

DE JURE NEXUS LAW JOURNAL

Author:

Deepanshita Singh

Symbiosis Law School, Noida

2nd Year, B.A. LL.B.

**A STUDY ON CAPITAL PUNISHMENT IN INDIA****INTRODUCTION**

Capital punishment, commonly known as the death penalty, is the execution of a person who has been sentenced to death by a court of law. Because of the potential of commutation to life imprisonment, the terms death sentence and capital punishment are commonly interchanged. However, application of the penalty does not necessarily result in execution (even when it is affirmed on appeal)¹.

The expression "Capital Punishment" refers to the harshest type of punishment. It is the retribution that will be meted out to those who commit the most egregious, severe, and abhorrent crimes against mankind. While the meaning and scope of such offences vary from nation to nation, state to state, and age to age, the death penalty has always been the connotation of capital punishment in jurisprudence, as well as criminology and penology.²

EVOLUTION OF CAPITAL PUNISHMENT IN INDIA

When India gained independence in 1947, it kept the Indian Penal Code of 1861, which included the death sentence for murder. Several members of the Constituent Assembly proposed removing the death sentence during their meetings to draft the Constitution between

¹ Available at- <http://www.britannica.com/topic/capital-punishment> (Last Accessed on 15th January 22)

² Dr. Subhash C. Gupta, Capital Punishment in India, 2000, p. 1

1947 and 1949, but no such provision was included in the document. Bills were introduced in both the houses by private members several times during the next two decades, but no such bill was ever passed.

Around 4000 people were estimated to have been executed after receiving the death penalty in the period between 1950 and 1980; and this number became even more difficult to calculate for the period between 1980- mid 1990s. The Supreme Court decided in *Bachan Singh v. State of Punjab*³ that the death sentence should only be employed in the "rarest of rare" circumstances, however it is unclear what constitutes the "rarest of the rare."

INDIA'S STAND ON CAPITAL PUNISHMENT

India voted against a United Nations resolution asking for a ban on the capital punishment because it violates Indian law and each country's sovereign right to construct its own legal system.

It is given for the most heinous crimes in India; for the most terrible and horrible offences. Article 21 states that no one shall be deprived of their 'right to life,' which is guaranteed to all Indian citizens. Under the Indian Penal Code, various crimes such as criminal conspiracy, murder, war against the government, abetment of mutiny, dacoity with murder, and anti-terrorism are punishable by death.

In circumstances involving death sentences, only the president has the authority to grant clemency. The death penalty must be confirmed by the High Court once a criminal has been given the death penalty by the Sessions Court. If the convict's appeal to the Apex Court is unsuccessful, he may make a "mercy petition" with the President of India. States must follow detailed instructions on how to deal with applications for mercy from or on behalf of death-sentenced inmates. The Ministry of Home Affairs will set out the procedures for such convicts' appeals to the Supreme Court and requests for special leave to appeal to that court. The President of India has the authority under Article 72⁴ of the Indian Constitution to award pardons, reprieves, respites, or remissions of penalty, as well as to suspend, remit, or decrease the sentence of anyone who was convicted of a crime.

³ AIR 1980 SC 898

⁴ India Const. Art. 72

DEATH PENALTY CRIMES

1. Aggravated Murder- It is punishable by death as per Section 302⁵ of the IPC. However, in the Bachan Singh case, the Apex Court has ruled that a death sentence is only constitutional when given in the rarest of rare cases.
2. Terrorism-related offences not resulting in death- On the 9th of February 2013, Muhammad Afzal was hanged. He was executed for the attack on India's parliament in December 2001, in which nine persons were slain by five gunmen armed with explosives. On November 21, 2012, Mohammad Ajmal Amir Qasab, the lone surviving gunman from the 2008 attack, was hung for a variety of offences, including waging war on India, murder, and terrorist acts. The use of any particular category of explosive to trigger an explosion that poses a risk of death or substantial property damage is punishable by death.
3. Rape not Resulting in Death- Under the Criminal Law Act of 2013⁶, a person who inflicts injuries in a sexual assault that leads in death or leaves the victim in a "persistent vegetative state" may be sentenced to death. Rapes committed by gangs are punished by death. Following the gang rape and killing of medical student Jyoti Singh Pandey in New Delhi in 2012, these modifications were made. According to the 2018 Criminal Law Ordinance, a person who is found guilty of raping a girl under the age of 12 may be sentenced to death or 20 years in jail, as well as a fine. A girl under the age of 12 who is gang raped faces the death sentence or life in prison, according to the 2018 amendment. Following the rape and murder of an eight-year-old girl, Asifa Bano, which sparked political turmoil in Jammu and Kashmir State and across the country, several modifications to criminal law were made.
4. Kidnapping not Resulting in Death- According to Section 364A⁷ of the Indian Penal Code, 1860, kidnapping that does not result in death is an offence that can be punishable with death. If someone kidnaps someone and attempts to kill him, and the kidnapping act results in the death of the person in question, he will be subject to prosecution under this provision.
5. Military Offences- If an officer of the Army, Navy, or Air Force aids and abets assault, mutiny, or other connected offences, he will be sentenced to death.

⁵ Indian Penal Code, 1860, §302

⁶ Criminal Law (Amendment) Act, 2013

⁷ Indian Penal Code, 1860, §364A

6. Treason- An individual who attempts or is taking up weapons against the government and assists Navy, Army, or Air Force officials, troopers, or individuals in launching a revolt will face the death penalty.
7. Drug Trafficking- If a person attempts to perform any of a variety of drug trafficking felonies or finances such narcotic acts, the person concerned may be sentenced to death.
8. Other offences-
 - a. A person who participates in a criminal conspiracy to commit a capital offence is subject to the death sentence.
 - b. If an individual gives false evidence against an innocent person despite knowing that that person could face the death sentence based on that evidence, and if that evidence leads to the execution of an innocent person, the person who provided the false evidence will face the death penalty.
 - c. A person who commits murder during an armed robbery in India is sentenced to death under the Indian Penal Code.
 - d. Organized crime involvement is punishable by death if it results in death.
 - e. Committing Sati to another person, or assisting in the commission of Sati to another person, is also punishable by death, etc.

CONSTITUTIONALITY OF CAPITAL PUNISHMENT IN INDIA

Article 21 of the Constitution guarantees everyone the right to life and personal independence, as well as the right to live with dignity. In the name of law and good order, the state may take away or limit even the right to live. However, this approach must follow "due process," as established in *Maneka Gandhi v. Union of India*⁸ case. The process of terminating a human being's sacred life must be ethical, fair, and reasonable.

Our constitutional principle is as follows:

- The death sentence should be applied only in the most extreme of circumstances.
- Only on rare grounds can the death penalty be sentenced, and it should be regarded as an extraordinary punishment.
- The accused has the right to be heard.

⁸ 1978 AIR 597

- The sentencing should be tailored to the individual's circumstances.
- The High Court must approve the death punishment. There is indeed a right to appeal to the Supreme Court under Article 136⁹ of the Constitution and Section 379¹⁰ of the Code of Criminal Procedure.
- Sections 433 and 434¹¹ of the Code of Criminal Procedure allow the accused to pray to the President or the Governors for pardon, commutation, or other relief from their punishment. Apart from judicial power, Articles 72 and 161¹² give the President and governor discretionary power to intervene in the merits of the case; however, judicial authorities have limited authority to review it, and they must guarantee that the President or governor has all necessary documentation and material before them.
- The prisoner has freedom of speech and expression while in custody per Art.21 and 19 of the Constitution.
- The accused has the right to be represented by lawyers who have been lawfully qualified and appointed.

LANDMARK JUDGEMENTS

1. The Supreme Court ruled in *Jagmohan v. State of Uttar Pradesh*¹³ that Articles 14, 19, and 21 did not get violated by the death penalty. The judge was reported to choose between the death penalty and life in prison based on the circumstances, facts, and nature of the offence that were documented throughout the trial. As a result, the decision to impose the death penalty was made in line with the legal procedure, as required by Article 21.
2. The Supreme Court established the idea that life imprisonment for murder is the rule and capital punishment is the exception in certain situations in *Ediga Anamma v. the State of Andhra Pradesh (1974)*¹⁴. The Court further declared that if the court determines to inflict a death sentence, a special justification must be supplied.
3. The case of *Vinay Sharma v. Union of India* (2020)¹⁵, widely known as the Nirbhaya gang-rape case, had outraged the nation's conscience. The terrible and violent tragedy

⁹ India Const. Art. 136

¹⁰ Code of Criminal Procedure, 1973, §379

¹¹ Code of Criminal Procedure, 1973, §433 & §434

¹² India Const. Art. 161

¹³ 1973 1 SCC 20

¹⁴ 1974 AIR 799

¹⁵ Vinay Sharma v. Union of India

occurred on a bus in Delhi's chilly weather. Six people were accused of viciously rapping the girl, which resulted in her death. She was also flung naked on the road after an iron rod was shoved into her private parts. Her death resulted from the physical and mental suffering she had endured. One of the implicated committed suicides in jail when the matter was taken to court, and one of the accused was a minor, thus he was not condemned to death. The other four defendants, on the other hand, were given the death penalty and were hanged in 2020. After considering the aggravating and mitigating elements, this decision was reached. If there were any, the aggravating factors outnumbered the mitigating aspects. Because life imprisonment deemed insufficient in light of the circumstances of the crime and the horrific torture that led to the victim's death, the death penalty was imposed.

4. In *Rajendra Prasad v. State of Uttar Pradesh*¹⁶, the judge ruled that capital punishment could not be justified unless the defendant posed a threat to society. The learned judge argues that the death penalty should be abolished, apart from "white collar offences." It was also determined that the death sentence for murder awarded under I.P.C. Section 302 did not contradict the constitution's "basic feature".

CONCLUSION

In its 262nd Report, the Law Commission calls for the death sentence to be abolished in all cases save those involving terrorism. This came after the execution of Yakub Abdul Razak Memon, who was hanged in the early morning hours of July 30, 2015, despite his lawyers' attempts to postpone his execution and convert it to a life sentence. "The death penalty, like its alternative, life imprisonment, has not demonstrated usefulness in deterring crime or incapacitating offenders," the commission said.

Those who support death punishment, on the other hand, argue that it should not be abolished since it is the ultimate sort of punishment for the most horrendous crimes and the "rarest of the rare" circumstances. After a private members' bill seeking its elimination was introduced in the Rajya Sabha in 2019, 90 percent of Indian states voted to keep the death penalty.

This leads us back to our initial question: is the death penalty necessary? Even while the nations that still have it have substantial strong arguments in defence of it, the global

¹⁶ 1979 AIR 916

conversation has been one of moving away from it. The basic assumption, according to French philosopher Jacques Derrida, is that the criminal code of "civilised nations and states" cannot have barbaric traits. As a result, countries who have abolished death punishment have done so not out of a belief in mercy or reform, but out of an "unspoken motive" to keep up with the rest of the "civilised" world.

Increasing international trends toward the abolition of the death penalty indicate that an international norm is being developed. It has been suggested that the death penalty must be abolished in order to defend the right to life. Whether an international norm regarding capital punishment is formed, remains to be seen.

BIBLIOGRAPHY

1. Death Penalty India Report; <https://www.project39a.com/dpir>
2. All you need to know about Capital Punishment in India; <https://blog.ipleaders.in/capital-punishment-in-india/>
3. Capital Punishment in India, Lok Sabha Secretariat; <http://164.100.47.193/Refinput/New Reference Notes/English/CAPITAL PUNISHMENT IN INDIA.pdf>
4. Mode Of Execution of Death Sentence And Incidental Matter by Law Commission of India; <https://lawcommissionofindia.nic.in/cpds1.pdf>