on the Qur'an, the Hadith (Sunnah), the Ijma', the 'Urf, the Masalih al-Mursala, and the Qiyas. In verse 2:30 of the Qur'an, it is stated, "Your Lord said to the angels, I am appointing a vicegerent on earth." The text also said, "Your Lord said to the angels, I am about to create a human being out of clay; when I have fashioned him and breathed of My spirit into him, kneel before him in prostration"<sup>3</sup>. As a result, the Qur'an rejects the legitimacy of taking human life. Ijad, the act of giving life, and I'dam, the act of taking it away, are regarded in Islamic philosophy as wholly divine entitlements.

The Qur'an allows the taking of life by authorities other than Allah through the appropriate procedures of law and justice, as required by Sharia Law, in order to prevent other horrific crimes from taking place in society.

### **(C) Death Penalty Under the Mughal Empire-**

The Mughal Empire dominated India's medieval history. Their administration mainly adhered to the Quranic laws. When conflicts developed, judges largely took into account the teachings of the Quran while also having the power to impose arbitrary punishments. There was no

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<sup>3</sup> Naveen Talawar, Capital Punishment in India, iPleaders Blog (April 05, 2023, 5:25 PM), <https://blog.ipleaders.in/capital-punishment-in-india-2/>.

uniform application of the law throughout the world.

Akbar held extremely tolerant views and thought the death penalty should only be enforced in extreme cases of sedition and only after careful study. Additionally, he held the view that no death should be followed by cruel acts like mutilation or other abuse. Jahangir and Aurangzeb both had similar legal systems.

The death penalty was carried out using cruel and agonizing methods, such as throwing the prisoner in the hot sun while they were wrapped in rawhide that had just been butchered and fluffed thin to shrink, causing them to eventually collapse in agony and pain, or nailing the prisoners in the walls next to other bodies. Under the contemporary British criminal justice and administration system, the mandatory execution of criminals has surpassed these tactics.

#### **(D) Death Penalty in Pre- and Post-Independence Era-**

It wasn't until 1931 that the question of the death sentence came up in the British India legislative assembly when Shri Gaya Prasad Singh, a member from Bihar, attempted to present a measure to do away with the death penalty for offenses included by the Indian Penal Code. Nevertheless, after the then-Home Minister responded, the motion was defeated. During two debates in the Legislative Assembly prior to independence, then-Home Minister Sir John Thorne made it plain the government's position on the death penalty in British India. The death sentence for any offenses for which it is now authorized is not deemed prudent by the government.

The Indian Penal Code of 1860 and the Code of Criminal Procedure of 1898 were two pieces of colonial-era law that the Republic of India adopted after gaining its independence. The IPC issued six sentences, including the death penalty.

### **IV. CRIMES THAT ARE SUBJECT TO THE DEATH SENTENCE**

Reformist and deterrent views of punishment make up the core of Indian criminal law. Applying penalties to deter offenders is necessary, but the offender must also be given the chance to change. The courts are required to present a thorough reason for their decision when the death penalty is applied. Several pieces of legislation punishable by the death penalty include:

#### **The Indian Penal Code, 1860<sup>4</sup>**

Numerous crimes are punishable by death under the Indian Penal Code. The following is discussed:

- Warfare against India or the attempt to wage it is one of the crimes that have been linked

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<sup>4</sup> Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

to the death sentence. Declaring war against a country is a crime that is specifically defined in Section 121 of the IPC. Anyone who makes an effort to wage war against India or is successful in doing so may face the death penalty.

- The abatement of mutiny has also been linked to the death penalty. Section 132 of the Indian Penal Code forbids the mutiny of an officer, soldier, sailor, or pilot in the army, navy, or air force of the Government of India. Anyone who assists in the commission of a mutiny by one of these people so that mutiny will be committed as a result of their aid and assistance can also be executed.
- The list of offences that carry a death sentence now includes Section 194 of the IPC. In accordance with Section 194, falsifying evidence is punished by the death penalty if done in order to get a conviction for a crime that carries the death penalty. An individual who commits such a crime may be put to death.
- Murderers are subject to the death penalty under Section 302 of the IPC.
- It has been established that assisting or persuading a minor to commit suicide is punishable by death. The consequences for urging or helping a youngster or someone with intellectual disability commit suicide are covered under Section 305 of the IPC. Anyone who commits this crime will therefore be subject to the death penalty.
- Kidnapping is a serious offense that can result in death if done for ransom or other reasons. Section 364A of the IPC defines kidnapping someone with the purpose to harm or kill them as a crime. Anyone who commits this crime could get executed.
- The Criminal Law (Amendment) Act of 2013 introduced the following crimes to the IPC that a court may punish with the death penalty:
  - For rapes that leave the victim dead or in a persistent vegetative state, Section 376A mandates the death penalty.
  - Repeat rape offenders may be sentenced to death under Section 376E.
- In circumstances of murder and dacoity, Section 396 further stipulates that the death penalty is applicable.

### **The Commission of Sati (Prevention) Act, 1987<sup>5</sup>**

According to The Commission of Sati (Prevention) Act, 1987, everyone participating in the act of Sati, whether directly or indirectly, faces the death penalty.

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<sup>5</sup> The Commission of Sati (Prevention) Act, 1987, No. 3, Acts of Parliament, 1987 (India)

**Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985<sup>6</sup>**

Providing financial assistance or taking part in the manufacturing or distribution of narcotics or psychoactive substances in a predetermined amount (e.g., opium 10 kg, cocaine 500 grammes) is punishable by death under Section 31A of the NDPS Act based on prior convictions.

**The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989<sup>7</sup>**

Under the Act, fabricating evidence that results in a scheduled caste or tribal member's conviction and execution is punishable by death.

**Army Act, 1950; Air Force Act, 1950 and Navy Act, 1957<sup>8</sup>**

The death penalty may also be applied to a number of offenses that military personnel have committed in violation of military statutes such the Army Act of 1950, Air Force Act of 1950, and Navy Act of 1957.

Just after a sessions (trial) court grants a death sentence, the decision must be confirmed by the High Court in order to be finalized. Convicted persons who have had their sentences upheld by the High Court may file an appeal with the Supreme Court. The condemned person may file a “mercy petition” to the President of India and the State Governor if this is not practicable, or if the Supreme Court rejects the appeal or declines to hear the petition. The Government of India Act of 1935 gave the President and Governors their current constitutional mercy powers, but unlike the Governor-General, they do not have any prerogative clemency powers in independent India.

**Execution Method-**

- According to the Indian Criminal Procedure Code, hanging is the execution method used in the civil court system.
- In the military court martial system, hanging and shooting are both listed as official methods of execution.

**V. TYPES OF CRIMINALS THAT ARE NOT SUBJECT TO THE DEATH PENALTY**

- **Minors-** Indian law prohibits the execution of anyone who committed a crime while still a minor, that is, before the age of 18. Because they believed that anyone who hasn't reached adulthood has room for improvement and might be able to learn from his

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<sup>6</sup> Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61, Acts of Parliament, 1985 (India)

<sup>7</sup> Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 (India)

<sup>8</sup> The Army Act, 1950, No. 46, Acts of Parliament, 1950 (India)

mistakes by being provided with the right environment and education, lawmakers decided to include minors in the group of offenders exempt from the death penalty. Additionally, the Juvenile Justice Act (2015), a distinct law that is only used in situations involving minors, is provided by our laws. Because it gives criminals a chance to get better, this is advantageous.

- **Pregnant Woman-** The list of criminals who are exempt from the death penalty now includes pregnant women. In accordance with Section 416 of the CrPC<sup>9</sup>, a woman who has been given a death sentence may have her sentence delayed or converted to life in prison if the high court determines that she is pregnant. This is justified by the fact that hanging a pregnant woman kills both the mother and the unborn child. The unborn child in the woman's womb hasn't done anything wrong and doesn't deserve to perish as a result of what she did. Thus, pregnant women may be included in the group of criminals exempt from the death penalty.
- **Intellectually Disabled-** Anyone who is intellectually challenged or disabled may qualify as an offender who is exempt from the death penalty under the law. It is frequently referred to as having an intellectual handicap if the individual committing a significant crime is unable to understand the nature and effects of their acts. Someone with a criminal record might not be aware of the specifics of their offense due to their intellectual handicap. As a result, lawmakers added those with intellectual disabilities to the list of criminals who are exempt from the death penalty.

## VI. THE DOCTRINE OF RAREST OF RARE

In India, the "rarest of the rare test" is used to determine whether to impose the death penalty, as stated in the case of *Bachchan Singh v. State of Punjab*<sup>10</sup>. Therefore, the death penalty will only be applied in the most exceptional circumstances.

Additionally, in the case of *Macchi Singh & Others v. State of Punjab*, the Three Judge Bench upheld *Bachchan Singh's* ruling and stated that the death penalty can only be awarded in the rarest of circumstances when the community's collective conscience is such that it will expect those who hold judicial authority to impose it. These circumstances include:

- when the murder is carried out in a way that is particularly gruesome, repulsive, or nefarious in order to elicit a strong and excessive sense of outrage from the community.

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<sup>9</sup> Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India)

<sup>10</sup> *Bachan Singh vs State Of Punjab*, (1982) 3 SCC 24



- when a murder occurs that incites social outrage against a member of a Scheduled Caste.
- when the "Dowry Death" or "Bride Burning" occurs.
- when the offense is massive in scope.
- When a murder victim is-
  - an innocent child
  - a woman in need or someone who is incapable of helping themselves due to old age or disease
  - Whenever the injured victim is a person who the slaughterer has authority over or relies on.
  - when a public figure is hurt and a murder is done for a political or similar cause as opposed to a personal one.

The Supreme Court's Ratio Decidendi, or Rule of Law, in the Bachchan Singh case holds that the death sentence is only legal if it serves as an alternative to life in prison. The same will hold true in the incredibly unlikely scenario in which the alternate option is completely prohibited.

In the case of Santosh Kumar Bariyar v. State of Maharashtra<sup>11</sup>, the Supreme Court further stated that the “rarest of rare dictum only serves as a guideline in enforcing the provisions mentioned in Section 354(3) of the CrPC and entrenches the policy that life imprisonment is the rule and death punishment is an exception.”

According to Article 21 of the Indian Constitution, no one may be denied the "Right to Life" until a legal procedure is followed. The use of new evidence or legal precedents is likewise constrained when the death sentence is applied. The penalty is final once it has been carried out.

## **VII. PAST EXECUTIONS IN INDIA: EXAMPLES**

In India, the death sentence is rarely carried out. The four criminals convicted in the Nirbhaya gang rape and murder case who were hanged simultaneously on March 20, 2020 were Mukesh Singh, Vinay Sharma, Pawan Gupta, and Akshay Thakur. There have only been 8 executions since 2000, even with them. Although many death row inmates receive their death sentences, this rarely happens. Only four of the approximately 1500 death row inmates who received the death penalty between 2004 and 2015 were hanged. They are listed below-

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<sup>11</sup> Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, [(1961) 3 SCR 440]

**Dhananjoy Chatterjee v. State of West Bengal (2004)<sup>12</sup>**

Hetal Parekh, an 18-year-old student, was killed in this case by Dhananjoy Chatterjee, who was found guilty of both rape and murder. The victim lived in the same apartment that Dhananjoy, a security guard, was assigned to. On the afternoon of March 5, 1990, the victim's mother discovered her dead inside of her house. Dhananjoy was accused of raping the girl and killing her in her apartment because, after the murder was uncovered, he was nowhere to be found. On May 12, 1990, Kolkata police detained him on rape, murder, and watch stealing suspicions.

The Alipore Sessions Court found Dhananjoy guilty on all counts and sentenced him to death in 1991. This decision was supported by both the Supreme Court and the Calcutta High Court. Both the West Bengal Governor and President A.P.J. Abdul Kalam rejected the mercy requests he submitted to them. On August 14, 2004, Dhananjoy's 39th birthday, he was executed at 4:30 am in Kolkata's Alipore Central Jail.

**Mohammed Ajmal Amir Kasab v. State of Maharashtra (2012)<sup>13</sup>**

Kasab and nine other terrorists carried out a variety of well-planned bombing and shooting operations throughout the city during the infamous 26/11 Mumbai attack. Ajmal Kasab and Ismail Khan carried out the terrorist attack at the CST station, which targeted important landmarks and resulted in up to 58 fatalities and over 100 injuries. At the time, the group responsible for the widespread destruction of Mumbai and the deaths of 166 people, led by 21-year-old Kasab, was the only one to have survived. After a shootout with the police, he was taken into custody, questioned, and accused of 86 crimes, including murder and declaring war on India.

He was put on trial in March 2009 and was given the capital punishment by a special court in May 2010. Kasab filed an appeal against the judgment, but the Mumbai High Court dismissed it in February 2011. In July 2011, Kasab appealed the death penalty to the Supreme Court. The Supreme Court rejected his appeal, upholding the Trial Court's determination to carry out his execution on August 29, 2012, and dismissed his appeal. Also rejected by President Pranab Mukherjee was his demand for compassion. On November 21, 2012, Ajmal Kasab was executed by hanging in Pune's Yerwada Jail.

**State v. Mohd. Afzal & Ors. (Afzal Guru's case, 2013)<sup>14</sup>**

The events in this case began on December 13, 2001, when five armed assailants opened fire

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<sup>12</sup> Dhananjoy Chatterjee v. State of West Bengal, 1994 SCR (1) 37

<sup>13</sup> Mohammad Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1

<sup>14</sup> State v. Mohd. Afzal & Ors., 2003 (3) JCC 1669

on Parliament, killing many of the on-duty security personnel. The five terrorists who attempted to enter Parliament while it was in session were killed in the gun battle. Nine persons were slain by the attackers, including one gardener and eight security personnel. 16 persons were hurt, including 13 security guards. Using data from car and cellphone records, the special section of the Delhi Police detained Afzal Guru from Srinagar, his cousin Shaukat Husain Guru, Shaukat's wife Afsan Guru, and S.A.R. Gilani, a lecturer in Arabic at Delhi University.

All of the suspects were tried on allegations of waging war, conspiring to commit murder, attempting to commit murder, and other connected offenses after the police filed a FIR on December 13. Provisions of the Prevention of Terrorism Act (POTA) 2002 were later added in addition to the initial accusations.

On December 18, 2002, the special court executed Guru, Shaukat, and Gilani. Afsan, Shaukat's wife, was sentenced to five years in prison after being found guilty of hiding the conspiracy. In 2003, the Delhi High Court affirmed Guru and Shaukat's convictions following an appeal. SAR Geelani and Shaukat Husain's spouse Afsan Guru were ruled not responsible for the accusations levelled against them by the High Court on October 29, 2003. The Supreme Court commuted Shaukat Guru's death sentence to ten years in prison on August 24, 2005, while upholding Afzal Guru's death sentence. Guru submitted a review petition to the Supreme Court, but in September 2005, the Court eventually decided to reject it.

Guru's widow sent an appeal for mercy to A.P.J. Abdul Kalam, who was the president of India at the time, in October 2006. The President turned down Afzal Guru's request for mercy on February 3, 2013. On February 9th, 2013, Afzal Guru was hung in Delhi's Tihar Jail.

### **Yakub Memon v. State of Maharashtra (2013)<sup>15</sup>**

Yakub Memon, Tiger Memon's brother, was in this case the main suspect in the bombs. Yakub Memon, a chartered accountant by trade, was accused of participating in the Bombay blast case, which was orchestrated by Tiger Memon and Dawood Ibrahim. 257 people were killed by the explosions. On August 5, 1994, Yakub Memon was taken into custody at the New Delhi Railway Station.

Murder, supporting terrorism, and criminal conspiracy to commit terrorism were all deemed to be crimes for which he was found guilty. In accordance with the 1987 TADA (Terrorist and Disruptive Activities (Prevention) Act), the Trial Court also found him guilty of illegally carrying and possessing firearms and ammunition and sentenced him to death.

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<sup>15</sup> Yakub Abdul Razak Memon v. State of Maharashtra, CDJ 2013 SC 230

Despite Memon's request for a revision, the Supreme Court upheld the death penalty for him. On July 30, 2015, Yakub Memon was put to death by the Maharashtra government. Memon filed a curative petition with the Supreme Court on May 22, 2015. The identical was turned down on July 21, 2015. He also submitted a mercy appeal, which the governor of Maharashtra rejected, asking for a stay of execution. Yakub Memon was put to death at Nagpur Central Jail on July 30, 2015.

### **CONSTITUTIONALITY OF THE CAPITAL PUNISHMENT**

As we all know, Article 21 of the Constitution guarantees the fundamental rights to life and personal freedom. Although everyone's right to life and personal freedom is guaranteed by this article, is it absolute? The state has the power to limit or revoke even this right in order to uphold law and order, despite the fact that everyone has the right to live in dignity.

However, since it takes away a person's sacred life, the procedure must be a proper procedure and be fair, reasonable, and impartial, as decided in the case *Maneka Gandhi v. Union of India* (1978)<sup>16</sup>. It suggests that the state may impose restrictions on or revoke a person's right to life through the passage of legislation, provided that a just and legitimate process is followed. But only the most heinous crimes are punished with the death penalty; it is not a punishment for all crimes.

The death penalty's constitutionality has occasionally been contested. The first case to appeal the death penalty was that of *Jagmohan Singh v. State of Uttar Pradesh* (1973)<sup>17</sup> on the grounds that it infringed a person's right to life under Article 21 of the Indian Constitution, a significant basic freedom. The death sentence is constitutionally valid and does not contravene any of the Constitution's Articles, according to the opinion of the Apex Court's five-judge bench. The decision between the death penalty and life in prison was taken after taking into account all the relevant information and the nature of the crime as it was presented during the trial, the ruling also noted.

Justice Krishna Iyer argued that the death sentence was a blatant breach of Articles 14, 19, and 21 of our Constitution in *Rajendra Prasad v. State of Uttar Pradesh* (1979)<sup>18</sup>. In this instance, it was made clear that two conditions must be met before any offender can get the death punishment. First, it is necessary to document the precise reason or situation for which the offender received this punishment. Second, it can only be used in unusual situations.

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<sup>16</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

<sup>17</sup> *Jagmohan Singh v. State of Uttar Pradesh*, 1973 AIR 947

<sup>18</sup> *Rajendra Prasad Etc. Etc v. State of Uttar Pradesh*, 1979 AIR 916

In *Deena Dayal v. Union of India* (1983)<sup>19</sup>, the validity of the death penalty was once more contested, this time on the grounds that hanging by a rope breaches Article 21 since it is barbaric, inhumane, and cruel. The Supreme Court has ruled that, under the parameters of Article 21, hanging is a legitimate and constitutional method of execution.

The death penalty under Section 303 IPC was ruled to be unconstitutional because it violates the protections listed in Articles 14 and 21 of the Constitution in the case of *Mithu v. State of Punjab* (1983)<sup>20</sup>. It was consequently removed from the Indian Penal Code. The Supreme Court debated whether a major delay in the execution of the death sentence was a good enough justification to commute it to life in prison in the later judgements of *T. V. Vatheeswaran v. Tamil Nadu* (1983)<sup>21</sup>.

The three-judge bench in *Macchi Singh & Others v. State of Punjab* (1983)<sup>22</sup> also upheld Bachan Singh's decision and stated that the death penalty can only be imposed in the most extreme circumstances when the community will expect those in positions of judicial authority to do so. Under these conditions, the following conditions must be met:

- when a murder is carried out in a particularly horrific, repulsive, or ethically questionable manner in an effort to stir up a strong and excessive sense of outrage among the public.
- In the dowry death or bride-burning tragedy.
- when the crime is disproportionately large.
- when a member of the Scheduled Caste is killed, which causes indignation in society.
- when the murder victim is a defenseless individual due to old age or illness, a vulnerable woman, or an innocent youngster.

The Supreme Court further stated in the 2009 case of *Santosh Kumar Satishbhusan v. State of Maharashtra* that even the most exceptional cases only serve as guidelines for enforcing the rules outlined in Section 354(3) of the CrPC and establishing the principle that Death penalty is only sometimes used; life in prison is more common.

*Ajmal Kasab*, in a well-known case, was found guilty of 80 offenses, including murder, having explosives, and waging war against India. He was given the death penalty by the Bombay High Court, which ruled that it was the only just punishment for the 166 people who died as a result

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<sup>19</sup> *Deena @ Deena Dayal Etc. Etc vs Union of India and Others*, 1983 AIR 1155

<sup>20</sup> *Mithu, Etc., Etc vs State of Punjab Etc. Etc*, 1983 AIR 473

<sup>21</sup> *T.V. Vatheeswaran vs State Of Tamil Nadu*, 1983 AIR 361

<sup>22</sup> *Machhi Singh and Others vs State of Punjab*, 1983 AIR 957

of the attacks in Bombay on November 26, 2011. The Supreme Court also upheld the death penalty.

In the case of *Mukesh and Anr. v. State (NCT of Delhi)*<sup>23</sup> in 2017, the Supreme Court upheld the death penalty for four prisoners, describing it as "the rarest of rare" and stating that the crime committed was abhorrent to mankind. Later, the detainees' demands for reconsideration were denied by the Supreme Court.

## VIII. RECENT CASES OF CAPITAL PUNISHMENT

### **Manoj v. State of Madhya Pradesh (2022)**<sup>24</sup>

The Supreme Court reiterated its decision and the guidelines established in *Bachan Singh's* case in the recently decided landmark case *Manoj v. State of Madhya Pradesh (2022)*. The *Bachan Singh* principles must be applied to each unique case in light of its circumstances, the Court decided, adding that the death penalty only applies where the alternative opinion is unquestionably forfeited.

Once a decision has been made, the court must specifically consider the circumstances of the offender and determine whether the crime in question actually constituted something unusual and uncommon that would make even life imprisonment an insufficient punishment. The courts must assess the full facts and their cumulative influence on the application, even after giving the accused's available mitigating considerations the maximum weight and determine that the only available punishment is the death penalty. Courts should analyze these instances to see if any aggravating circumstances are present to their fullest extent and no mitigating ones at all, even though it would be one of the rarest of rare cases to sustain the death penalty.

### **Manoj Pratap Singh v. State of Rajasthan (2022)**<sup>25</sup>

In this instance, the Supreme Court affirmed the 37-year-old man's death sentence for raping and killing a seven and a half-year-old autistic girl. When *Manoj Pratap Singh*, the accused, was roughly 28 years old, the crime was perpetrated in Rajasthan. According to a three-judge bench, the crime was perpetrated with severe depravity, especially given the victim's fragility and the way it was carried out.

On a stolen motorcycle, the criminal abducted the victim, taking advantage of the trust established through the offer of candy. She afterwards experienced a sexual attack and a head injury, breaking her frontal bone among other ailments. The victim's private parts had also been

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<sup>23</sup> *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1

<sup>24</sup> *Manoj vs The State Of Madhya Pradesh*, 2022 Latest Caselaw 3081 MP

<sup>25</sup> *Manoj Pratap Singh v. State of Rajasthan*, 2022 SCC OnLine SC 768

severely injured.

The accused claimed that he was just 28 years old when the incident was committed. He also has a wife, a small daughter, and an aging father as members of his family. The Supreme Court stated that, when these mitigating considerations are taken into account alongside a number of other factors relevant to his antecedents, there does not appear to be any hope of his reformation and rehabilitation.

The Court noted that the defendant had a criminal past and was connected to at least 4 instances of theft, vandalism, and attempted murder. Furthermore, the current crime involved the use of a stolen motorcycle. The offender was sentenced to seven days in prison for fighting with another prisoner, and the court also noted that he had already been found guilty of killing another prisoner.

After considering all of these circumstances, the Court even went so far as to declare that the convict was a "danger to the maintenance of order in the society." In light of the accused's incorrigible behavior, the Court claimed that the alternative of giving the convict a life sentence for the remainder of their natural life without commutation was likewise unworkable. The Bench claimed that because it was unavoidable in this particular situation, it had "no choice but to confirm the death sentence awarded to the appellant."

## **IX. WHY INDIA REMAINS FIRM IN ITS USE OF THE DEATH PENALTY**

Given that it is obvious that the reformatory theory of punishment has failed miserably in India and that the rate of wrongdoing has increased, it is necessary to instill the fear of death in the minds of criminals in order to improve the environment for the general public. India disagreed with the United General Assembly's vote to abolish or outlaw the death penalty because it conflicted with its legal system. Even though it is a sanctioned punishment in India, the death penalty is only ever applied in serious crimes including murder, child suicide, and terrorism.

Abolishing the death penalty would not make sense in the current context, when India has seen an increase in rape and murder cases, where stern measures should be taken against the culprits. If the death penalty were applied more frequently in cases when the accused is completely proved guilty, people would be less inclined to commit crimes since it is seen as a more terrible punishment than life in prison.

## **X. CONCLUSION**

Since the beginning of time, India has applied the death penalty, also referred to as capital punishment. The death sentence has been the most popular punishment in India for crimes and

offenses that essentially violate the law from the days of the monarchy. No idea of heinous or significant crimes that would call for the death punishment existed. Nowadays, considerations such as "rarest of rare cases," "special reasons," "grievous crimes," "serious offenses," etc. are made before the death penalty is applied.

The death penalty is a sensitive topic; there is growing global resistance to it, and many countries have done away with it as a form of punishment. Although the death penalty is not explicitly outlawed in Article 6 of the International Covenant on Civil and Political Rights, signatories who still use it must uphold key protections. The International Commission of Jurists and Amnesty International India have denounced the executions notwithstanding the controversy surrounding Nirbhaya's case. Australian and American law both enforce the death sentence for crimes involving murder and rape, with the exception of India.

In its 262nd Report, the Law Commission also advocated against the death sentence overall, with the exception of terrorism. It is important to keep in mind the cases where the accused in India obtained the death penalty and were put to death at this stage. Studies of cases from the last 20 years show that there have been 5 executions in total, 3 of them including terrorist acts and the other 3 rape cases. The public and court consciences were shaken by all five of these cases, which all matched the description of the rarest of rare situations. Although rape cases and terrorist attacks are fundamentally different from one another, these five cases share brutality, gruesomeness, and inhuman act against the victim(s) that an ordinary person could not even begin to fathom.

The use of the death penalty is acknowledged as a kind of retributive and preventive punishment as well as an effective deterrent in society. Many claim that it infringes on fundamental rights and is ineffective as a deterrent. In the Indian context, it is possible to argue that some acts are so heinous and dreadful in character that no punishment less than the death penalty can be thought of as fair or right. Similar to how Justice ML Tahaliyani stated in the Ajmal Kasab case that "he lost his right to humanitarian treatment," such offenders lose their right to humanitarian treatment for committing barbarous offenses. Death warrants are only ever issued in the most exceptional and exceptional instances in India. Because the State wouldn't be able to act when the rarest of rare cases occurred, completely abolishing the death penalty would put the country at greater risk.

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