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# Death Penalty: A Study of Execution

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MAHALAKSHMI SWAMINATHAN<sup>1</sup>

## ABSTRACT

*India, a developing country, grapples with a rising crime rate despite having a plethora of laws to combat it. The inadequacy of punishments has been a key factor contributing to this issue. Discipline and punishment are essential to hold wrongdoers accountable and dissuade potential offenders through fear of consequences. In India, the most severe form of punishment is the death penalty, seen as a necessary legal measure. This research paper delves into the history of the death penalty in India, covering its historical context, attempts to abolish it, and the reasons behind its continued use. It also explores the mercy powers granted to the President and Governor. The paper scrutinizes whether the "rarest of rare" cases affect the constitutionality of Article 21 of the Indian Constitution, which pertains to the right to life and personal liberty. It argues for the benefits of employing the death penalty in cases involving heinous criminals and advocates for its more frequent utilization as a deterrent. In summary, this paper seeks to present arguments in favor of using the death penalty and promoting its application in cases involving extreme offenders in Indian society.*

**Keywords:** *Death penalty, retain, abolish, rarest of rare.*

## I. INTRODUCTION

The death penalty is a highly debated issue because it cannot be reversed once carried out. It's a legal mechanism in which the state executes individuals as a form of punishment for serious crimes. This practice aims to protect society from irredeemable offenders and to deter potential wrongdoers from engaging in heinous acts. The President and Governor have the authority to pardon or delay a death sentence. Typically, the death penalty is imposed for crimes such as abetment of duties, robbery accompanied by murder, and murder. In India, there have been eight executions, including those of the four individuals involved in the *Nirbhaya Rape case*.

According to NCRB data, around 2,500 death penalties have been issued since 2000. The death penalty is considered constitutionally valid when reserved for the rarest of the rare cases and is primarily seen as a means of deterrence. India strongly upholds this principle, although approximately 70% of countries worldwide have already abolished the death penalty.

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<sup>1</sup> Author is a student at Christ University, India.

## II. HISTORICAL BACKGROUND

The practice of the death penalty has been employed in every country worldwide. Its official historical inception as a codified law dates back to the 18th century. During this era, King Hammurabi of Babylon established the death penalty as punishment for approximately 25 different types of crimes. It also played a significant role in the Hittite Code of the 14th century. In ancient Athens, the Draconian Laws were particularly harsh, with death being the sole form of punishment for any crime. The methods used for carrying out the death penalty were extremely brutal, including drowning, burning alive, and beatings, etc.

### Indian History

Capital punishment has a long history in India, dating back to ancient times as evident in ancient texts and legal documents. The practice of the death penalty was used sporadically and often accompanied by harsh forms of torture. Even during the era of Buddha's teachings on non-violence (Ahimsa), King Ashoka did not prohibit the death penalty. The concept of capital punishment can also be found in the Mahabharata, which suggests that if destroying an individual or a family is deemed necessary for the safety of society, it should be done. Ancient lawgiver Manu advocated for the practice of capital punishment to instill fear in people, preventing them from committing heinous crimes. He believed that without this practice, chaos would prevail, and people would harm each other, much like fish devouring the weaker ones in the water. In India's attempts to abolish the death penalty, several efforts were made, but they were unsuccessful. Even before gaining independence, there were private bills introduced in the Legislative Assembly in 1931 to abolish the death penalty for certain criminal offenses, but they were rejected by the British Home Secretary. After Independence, the Indian government refrained from passing a bill to abolish the death penalty during the initial Lok Sabha session.

Similar efforts in the Rajya Sabha in 1958 and 1961 also met with failure. The Law Commission issued reports stating that the death penalty would continue to exist, and the government should retain the power of mercy. These reports were presented to the government and Lok Sabha in 1967 and 1971, respectively.

## III. THE DOCTRINE RAREST OF RARE

The concept of the "**Rarest of Rare**" principle in the judicial system was introduced following a significant judgment in the case of '*Bachan Singh v State of Punjab*' [(1980) 2

**SCC 684]**. This principle was further clarified in the landmark case of '*Machhi Singh v State of Punjab.*'

Although it lacks a precise legal definition, the "Rarest of Rare" doctrine essentially means that the death penalty should only be applied in exceedingly uncommon or extraordinary cases where the criminal's actions pose a significant threat to society. To apply this doctrine, several aspects of the crime must be carefully considered. These include the scale and seriousness of the crime, the nature of the crime and the offender, the victim's circumstances, the motive or reasons behind committing the crime, and the method used to carry it out. The death penalty can only be justified when all of these factors align in such a way as to warrant the most severe punishment. Concerns about the misuse of this principle are not supported by evidence and do not hold water in the ongoing debate.

#### **Does the constitutional validity of Article 21 get violated by the Rarest of the rare case?**

In the case of *Jagmohan v. State of U.P AIR 1973 SC 947 Cr.LJ 3301973 SCC162*, the Supreme Court was called upon to determine the legality of capital punishment. It was argued that the death penalty contravened an individual's right to life, which is a fundamental right protected under Article 21 of the Indian Constitution. However, the court, in this instance, dismissed these arguments and concluded that the death penalty did not violate Article 21. In this case, the Supreme Court upheld the constitutionality of capital punishment and underscored its role in deterring the occurrence of crimes within society.

In the case of *Meneka Gandhi v. UOI AIR 1978 SC 597*, the Supreme Court established that the implementation of the death penalty must follow a just and reasonable process. Each offender is entitled to procedural safeguards, as delineated in both natural and procedural laws, including:

##### **A. The death penalty is an extraordinary punishment, reserved for exceptional cases.**

- (i) The accused has the right to appeal.
- (ii) The accused is entitled to a fair hearing.
- (iii) The accused has the right to select a competent legal representative.
- (iv) The accused has the right to express themselves freely during the trial.
- (v) The High Court must properly administer the death penalty.
- (vi) The death penalty should only be carried out in rare cases.

- Offenders have the legal right to seek clemency or sentence reduction under Article 72 and Article 161 of the Constitution of India, from the President and Governor, respectively.
- Sentences must consider individual circumstances.
- Offenders must not be subjected to torture.

In the case of *Deena v. UOI AIR 1983 SC 1155*, the court addressed concerns regarding the method of hanging as an execution method and concluded that it is not a cruel or inhumane practice, thus not violating Article 21 of the Indian Constitution. In *Triveni bai v State of Gujarat*, the court emphasized the importance of ensuring a fair trial and avoiding delays in the execution of the death penalty. In conclusion, the "*Doctrine of the Rarest of Rare*" cases does not violate the constitutionality of Article 21 of the Indian Constitution.

### **Capital Punishment to accused violates Human Rights in India but is but beneficial to the society**

Under *Article 5* of the Universal Declaration of Human Rights (UDHR) from 1948, it is stated that no person should be subjected to any form of torture, cruelty, inhumane treatment, or punishment. The United Nations General Assembly has stressed the importance of adhering to higher standards of procedural safeguards in countries where the death penalty is practiced, emphasizing the necessity for a fair, reasonable, and just process. In this context, the thirteenth protocol of the European Convention for the Protection of Fundamental Rights and Human Rights were introduced for signatures, with the goal of abolishing the practice of capital punishment. Capital punishment is regarded as one of the most degrading and inhumane forms of punishment, infringing upon the human rights of the offender as per Article 3 of the European Convention on Human Rights. **Article 3 of The UDHR** affirms that every individual holds a legal right to liberty, personal security, and the ability to live their lives as they choose. All states acknowledge the need for punitive measures against wrongdoers. Different theories of punishment exist, including the deterrent theory, retributive theory, reformatory theory, rehabilitative theory, and preventive theory. The deterrent theory, for instance, posits that punishment serves as a warning to others, aiming to deter the proliferation of criminal behavior in society by removing wrongdoers. Severe penalties, such as the death penalty, are intended to function as deterrents and examples to the public, conveying the message that those who engage in criminal acts will face similar consequences. The deterrent theory operates with four primary objectives: prevention, elimination, isolation, and serving as a warning to potential wrongdoers in society.

The Economic and Social Council of the United Nations has issued guidelines for the application of the death penalty, including the following principles:

- Capital punishment should not be imposed for political motives or for expedience.
- The application of the death penalty should be restricted to the most serious crimes in member countries that have not abolished the practice. India adheres to the UN ECOSOC guidelines by reserving the death penalty for only the gravest offenses.
- The death penalty should not be meted out to pregnant women or individuals with mental illnesses.
- Minors below the age of 16 should not be subject to the death penalty.
- Everyone should have the right to appeal in a higher court.
- According to Article 14 of the International Covenant on Civil and Political Rights (ICCPR), the death penalty should only be imposed following a fair and just procedure.
- There should be no lingering impact of the death penalty.

The Indian judiciary adheres to all the UN ECOSOC rules when imposing the death penalty in the rarest of the rare cases, as it can have a far-reaching impact on the general public and does not contravene UN ECOSOC regulations.

Article 21 of the Indian Constitution states that no individual can be deprived of their fundamental right to life, except in accordance with the established legal framework. This means that if a person has been legally sentenced to the death penalty, it is deemed fair and just under Indian law. While the international perspective considers the death penalty a violation of human rights, it does not contravene the legality of Article 21 of the Indian Constitution, nor is it deemed unfair under the Indian Constitution. In the broader context of the Indian public, it is often said that if an individual repeatedly disrupts public order through their criminal activities, their life should be taken, provided it appears reasonable to the guardians of the constitution.

This perspective takes into account not only the human rights of the accused but also the rights of the victim. It seeks to take retribution from the wrongdoer for the harm they caused. These actions could lead to social unrest and the breaking of laws, which could undermine the stability of society. Therefore, it is necessary to enforce strict laws to prevent such actions, and it can be argued that Capital Punishment is beneficial for society.

### **Clemency Powers**

The Indian Constitution bestows special clemency powers upon the President of India and Governors of states, as outlined in Article 72 and Article 161. These powers come into play when all legal avenues for the accused have been exhausted, making the President and Governors the last resort for appeals. They possess the authority to take various actions, including:

1. Remission: Shortening the duration of the sentence.
2. Commutation: Replacing the original punishment with a less severe one.
3. Complete Pardon: Granting the offender full exemption from any further penalty.
4. Reprieve: Providing a temporary suspension of the sentence.
5. Respite: Offering relief or temporary postponement of the penalty.

Multiple pardon requests can be submitted. These provisions ensure that the death penalty is only imposed after thorough scrutiny of the case to confirm the absence of errors and the full culpability of the offender.

### **IV. OPINIONS ON RETENTION OF DEATH PENALTY**

The debate over the retention or abolition of the death penalty has been a global issue for a long time. Proponents of retaining capital punishment argue that it is essential to deter murder, as otherwise, murderers may go unpunished. Those in favor of capital punishment contend that in a country like India, which is economically challenged, it would be impractical to incarcerate all offenders of heinous crimes. They believe that retaining the death penalty creates a deterrent effect, promoting law and order in society. It is also seen as a form of societal retribution, and the state is believed to have the full authority to execute the worst criminals. Supporters claim that capital punishment serves as a warning or ultimatum to potential murderers, and keeping them alive could pose a threat to the lives of citizens when they are eventually released or on parole.

They argue that even if abolition is to be considered, the current timing might not be right, as crime rates have increased, and society has not yet progressed to a point where abolition would be appropriate.

#### **Why does the death penalty still prevail in India?**

It is evident that the rehabilitative theory of punishment has not been effective in India, resulting in an increase in the crime rate. Therefore, instilling the fear of death in the minds of

criminals is crucial to create a safer society. India has also opposed the United General Assembly's resolution advocating for the abolition or prohibition of capital punishment, as it goes against India's legal framework.

In the current scenario, India has experienced a rise in murder and rape cases, necessitating strict action against the accused. Therefore, abolishing the death penalty would not be logical. Capital punishment is considered a more intimidating punishment than life imprisonment, and its increased implementation when the accused is proven completely guilty can serve as a strong deterrent. In 2019, Indian trial courts imposed 102 death sentences for rape and murder, the highest in the past four years. Under the guidance of former Chief Justice Ranjan Gogoi, the Supreme Court handled approximately 27 death penalty cases, marking the highest number since 2001.

## **V. CONCLUSION**

The fear of death is a universal apprehension, and if it becomes a punishment for heinous crimes, individuals may be deterred from committing such acts. In the current context, abolishing the practice of capital punishment is not advisable. It should be retained for the betterment of society and reserved for the most exceptional and extreme cases. Presently, legal proceedings are excessively complex and protracted, leading to slow processes and a low execution rate.

Therefore, cases should be expedited to ensure swift and appropriate punishment for wrongdoers. The death penalty must be commensurate with the nature and severity of the crime. There should be no undue delay in carrying out the death penalty. Terrorists should not be spared for their crimes. Instead of completely abolishing capital punishment, it should be retained in the Indian Penal Code (IPC) as a strict deterrent for offenders and to maintain public faith in justice, ensuring that the most heinous criminals will face this punishment only in the rarest and most extreme cases. It is essential to consider Bentham's theory of pleasure and pain. In conclusion, based on the research paper, it can be asserted that capital punishment should be implemented only in the 'rarest of the rare cases' for the welfare and safety of society.

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