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# Capital Punishment Ethics in India: A Comprehensive Examination of Ethical, Legal, and Societal Perspectives

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## ABSTRACT

*This article critically analyses the ethics of capital punishment in India, delving into the multifaceted aspects that influence the practice. Capital punishment, or the death penalty, has long been a subject of intense debate globally. India, as one of the world's largest democracies, is no exception to this discourse. The article examines the ethical justifications for and against capital punishment, considering legal frameworks, societal perceptions, human rights implications, and international perspectives. Drawing upon relevant case studies, legislative developments, and historical data, the study aims to provide a holistic understanding of the ethical challenges surrounding capital punishment in India. Ultimately, the article seeks to contribute to the ongoing discourse on capital punishment by addressing the complexities of its practice within the Indian context.*

**Keywords:** Capital punishment, death penalty or execution.

## I. INTRODUCTION

The death penalty, commonly known as capital punishment, is still one of the most contentious subjects in law, morality, and human rights. The practice involves the state-sanctioned execution of individuals convicted of serious crimes, with proponents arguing that it serves as a justifiable response to the most grievous offences. They think capital punishment is a deterrent, dissuading potential criminals and providing a sense of closure and retribution for victims' families. On the other side of the spectrum, opponents cast doubt on the practice's moral grounds by highlighting its irreversible nature, the possibility of injustices, and its dubious usefulness as a deterrence to crime.

This article aims to go into the various ethical dimensions of capital punishment in India. By examining the diverse viewpoints that have shaped the nation's approach to this practice, we seek to contribute to a deeper understanding of the complexities and challenges surrounding capital punishment in the Indian context. To accomplish this, we will look into historical

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precedents, critically evaluate ethical arguments for and against the death penalty, investigate its implications for human rights, examine the role of the Indian legal system in capital punishment administration, and consider public perceptions and international comparisons.

## II. HISTORICAL CONTEXT OF CAPITAL PUNISHMENT IN INDIA

Capital punishment in India has a long and complicated history going back to ancient times. The practice of capital punishment has evolved significantly throughout Indian history, influenced by religious, cultural, and social factors. Understanding the historical context is critical to understanding the evolution of death punishment in India, as well as the ethical perspectives that have shaped its perception in Indian culture.

- **Ancient and Medieval India:** Justice and punishment were deeply rooted in religious and ethical concepts in ancient and mediaeval India. For certain transgressions, ancient writings like as the Manusmriti<sup>3</sup> and Arthashastra<sup>4</sup> mandated various forms of punishment, including death. These punishments were frequently harsh and aimed at maintaining social order and upholding dharma (righteousness) values.

During the mediaeval period, capital punishment was used to preserve law and order under the rule of many empires and kingdoms. The methods of execution varied and included beheading, hanging, and, in some cases, crucifixion.

- **British Colonial Rule:** With the advent of British colonial rule in India, the legal system underwent significant changes. The British established a judicial system that included elements of English common law and European legal concepts. During this period, the death penalty was regularly applied for crimes ranging from murder to subversion against the British Crown.

The colonial authorities implemented capital punishment as a tool of control and deterrence, often using public executions as spectacles to intimidate the local population. The Indian Penal Code of 1860, enacted during British rule, codified the offences punishable by death.

- **Post-Independence India:** The issue of capital punishment took on fresh significance when India gained independence in 1947. The newly established Indian government debated whether to keep or abolish the death sentence. The creators of the Indian Constitution, led

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<sup>3</sup> Manusmriti, also known as the Laws of Manu, is an ancient legal and religious text in Hinduism.

<sup>4</sup> The Arthashastra is an ancient Indian treatise on statecraft, economic policy, and military strategy attributed to the ancient scholar Chanakya (Kautilya).

by Dr B.R. Ambedkar, debated the issue extensively before deciding to keep the capital penalty as a legal sanction.

The Constitution of India, under Article 21<sup>5</sup>, guarantees the right to life and personal liberty. However, the same article allows for the deprivation of life under specific circumstances, including the imposition of the death penalty.

### III. ETHICAL JUSTIFICATIONS FOR CAPITAL PUNISHMENT

Proponents of capital punishment argue that it is a morally appropriate reaction to serious crimes, with many ethical arguments for its continued use. These moral debates are frequently based on conceptions of retributive justice, deterrence, and closure for victims' relatives. Let us look at each of these explanations and how they are used in Indian legal and societal systems.

- **Retributive Justice:** Retributive justice is a theory of punishment that holds that offenders should be punished in proportion to the harm they have caused. Capital punishment advocates think that certain crimes, particularly terrible offences like planned murder, justify the ultimate penalty - the forfeiture of the offender's life. They say that by imposing the death sentence, society preserves the idea that major wrongdoers deserve to face penalties commensurate with their conduct.

Within the Indian legal system, the concept of retributive justice is evident in the application of the "rarest of rare" doctrine established by the Supreme Court of India in the landmark case of *Bachan Singh v. State of Punjab* (1980)<sup>6</sup>. The doctrine states that the death sentence should be used only in the most extreme instances, when society's conscience is so severely outraged that life imprisonment would be insufficient. In such circumstances, supporters of retributive justice say that the death penalty is a legitimate and appropriate response to the enormity of the offence.

- **Deterrence:** The deterrence theory posits that the threat of severe punishment, such as the death penalty, will discourage potential offenders from committing heinous crimes. Proponents of capital punishment believe that the fear of losing one's life will be a powerful deterrent against murder and other capital offences, potentially reducing the incidence of such crimes in society.

In the Indian context, the effectiveness of the death penalty as a deterrent remains a subject of debate. Some argue that its existence sends a strong message about society's abhorrence

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<sup>5</sup> No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>6</sup> *Bachan Singh vs State Of Punjab* (1982) 3 SCC 24

of certain crimes, potentially dissuading individuals from engaging in them. However, opponents counter that empirical evidence on the deterrent effect of capital punishment is inconclusive, and factors such as the likelihood of apprehension, societal conditions, and the potential for irrational behaviour during crimes are equally influential in deterring criminal behaviour.

- **Closure for Victims' Families:** Another ethical argument put forward by proponents of capital punishment revolves around providing closure to the families of victims. They contend that the execution of the offender offers a sense of justice and closure to those who have endured immense suffering and loss due to the heinous act committed against their loved ones.

In the Indian legal system, cases involving crimes that have deeply affected the collective conscience of society and caused immense grief to victims' families are more likely to be considered for the imposition of the death penalty. The belief is that capital punishment can offer a form of closure and vindication to the affected families, though this perspective is also subject to critique.

#### **IV. ETHICAL CRITIQUES OF CAPITAL PUNISHMENT**

The practice of capital punishment has faced vehement opposition from various quarters due to a range of ethical critiques. These critiques challenge the moral implications of taking a human life, highlight the potential for wrongful convictions, and expose disparities in the application of the death penalty across different socioeconomic backgrounds in India. Let's delve deeper into these ethical concerns:

- **The Sanctity of Human Life:** One of the central ethical critiques against capital punishment is rooted in the belief in the sanctity of human life. Critics argue that the state's act of intentionally ending a human life, regardless of the crime committed, contradicts the fundamental value placed on human dignity and the inherent right to life. This perspective asserts that upholding the value of life is crucial to fostering a just and compassionate society.

Opponents of capital punishment contend that the state should not perpetuate violence through executions, as it compromises the moral high ground that society should uphold. By responding to violence with violence, critics argue that the state risks devaluing the preciousness of human life and legitimizing a cycle of vengeance rather than focusing on restorative justice and rehabilitation.

- **Potential for Wrongful Convictions:** A significant ethical concern surrounding capital punishment is the potential for wrongful convictions. In any judicial system, there is always a risk of errors, flawed evidence, or witness testimonies. However, in cases involving the death penalty, these errors become irreversible and catastrophic. Critics argue that executing an innocent person is an unconscionable act that undermines the very principles of justice and fairness.

India, like any other country, is not immune to cases of wrongful convictions. Factors such as inadequate legal representation, investigative lapses, and coerced confessions have led to instances where innocent individuals have been sentenced to death. These harrowing instances illustrate the ethical dilemma of imposing the ultimate punishment without absolute certainty of guilt.

- **Uneven Application of the Death Penalty:** Critics also point to the stark disparities in the application of the death penalty across different socioeconomic backgrounds in India. The death penalty is often disproportionately imposed on marginalized and economically vulnerable communities, raising concerns about fairness and equality before the law.

Research indicates that individuals from disadvantaged backgrounds are more likely to be subjected to capital punishment, while those with greater access to resources and legal representation may receive lesser sentences for similar crimes. This disparity further exacerbates existing social inequalities, leading to ethical questions about the fairness and impartiality of the justice system.

## V. CAPITAL PUNISHMENT AND THE INDIAN LEGAL SYSTEM

The Indian legal system plays a crucial role in determining the application of capital punishment in the country. The legislative framework for capital punishment is laid out in the Indian Penal Code (IPC) and various other laws, with provisions defining the crimes eligible for the death penalty.

The "rarest of rare" doctrine<sup>7</sup>, established by the Supreme Court of India in 1980, is a significant factor in determining whether an offender should be sentenced to death. According to this doctrine, the death penalty should only be imposed in the rarest of rare cases, where society's collective conscience is so profoundly shocked that it demands the ultimate punishment. This principle aims to ensure that capital punishment is reserved for the most egregious and heinous crimes, ensuring a proportionate response to the severity of the offence.

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<sup>7</sup> Bachan Singh vs State Of Punjab (1982) 3 SCC 24

The process of granting clemency is another important aspect of the Indian legal system concerning capital punishment. Article 72 of the Indian Constitution<sup>8</sup> grants the President of India the power to grant pardons, reprieves, respites, or remissions of punishment. Additionally, Article 161<sup>9</sup> empowers the Governors of individual states to grant similar clemency in certain cases.

Before an execution can be carried out, the convict may petition for clemency, and the President or Governor will review the case. They consider factors such as the convict's mental health, mitigating circumstances, and any procedural or legal irregularities. The decision to grant clemency lies with the executive authority, and the power to pardon aims to offer a safety valve against any potential miscarriages of justice.

While the "rarest of rare" doctrine and clemency provisions strive to ensure fair and judicious application of the death penalty, the complexities of individual cases and the moral dilemmas surrounding capital punishment continue to challenge the Indian legal system. As the judiciary and executive grapple with these issues, the debate on the ethical implications of the death penalty remains a central concern within India's legal landscape.

## **VI. CONTEMPORARY DEBATES AND FUTURE PROSPECTS**

The debate surrounding capital punishment in India remains dynamic and multifaceted, with diverse perspectives shaping the discourse. While the death penalty remains for certain heinous crimes, ongoing discussions exist on its ethical validity, effectiveness as a deterrent, and potential for wrongful convictions.

One of the central contemporary debates revolves around the "rarest of rare" doctrine and its consistent application. Critics argue that the application of the death penalty may not always align with the original intent of reserving it for the most exceptional cases, leading to questions about its fairness and arbitrariness.

Moreover, human rights organisations and activists continue to advocate for the abolition of the death penalty, citing its violation of the right to life, the risk of wrongful executions, and its disproportionate impact on marginalised communities.

Looking ahead, there is potential for future developments in the approach to capital punishment in India. With changing societal attitudes, there may be increasing calls for a more restorative and rehabilitative approach to justice, focusing on crime prevention, victim support, and

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<sup>8</sup> The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

<sup>9</sup> The Governor of a State shall have the power to grant pardons

rehabilitation of offenders.

Additionally, there is a scope for legislative reforms to address concerns surrounding the application of the death penalty and ensure greater consistency, fairness, and transparency in its implementation. Policymakers and legal experts may consider reevaluating the criteria for determining "rarest of rare" cases and exploring alternative sentencing options.

Furthermore, developments in international human rights law and evolving global perspectives on capital punishment may exert influence on India's approach to the death penalty. Increased engagement with international human rights bodies and participation in global discussions may shape the country's stance on this contentious issue.

## **VII. CONCLUSION**

The research on the ethics of capital punishment in India provides a comprehensive and insightful examination of this contentious practice's complexities. Throughout the study, we explored the historical context of capital punishment in India, the ethical justifications put forward by its proponents, and the ethical critiques raised by its opponents. We also analyzed the intersection between capital punishment and human rights, the role of the Indian legal system in determining death penalty cases, and the current debates shaping the discourse on this issue.

In conclusion, the ethics of capital punishment in India is a deeply intricate and evolving subject, shaped by historical, legal, ethical, and human rights considerations. The research highlights the need for continued dialogue and critical examination of this complex issue. As India moves forward, exploring alternatives prioritising human rights, justice, and compassion is essential. Policymakers, legal experts, and society must grapple with the profound ethical dilemmas surrounding the death penalty to ensure that the criminal justice system reflects the values of fairness, dignity, and humanity. Embracing a more restorative and rehabilitative approach to justice can lead to a more compassionate and equitable society where the sanctity of human life and the principles of human rights are upheld, even in the face of the most grievous crimes.

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