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# Status of Death Penalty in India

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## ABSTRACT

*The death penalty or death sentence also referred to as capital punishment is awarded for capital offences like murder, rape or for any other offence where a provision of the death penalty as a punishment is mentioned in the law. The basic argument in favour of the death penalty appears to be the theory of retributive justice. This theory states that a person who has committed such a grave offence must also suffer the same fate. Capital punishment is basically awarded to create a deterrent effect on society so that the people fear the consequences of the offence and think twice before committing it. In this research paper, we will discuss the concept of the death penalty and the legislation pertaining to it in India and above the constitutional validity of the death penalty through various case laws in India. In the end, I will conclude whether the Indian stance on the death penalty is justified or not.*

**Keywords:** *Death Penalty, Capital Punishment, Deterrent Effect, Retributive Justice.*

## I. INTRODUCTION

The life of a human has the most significant role in society as it gives effect to other life forms i.e., plants and animals. It is only the humans who bring all the other life forms in effect and needs to be valued. Taking a life of a person is nowhere a justified act but when it comes to taking someone's life under the direction of law, then in that case it requires an in-depth study. The death penalty can be simply referred to as an act where the life of a person is taken by the State by following the due procedure of law for the heinous offence committed by that person. But the concept of the death penalty is not recent in this contemporary world, as it got its existence from ancient times. It was seen to be practised in all centuries of human life society. This 21st century now openly debates on the issue that time has come for the abolishment of the death penalty, by making up satisfactory opinions, arguments and certain conditions on which the death penalty should be imposed. In India, the death penalty is specifically provided as a form of punishment if a crime is committed by a person under the Indian Penal Code. Taking someone's life is not a casual act and raises a deep concern regarding the right to life of an individual.

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Therefore, this paper highlights and stretches out the concept, evolution, provisions relating to the death penalty and its constitutional validity in India to determine how far is it justified and what reforms needs to be made.

## **II. DEATH PENALTY: MEANING**

The death penalty is a process of law whereby a person is put to death by the state as a form of punishment for a crime. The judicial decree that someone is punished in this manner is referred to as a death sentence, while the actual process of killing the person under this form of punishment is execution. Though there has been a global trend towards the abolition of capital punishment; still, India has not adopted this position. The element of irreversibility attached to this form of punishment makes it different from other forms of punishment as a man once executed for a crime can never be brought back to life. Therefore, if any error had occurred while deciding on a matter, that error cannot be rectified at a later stage.<sup>2</sup>

## **III. INDIAN LEGISLATION AS TO THE DEATH PENALTY**

India is one of the largest and most populous countries in the world with a rapidly developing economy and therefore added to that India is also a country that consists of both crime and criminals. In India, the measure of punishment awarded in a given case must depend on the intensity of the crime. The entire criminal law of India is majorly consolidated in the Indian Penal Code and Criminal Procedure Code.<sup>3</sup>

Under criminal law, punishment is provided to stop the wrongdoer from committing the crime again. Punishment is a result of a wrong committed by a person. Provisions for punishment are provided in chapter III under section 53 of the Indian Penal Code (IPC).

This section defines various kinds of punishments to which an offender is liable if they commit an offence under IPC. The court has the power to reduce the quantum of punishment only after taking into consideration the various aspects and the mitigating circumstances if any, of the case.<sup>4</sup>

In Ancient India, the retributive theory of punishment used to be followed where people were not so civilized and followed the rule of an eye for an eye, a tooth for a tooth.

But over a period of time and the people becoming civilized, they tend to follow the reformative

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<sup>2</sup> Aditi Agarwal, Death Penalty: An overview of Indian cases (Sept. 2, 2014), Death Penalty: An Overview of Indian Cases - Academike (lawctopus.com).

<sup>3</sup> Devansh Agarwal, Death penalty in India, 4 *International Journal of Law Management & Humanities* 154, 161-162 (2021).

<sup>4</sup>Subhashini Parihar, Kinds of punishment under the Indian Penal Code, <https://www.writinglaw.com/punishments-under-ipc/>.

theory to provide punishment to ensure that the punishment awarded is neither too harsh nor too easy that it fails to serve its purpose of bringing an impact on the offender as well as acting as an eye-opener for the society. The ideal punishment is considered to be the one that is of such a nature that it brings reform in a person's personality and mindset.

Punishments as provided under Section 53, IPC:

- Death Penalty
- Imprisonment For Life
- Imprisonment(simple or rigorous)
- Forfeiture of Property
- Fine

As per section 53 of the Indian Penal Code, currently, there are five types of punishments that a court may provide to a person convicted for a crime.<sup>5</sup>

**Offences punishable with death penalty under IPC:**

- (i) Waging or attempting to wage war or abetting waging of war against the Government of India under section 121.
- (ii) The abetting mutiny was actually committed under section 132.
- (iii) Giving or fabricating false evidence upon which an innocent person suffers death under section 194.
- (iv) Murder may be punished with death or life imprisonment under section 302.
- (v) Abetment of suicide of a minor, or insane, or an intoxicated person under section 305.
- (vi) Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused under section 307.
- (vii) Kidnapping for ransom etc. under section 364A.
- (viii) Dacoity accompanied with murder under section 369.<sup>6</sup>

In addition to the above-stated cases, IPC provides for capital punishment in the following conditions:

- (ix) Criminal conspiracy to commit any offence punishable with death, if committed in consequence thereof for which no punishment is prescribed as stated under section

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<sup>6</sup> K.D. Gaur, Textbook on Indian Penal Code 148 (Lexis Nexis, Gurgaon, Sixth edition 2016).

120B.

- (x) Joint liability on all the persons who commit an offence punishable with death, if committed in furtherance of common intention or common object of all under sections 34 and 149.
- (xi) Abetment of offences punishable with death under section 109.<sup>7</sup>

Other laws providing for death sentence in India are as follows:

- (i) The Indian Air Force Act, 1950.
- (ii) The Army Act, 1950.
- (iii) The Navy Act, 1950.
- (iv) The National Security Guards Act, 1986 and the Indo-Tibetan Border Police Act, 1992 prescribe the death sentence as an alternative punishment for defined offences committed by members of the armed forces;
- (v) The Commission of Sati (Prevention) Act of 1987.
- (vi) The Narcotic Drugs and Psychotropic Substances Act of 1985,
- (vii) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989.<sup>8</sup>

#### IV. CONSTITUTIONAL VALIDITY OF DEATH PENALTY

The question of the constitutional validity of the death penalty was considered by a Constitutional Bench of the Supreme Court in the case of *Bachan Singh v. the State of Punjab*<sup>9</sup>. The matter came to the reference of the Constitutional Bench, as it was noticed by the bench hearing the case that there was a conflict between two rulings of the Supreme Court on the issue of the scope and validity of the provision which enabled the imposition of the death penalty.

These two cases were the ruling of the Constitutional Bench in *Jagmohan v. State of Uttar Pradesh*<sup>10</sup>, which declared the death penalty to be constitutionally valid, and the ruling of another three-member bench in the case of *Rajendra Prasad v. State of Uttar Pradesh*<sup>11</sup>, in which the majority of two judges, namely, Krishna Iyer and DA Desai JJ, ruled that when the

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<sup>7</sup> Ibid.

<sup>8</sup> Id 149.

<sup>9</sup> AIR 1980 SC 898.

<sup>10</sup> AIR 1973 SC 947.

<sup>11</sup> AIR 1979 SC 916.

trial court comes to a conclusion that the accused is guilty of murder, then the state through the prosecutor should be called upon by the court to state if the extreme penalty is called for; and if the answer comes in the positive, then the court should call upon the prosecutor to establish, if necessary by leading evidence, facts for seeking the extreme penalty of law. Those reasons accompanied with the evidence would constitute special reasons as put forward by the state, on the basis of which the court could decide whether to award the death penalty or not. However, the accused would be permitted to rebut the evidence, but the only consideration would be about the sentence and not about the guilt. Further, the majority held that the focus of determining 'Special Reason' was not to be the crime, but the criminal.<sup>12</sup>

In *Bachan Singh v. the State of Punjab*<sup>13</sup>, the Constitutional Bench, by a majority of four judges comprising Chandrachud CJ, Sarkaria, AC Gupta and NI Untwalia JJ, after a lengthy discussion on the matter which included the comparison of the law on the death penalty in some other countries like the US and UK, went on to uphold the constitutional validity of death penalty.

The Supreme Court's ruling that death sentence ought to be imposed only in the 'rarest of rare cases' was expanded in *Macchi Singh v. the State of Punjab*<sup>14</sup>. The following prepositions were culled out by the Supreme Court from the guidelines indicated in Bachan Singh's case. They are:

- (i) The extreme punishment of death should not be inflicted except in gravest cases of extreme culpability.
- (ii) Life imprisonment is the rule and death sentence is an exception. In other words, the death sentence must only be imposed in the cases where life imprisonment appears to be an altogether inadequate and insufficient punishment with reference to the circumstances of the crime and provided, the option to impose a sentence of life imprisonment cannot be efficiently exercised having regard to the nature and circumstances of the case and all the other relevant circumstances;
- (iii) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating circumstances and the mitigating circumstances before the option is exercised. In order to apply these

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<sup>12</sup> PSA Pillai, Criminal Law 284, (Lexis Nexis, Gurgaon, 12<sup>th</sup> edition, 2014).

<sup>13</sup> AIR 1980 SC 898.

<sup>14</sup> AIR 1983 SC 957.

guidelines inter alia, the following questions may be asked and answered:

- (a) If there is something uncommon about the crime, which renders sentence of imprisonment for life improper and calls for a death sentence.
- (b) When the circumstances of the crime are such that there is no alternative except to impose a death sentence even after giving maximum weightage to the mitigating circumstances speaking in favour of the offender.

## V. CONSTITUTIONAL LAW AS TO DEATH PENALTY

**Article 21** of the Indian Constitution guarantees the right to life and personal liberty including the right to live with human dignity. The state may only take away or abridge the right to live in the name of law and public order by the “due process of law” as held in the case of *Maneka Gandhi v. Union of India*<sup>15</sup>. This procedure which takes away the sacrosanct life of a human being must be just, fair and reasonable. Our constitutional principle regarding this can be stated as follows:

- Death penalty should only be awarded in the rarest of rare cases.
- Death penalty should be treated as an exceptional punishment and can be sentenced only on special grounds.
- The accused should be granted the right to be heard.
- In the light of individual circumstances, the sentence awarded should be individualized.
- The death penalty shall be confirmed by the High Court against which there lies a right to appeal to the Supreme Court under Article 136 of the Constitution and under **Section 379** of the Cr.P.C.
- The accused may pray for commutation or pardoning of death sentence under **Sections 433 and 434** of the Cr.P.C. and also to the President or the Governors under **Articles 72 and 161**.
- However, the essence of the governor’s power should not rest on the basis of race, religion, caste or political affiliations, but on rule of law and rational issues.
- Accused has a right to prompt and fair trial in accordance with Articles 21 and 22 of the Constitution.
- The accused is also not entitled to be tortured under Articles 21 and 22 of the

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<sup>15</sup> 1978 AIR 597, 1978 SCR (2) 621.

Constitution.

- Under Articles 19 and 21 of the Constitution, the accused has the right to freedom of speech and expression under custody.
- The accused is entitled to be presented by duly appointed and qualified lawyers.<sup>16</sup>

## VI. CONCLUSION

Death sentence is a cruel and inhumane act that takes away the most important fundamental right to the life of an individual and ends a person's very existence. Sometimes, it also has the possibility of taking away the life of a person who was innocent and is wrongly accused in the complex procedure of law. It deprives the accused of the chance of being rehabilitated and reformed thereby, reducing the possibility of a positive change in today's generation who once indulged in criminal activities does not find out the way and support to come out of that and thus, become habitual offenders. Though it is a very cruel act of punishment still it carries some positive points with it as it acts as a deterrent factor to other criminals because the consequence attached to such a form of punishment discourages the criminals from committing offences because rarely does a human dares to do an act at the expense of his own life. Moreover, it also acts as a measure to get rid of dangerous people and ensure safety the of society by reducing the fear of crime.

In simple terms, the death sentence is the highest and the most severe form of punishment that a country's judicial system can impose. Though it is heinous and violative of the most important fundamental right of an individual, still it holds some importance as it is equally essential to have an exceptional punishment in cases where an exceptional crime is committed.

The law relating to the death penalty in India appears to be justified and proper in a way that the death penalty is not a rule and is only awarded in the rarest of rare cases.

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<sup>16</sup> Khushi Agrawal, All you need to know about capital punishment in India (May 27, 2019), All you need to know about capital punishment in India (iplayers.in).