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DEATH PENALTY IN INDIA: DETERRENCE OR HUMAN RIGHTS VIOLATION?

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Abstract

Capital punishment continues to generate intense debate within criminal justice systems across the world, particularly concerning its moral legitimacy, constitutional validity, and compatibility with human rights. In India, the death penalty is retained for exceptionally grave offences under the “rarest of rare” doctrine, yet its justification remains controversial. This article undertakes a critical examination of the death penalty in India by tracing its historical development, analyzing constitutional provisions and judicial pronouncements, and assessing its effectiveness as a deterrent to crime. It also evaluates capital punishment through the lens of human rights, with reference to international legal standards and global abolitionist trends. The article contends that despite judicial safeguards aimed at limiting its application, the death penalty increasingly conflicts with constitutional morality and the evolving understanding of human dignity and human rights.

Keywords: - Capital Punishment, Rarest of Rare Doctrine, Constitutional Validity, Human Rights, Deterrence Theory.

1. Introduction

The right to life occupies a central position in modern constitutional democracies and is widely recognized as the foundation of all other rights. Article 21 of the Constitution of India provides that no person shall be deprived of life or personal liberty except according to a procedure established by law.¹ At the same time, Indian criminal law authorizes the imposition of the death penalty for certain offences, creating an inherent tension between the protection of life and the State’s power to impose capital punishment.

¹ Constitution of India, art. 21.

This contradiction has given rise to sustained legal, ethical, and philosophical debates. Proponents view the death penalty as a necessary response to heinous crimes, while critics argue that it represents an unacceptable infringement of human rights. India's position is particularly complex: although many nations have abolished capital punishment, India continues to retain it for extraordinary cases.

Judicial doctrines such as the "rarest of rare" principle seek to limit the use of the death penalty, yet executions have not been entirely eliminated. This raises pressing concerns regarding arbitrariness, unequal application, and the moral authority of the State in taking life. This article examines whether capital punishment in India genuinely serves the objective of deterrence or whether it undermines constitutional values and human rights.

2. Historical Development of Capital Punishment in India

2.1 Pre-Independence Period

The practice of imposing the death penalty can be traced back to ancient Indian legal traditions, including references in texts such as the *Manusmriti*, which prescribed severe punishments for serious offences. During British colonial rule, capital punishment became an integral part of the penal system. The Indian Penal Code, 1860, drafted under the leadership of Lord Macaulay, formally incorporated death as a punishment for offences such as murder, treason, and dacoity accompanied by murder.²

For the colonial administration, the death penalty was considered an essential instrument for maintaining authority and suppressing resistance. As a result, its use was frequent and expansive.

2.2 Post-Independence Continuity

Following independence, India largely retained the colonial criminal justice framework, including provisions relating to capital punishment. The IPC and the Code of Criminal Procedure continued to authorize the death penalty, unlike in some newly independent countries that chose abolition.

However, the adoption of the Constitution in 1950 introduced enforceable fundamental rights and judicial oversight. This shift enabled constitutional challenges to the death penalty and compelled courts to reconcile punitive laws with the guarantees of life, liberty, and dignity.

² Indian Penal Code, 1860.

3. Constitutional Validity of the Death Penalty

3.1 Scope of Article 21

Article 21 does not explicitly prohibit capital punishment. Judicial interpretation has clarified that the expression “procedure established by law” must meet standards of fairness, reasonableness, and non-arbitrariness.³ Consequently, the constitutionality of the death penalty is assessed not in isolation, but in relation to the procedure governing its imposition.

3.2 Judicial Approval in *Jagmohan Singh*

In *Jagmohan Singh v. State of Uttar Pradesh*,⁴ the Supreme Court upheld the constitutionality of capital punishment, observing that deprivation of life pursuant to a lawful judicial process does not violate Article 21. The Court emphasized that sentencing judges are required to consider the facts and circumstances of each case before imposing the death sentence.

3.3 *Bachan Singh* and the Restrictive Approach

A significant turning point came with *Bachan Singh v. State of Punjab*,⁵ where the Supreme Court reaffirmed the validity of the death penalty but confined its application to the “rarest of rare” cases. The Court held that life imprisonment should be the rule and death the exception, to be imposed only when alternative punishment is unquestionably foreclosed.

This judgment underscored the importance of individualized sentencing and consideration of mitigating factors, including the offender’s personal circumstances and potential for reform.

4. The ‘Rarest of Rare’ Doctrine

4.1 Judicial Elaboration

The contours of the “rarest of rare” principle were further clarified in *Machhi Singh v. State of Punjab*,⁶ where the Court identified categories of cases that might justify the death penalty, such as exceptionally brutal crimes or offences that profoundly shock societal conscience.

Despite this guidance, the doctrine remains open-ended and susceptible to subjective interpretation.

³ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁴ *Jagmohan Singh v. State of Uttar Pradesh*, AIR 1973 SC 947.

⁵ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

⁶ *Machhi Singh v. State of Punjab*, AIR 1983 SC 957.

4.2 Concerns of Arbitrariness

Judicial inconsistency in sentencing has emerged as a major criticism of the death penalty framework. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*,⁷ the Supreme Court acknowledged disparities in capital sentencing, highlighting concerns under Article 14 of the Constitution.

The lack of uniform standards has led to apprehensions that the death penalty may be imposed in an arbitrary and unequal manner.

5. Deterrence and Capital Punishment

5.1 Deterrence Theory

The deterrence rationale is often cited as the principal justification for the death penalty. According to this theory, the threat of execution is expected to discourage individuals from committing serious crimes by instilling fear of severe consequences.

5.2 Empirical Findings

Empirical research has failed to establish a clear correlation between the death penalty and reduced crime rates. The Law Commission of India, in its 262nd Report, concluded that capital punishment does not demonstrably serve as a more effective deterrent than life imprisonment.⁸ Crimes driven by ideological motives, extreme emotional states, or social circumstances are particularly resistant to deterrent effects.

5.3 Judicial Skepticism

Judicial skepticism toward deterrence was evident in *Rajendra Prasad v. State of Uttar Pradesh*,⁹ where Justice Krishna Iyer emphasized the reformatory function of punishment over retribution. Although this perspective did not prevail entirely, it has influenced subsequent judicial thinking.

6. Human Rights Dimensions

6.1 Right to Life and Dignity

From a human rights standpoint, the death penalty represents an intentional deprivation of life by the State. Critics argue that such deprivation is incompatible with the values of dignity and

⁷ *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498.

⁸ Law Commission of India, 262nd Report on the Death Penalty (2015).

⁹ *Rajendra Prasad v. State of Uttar Pradesh*, AIR 1979 SC 916.

humanity embedded in Article 21.

In *Mithu v. State of Punjab*,¹⁰ the Supreme Court invalidated provisions mandating the death penalty, holding that the absence of judicial discretion violates Articles 14 and 21.

6.2 International Human Rights Law

Globally, the death penalty is increasingly regarded as inconsistent with human rights. Article 6 of the International Covenant on Civil and Political Rights permits capital punishment only in limited circumstances and encourages progressive abolition. Although India is a party to the ICCPR, it has retained the death penalty.

United Nations General Assembly resolutions calling for a moratorium on executions reflect a growing international consensus against capital punishment.

6.3 Irreversibility and Miscarriage of Justice

The irreversible nature of the death penalty magnifies the consequences of judicial error. Wrongful convictions, once followed by execution, eliminate any possibility of rectifying injustice, making this punishment uniquely problematic.

7. Procedural Challenges

7.1 Delay as Cruelty

In *Shatrughan Chauhan v. Union of India*,¹¹ the Supreme Court held that inordinate delay in the execution of death sentences amounts to mental cruelty and provides grounds for commutation.

Prolonged uncertainty surrounding execution dates often results in severe psychological trauma for prisoners.

7.2 Executive Clemency

While Articles 72 and 161 empower the executive to grant mercy, the process has been criticized for opacity and delay. Lack of clear guidelines has raised concerns regarding fairness and accountability.

¹⁰ *Mithu v. State of Punjab*, AIR 1983 SC 473.

¹¹ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

8. Comparative and Global Trends

A majority of countries have abolished the death penalty either in law or in practice. Jurisdictions such as the United Kingdom, Canada, and South Africa have rejected capital punishment on human rights grounds and due to its questionable deterrent value.

India's continued retention places it among a diminishing number of democracies that still impose the death penalty.

9. Case for Retention

Advocates of retention argue that capital punishment is necessary to address crimes of extreme gravity, particularly terrorism and offences threatening national security. They contend that abolition may weaken public confidence in the criminal justice system and undermine victims' sense of justice.

10. Case for Abolition

Opponents emphasize that the death penalty is applied inconsistently, disproportionately affects marginalized groups, and fails to achieve its deterrent objective. The possibility of rehabilitation and reform, even for serious offenders, strengthens the argument for abolition. The Law Commission's 262nd Report recommended abolition of the death penalty for ordinary crimes, retaining it only for terrorism-related offences.

11. Conclusion

The persistence of the death penalty in India reflects an ongoing struggle between retributive impulses and constitutional commitments to human rights. Despite judicial efforts to limit its scope, concerns regarding arbitrariness, lack of deterrence, and violation of human dignity remain unresolved.

In a constitutional democracy grounded in liberty, equality, and dignity, the moral and legal justification for capital punishment appears increasingly fragile. A forward-looking approach would involve moving toward abolition while enhancing the certainty and effectiveness of punishment through systemic criminal justice reforms.