



A Study on Constitutionality of Death Penalty in India

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ABSTRACT:

The death penalty, or capital punishment, is a contentious issue globally, stirring debates on morality, ethics, and its alignment with constitutional principles. In the Indian context, the discourse surrounding the death penalty delves into its fairness, human rights implications, and adherence to constitutional provisions. This article explores the constitutionality of the death penalty in India, a nation where it remains a legal sanction. Drawing insights from constitutional provisions, landmark judicial decisions, and evolving societal values, it assesses the compatibility of the death penalty with fundamental rights and due process. Highlighting statistics from the 'Death Penalty in India, Annual Statistics Report, 2022', it addresses the growing number of death sentences and prisoners on death row, signaling heightened scrutiny of this form of punishment. By examining circumstantial evidence contributing to death penalty verdicts, the article navigates through the complexities of legal standards and international human rights norms. Ultimately, it offers a nuanced understanding of the constitutional landscape surrounding the death penalty in India, informing discussions on potential legal reforms and policy considerations.

1) Introduction:

The death penalty is an ongoing global debate with various opinions on its ethics, morals, and constitutionality. Also known as capital punishment, it is the legal execution of individuals convicted of serious crimes. In India, it follows a legal process and is different from extrajudicial actions. The country is currently discussing the fairness and human rights issues related to the death penalty, leading to debates on whether to keep or get rid of it. People hold different views, with some supporting the death penalty based on ideas of retribution and deterrence.

According to the Report- '*Death Penalty in India, Annual Statistics Report, 2022*', released by Project 39A of the National Law University (NLU) Delhi, the number of executions from 1947 to till date are 176 where trial courts across the country imposed 165 death sentences in 2022 and 539 prisoners were on death row by the end of 2022, which was the highest since 2016 and the number of prisoners living under death sentence saw an increase of 40% since 2015.

Given the gravity of the death penalty as the ultimate form of punishment, assessing its constitutionality is of a great importance. This article is particularly relevant in the context of India, where the death penalty remains a legal sanction. Examining its constitutionality sheds light on issues such as fundamental rights, due process, and the evolving standards of decency, offering insights into potential legal reforms and policy considerations. The following issues are briefly addressed in this article

- a) Constitutional provisions related to the imposition of the death penalty in India.
- b) Landmark judicial decisions on the constitutionality of the death penalty and their impact on legal precedents.
- c) Alignment of the death penalty with evolving societal values and international human rights standards.
- d) To what extent the circumstantial evidence contributing to the imposition of death penalty in India.

A) HOW DO CONSTITUTIONAL PROVISIONS AND THE CRIMINAL LAWS IN INDIA ADDRESS THE IMPOSITION OF THE DEATH PENALTY?

India is among the countries that have neither completely abolished the death penalty nor enacted laws confirming its legitimacy. Since the Indian Constitution was founded, the Supreme Court has heard petitions challenging the constitutionality of the death sentence several times.

I. THE INDIAN CONSTITUTION AND DEATH PENALTY:

Article 21 of the Constitution guarantees the fundamental right to life and personal liberty, but it is not absolute. The state can limit this right for law and order. In *Maneka Gandhi v. Union of India (1978)*¹, it was established that the procedure must be fair, reasonable, and unbiased when taking away a person's life and court held that every law of punitive detention must pass the reasonability test obtained from the collective reading of the "Golden Triangle" i.e. *Articles 14, 19 and 21*². While the death penalty is not for all crimes, India retains it for the 'rarest of rare' cases. The constitutionality of the death penalty has been challenged, with courts upholding it in cases like *Jagmohan Singh v. State of Uttar Pradesh (1973)*³ and *Bacchan Singh v. State of Punjab*⁴.

The "rarest of rare doctrine" was established by the landmark *Bacchan Singh v. State of Punjab (1980)*, decision, which also mandated the death penalty in certain circumstances. By a majority of 4:1, the Supreme Court upheld the constitutionality of the death penalty in this case, but it also established a rule requiring that it only be applied in the most extreme instances, the Supreme Court's decision did not define or restrict the use of the phrase 'rarest of rare.'

1. Is there something uncommon about the crime which renders the sentence of imprisonment for life inadequate and calls for a death sentence?
2. Are there circumstances of the crime such that there is no alternative but to impose the death sentence even after according maximum weightage to the mitigating circumstances which speak in favor of the offenders.

Notably, hanging as an execution method was found constitutional. The death penalty for all cases under Section 303 IPC was declared unconstitutional in *Mithu v. State of Punjab (1983)*⁵. The Supreme Court, in *Macchi Singh & Others v. State of Punjab (1983)*⁶, outlined specific criteria for 'rarest of rare' cases and has laid down the guidelines of the circumstances in which death sentences can be imposed. J. Thakkar spoke about Five circumstances which are mentioned below:

Firstly: Manner of Commission of murder – When the murder is committed in an extremely brutal manner to arouse intense and extreme indignation in the community, for instance, when the house of the victim is set a flame to roast him alive when the body is cut to pieces or the victim is subjected to inhuman torture.

Secondly: Motive – When the murder is committed for a motive that evinces depravity and meanness, e.g. a hired assassin, a cold-blooded murder to inherit property or gain control over property of a ward, or a murder committed for the betrayal of the motherland.

Thirdly: Anti-social or socially abhorrent nature of the crime – where a scheduled caste or minority community person is murdered in circumstances which arouse: social wrath; or bride burning for dowry, or for remarriage.

Fourthly: Magnitude of the Crime – Crimes of enormous proportion, like multiple murders of a family or persons of a particular caste, community, or locality.

Fifthly: Personality of the victim of murder.

The *Ajmal Kasab's case*⁷ and *Mukesh and Anr. v. State (NCT of Delhi) (2017)*⁸ reflect the courts' application of the death penalty in extreme cases.

II. LAW COMMISSION REPORTS ON DEATH PENALTY:

- **35th Report:** In India, discussions about keeping or getting rid of the death penalty have been ongoing. The Law Commission explored this issue in its 35th Report. Initially, it suggested experimenting with abolishing the death penalty temporarily and then reintroducing it. However, in 2015, the Commission expressed the view that India should move towards abolishing the death penalty.
- **187th Report:** The Law Commission's 187th Report in 2003 covered matters like the method of executing death sentences but did not address the constitutionality of the death penalty. In a paper on execution methods, the Commission compared hanging, lethal injection, and shooting. It recommended adding lethal injections to hanging, considering factors like international standards and modern views on human decency. The Supreme Court has echoed the need for certain, humane, and dignified execution methods.
- **262nd Report:** In 2015, the Law Commission, led by Justice A.P. Shah, released its 262nd Report, suggesting abolishing the death penalty for all crimes except terrorism and war-related offenses. The recommendations included implementing police reforms, witness protection, and victim compensation. The Commission emphasized the evolving view of the right to life and urged India to move towards complete abolition,

¹ *Maneka Gandhi v. Union of India AIR 1978 SC 597*

² Articles 14, 19 and 21 of The Constitution of India 1950

³ *Jagmohan Singh v. State of Uttar Pradesh 1973 AIR 947*

⁴ *Bacchan Singh v. State of Punjab AIR 1980 SC 898*

⁵ *Mithu v. State of Punjab 1983 AIR 473*

⁶ *Macchi Singh & Others v. State of Punjab 1983 AIR 957*

⁷ *Mohammed Ajmal Mohammad Amir Kasab Alias Abu Mujahid V. State Of Maharashtra (2012) 9 SCC 1*

⁸ *Mukesh and Anr. v. State (NCT of Delhi) (2017) 6 SCC 1*

especially for crimes not linked to terrorism. Despite concerns about national security, the Commission recommended swift steps toward abolition for most crimes.

III. CRIMINAL LAWS ON DEATH PENALTY:

According to Section 354(3) of the Code of Criminal Procedure, 1973, when someone is convicted of a crime that can lead to the death penalty or life imprisonment, the judgment must explain the reasons for the sentence. For death sentences, it must include special reasons.

➤ Crimes under the Indian Penal Code, 1860, that may result in the death penalty include:

1. Criminal conspiracy to commit a capital offence (Section 120 B)
2. Waging or attempting to wage war against the Government of India (Section 121)
3. Abetting mutiny in the armed forces (Section 132)
4. Giving false evidence with the intent to convict for a capital offence (Section 194)
5. Threatening or inducing false evidence resulting in the conviction and death of an innocent person (Section 195A)
6. Murder (Section 302 and 303)
7. Abetting the suicide of a minor (Section 305)
8. Attempted murder by a life convict (Section 307(2))
9. Kidnapping for coercive purposes or ransom (Section 364A)
10. Rape resulting in the victim's death or incapacitation (Section 376A)
11. Rape of a child below 12 years (Section 376AB)
12. Gang rape of a child below 12 years (Section 376DB)
13. Certain repeat offences in the context of rape (Section 376E)
14. Dacoity with murder (Section 396)
 - Aiding or abetting an act of Sati (Part II, Section 4 of Prevention of Sati Act)
 - Drug trafficking in cases of repeat offenses under The Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 31A).
 - The Explosive Substances Act, 1908
 - The Terrorist and Disruptive Activities (Prevention) Act, 1987
 - The Arms Act, 1959
 - The Border Security Force Act, 1968
 - The Unlawful Activities (Prevention) Act, 1967

B) TO WHAT EXTENT DOES THE CIRCUMSTANTIAL EVIDENCE CONTRIBUTE TO THE IMPOSITION OF DEATH PENALTY IN INDIA?

Circumstantial evidence, often referred to as indirect evidence, typically involves a hypothesis supported by a substantial amount of corroborating information. It is crucial to differentiate between direct and circumstantial evidence. This is significant because, barring certain exceptions like the immature or incompetent, most criminals take care not to produce direct evidence, trying to conceal any indications of criminal intent. Consequently, to establish the mens rea levels of "purposely" or "knowingly," the prosecution often relies on circumstantial evidence.

I. REPORT NO.262 ON DEATH PENALTY: CIRCUMSTANTIAL EVIDENCE⁹

In the case of *Mohd. Farooq v. State of Maharashtra*¹⁰, the Supreme Court addressed concerns about the potential errors in the death penalty system by outlining "rules of prudence." The Court emphasized the heavy burden on the court to meet procedural justice requirements, both from legal principles and conventions. It suggested giving priority to life imprisonment over the death penalty, especially in cases solely based on circumstantial evidence or when lower courts have already imposed life imprisonment or acquitted the accused. Despite these guidelines, the Court noted a lack of consistency in their application.

⁹ LAW COMMISSION OF INDIA Report no. 262 on Death Penalty [p 132- 135]

¹⁰ *Mohd. Farooq Abdul Gafur v. State of Maharashtra*, (2010) 14 SCC 641

Expressing worries about the fallibility of convictions based solely on circumstantial evidence, the Court advised against imposing the death penalty in such cases. It highlighted that convictions relying on seemingly conclusive circumstantial evidence should not be considered foolproof, and the unique irreversibility of capital punishment must be carefully considered during sentencing. The Court cited cases like *Sahdeo v. State of U. P.*¹¹, *Sheikh Ishaq v. State of Bihar*¹², *Aloke Nath Dutta v. State of West Bengal*¹³, and *Bishnu Prasad Sinha v. State of Assam*¹⁴, where the death penalty was not imposed due to reliance on circumstantial evidence. However, there have been instances in cases like *Shivaji v. State of Maharashtra*¹⁵, *Kamta Tewari v. State of M.P.*¹⁶, and *Molai v. State of M.P.*¹⁷ where the Supreme Court refused to consider circumstantial evidence as a reason to avoid the death penalty, asserting that the nature of evidence does not impact the decision when weighing aggravating and mitigating circumstances.

C) TO WHAT EXTENT DOES THE DEATH PENALTY ALIGN WITH EVOLVING SOCIETAL VALUES, PUBLIC INTERESTS, AND INTERNATIONAL HUMAN RIGHTS STANDARDS?

Death penalty is incompatible with the core principles of our democratic system and is an unacceptable deprivation of civil rights. The death sentence is unjust and unequal in fact, and it is barbaric in philosophy.

I. DEATH PENALTY AND INTERNATIONAL HUMAN RIGHTS STANDARDS:

International human rights treaties affirm the inherent right to life for every individual. The International Covenant on Civil and Political Rights (ICCPR), established by the United Nations (UN) in 1966, specifically articulates this right in Article 6, emphasizing that no one should be arbitrarily deprived of their life. The article acknowledges that in countries where the death penalty still exists, it should only be applied for the most serious crimes and in accordance with the laws in place at the time of the offense. Additionally, the ICCPR prohibits the death penalty for individuals below eighteen years of age and prohibits the execution of pregnant women. Another crucial provision in Article 7 of the ICCPR emphasizes the prohibition of torture, cruel, inhuman, or degrading treatment or punishment for any individual.

India has officially accepted the ICCPR and the CRC, and while it has signed the Torture Convention, it has not formally ratified it. In the realm of international law, once a state ratifies a treaty, it is obligated to adhere to its terms. Even if a treaty is signed but not ratified, the state is still required to avoid actions that would undermine the treaty's purpose.

In the Indian context, converting international treaties into enforceable laws necessitates domestic legislation. The Protection of Human Rights Act, 1994, integrates the ICCPR into Indian law through sections 2(d) and 2(f). Section 2(d) defines "human rights" as those safeguarded by the Constitution or outlined in the International Covenants, enforceable by Indian courts. Section 2(f) Protection of Human Rights Act, 1994 specifies that "International Covenants" refers to the ICCPR and the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly in 1966.

Furthermore, Article 51(c) of the Indian Constitution urges the state to strive for "respect for international law and treaty obligations" in interactions between organized communities. While this does not automatically bind all of India's treaty obligations, courts have recognized international law principles when no conflicting legislation exists in India.

II. ROLE OF SOCIETAL VALUES, PUBLIC INTERESTS ON DEATH PENALTY IN INDIA

Public interests in India are often viewed through the lens of ensuring justice, deterrence, and the safety of the community. Supporters of the death penalty argue that it serves as a deterrent to heinous crimes and provides a sense of justice to the victims and their families. However, opponents emphasize concerns about the possibility of wrongful convictions, the irreversible nature of the punishment, and the violation of the right to life.

The Indian legal system incorporates provisions for the death penalty in cases of extreme gravity, often guided by the "rarest of the rare" doctrine established by the Supreme Court. However, there have been discussions at various levels, including within the legal fraternity and civil society, about reevaluating the use of the death penalty.

A survey was conducted including the sample ranging from law professionals, law academicians, law students and other working professionals in the field of science, medicine, and IT in February 2024 through circulation of google forms. This survey although includes a small number in its sample, it covers most of almost all the professional areas of the Indian society.

The following are the conclusions drawn for the respective questions of the survey:

¹¹ *Sahdeo v. State of U.P.*, (2004) 10 SCC 682.

¹² *Sheikh Ishaq v. State of Bihar*, (1995) 3 SCC 392.

¹³ *Aloke Nath Dutta v. State of West Bengal*, (2007) 12 SCC 230.

¹⁴ *Bishnu Prasad Sinha v. State of Assam*, (2007) 11 SCC 467.

¹⁵ *Shivaji v. State of Maharashtra*, (2008) 15 SCC 269

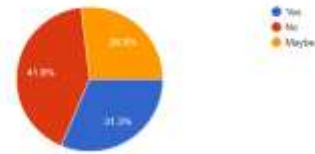
¹⁶ *Kamta Tiwari v. State of M.P.*, (1996) 6 SCC 250

¹⁷ *Molai v. State of M.P.*, (1999) 9 SCC 581.

1. Do you believe the death penalty serves as an effective deterrent to crime?
67 responses



2. Do you think the current constitutional framework adequately addresses concerns related to the death penalty?
67 responses



3. Do you believe these legal procedures are sufficient to prevent wrongful convictions in capital cases?
67 responses



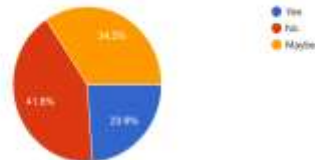
4. Should public opinion play a significant role in determining the fate of an individual sentenced to death?
67 responses



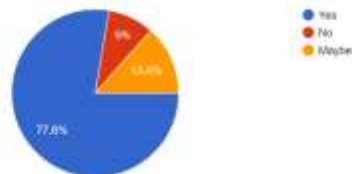
5. Do you believe there are alternative punishments that can serve the same purpose as the death penalty?
67 responses



6. In your opinion, is the death penalty administered fairly and justly in India?
67 responses



7. Should there be special guidelines or restrictions on how the media reports on death penalty cases?
67 responses



2) CONCLUSION

The death penalty in India faces criticism for its inability to serve the deterrence purpose better than life imprisonment. Life imprisonment entails lengthy confinement, often spanning 30-60 years, allowing for rehabilitation and just remissions. Retribution, though legitimate, should not equate to vengeance, and the constitutional criminal justice system rejects the "eye for an eye" principle.

The researcher thus, concludes that the hypothesis stands proved that Capital punishment fails to align with valid constitutional penological goals, overshadowing the restorative and rehabilitative aspects of justice. The focus on the death penalty diverts attention from systemic issues like poor investigation, crime prevention, and victim rights. Establishing effective victim compensation schemes, witness protection, and police reforms are deemed essential. The Supreme Court expresses concern about arbitrary sentencing in death penalty cases, highlighting systemic flaws. The administration of capital punishment is prone to misapplication, particularly impacting socially and economically marginalized individuals who may lack resources for effective advocacy.

Clemency powers act as a final safeguard against judicial errors or miscarriages of justice. They empower the President and Governor to scrutinize case records, differ with judicial verdicts, and consider fresh evidence. The responsibility of wielding clemency powers entails a thorough examination of judicial records and extensive inquiries, especially when considering petitions from prisoners facing confirmed death sentences. Relevant considerations are outlined by the Supreme Court in the Shatrughan Chauhan case¹⁸ and are considered by the Home Ministry while deciding mercy petitions.

3) REFERENCES

¹⁸ Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1

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