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CONSTITUTIONAL VALIDITY OF CAPITAL PUNISHMENT IN INDIA : A CRITICAL LEGAL ANALYSIS

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ABSTRACT :

Capital punishment, or the death penalty, is the most severe punishment recognized by the Indian criminal justice system. Its constitutional validity raises difficult questions concerning the right to life, personal liberty, equality, human dignity, proportionality, judicial discretion and the limits of State power. The Supreme Court of India has repeatedly examined these issues and has upheld the constitutional validity of capital punishment while imposing stringent restrictions on its application.

This research examines the constitutional framework governing capital punishment in India, particularly Articles 14 and 21 of the Constitution. It traces the development of the Supreme Court's jurisprudence from Jagmohan Singh v. State of U.P. to Bachan Singh v. State of Punjab and subsequent cases concerning the rarest of rare doctrine, mitigating circumstances, rehabilitation, mandatory death sentences, delay in execution and mercy petitions. The paper also considers the statutory position under the Bharatiya Nyaya Sanhita, 2023, which replaced the Indian Penal Code from 1 July 2024.

The research adopts a doctrinal methodology based on constitutional provisions, statutes, judicial decisions and Law Commission reports. It finds that Indian constitutional law permits capital punishment but treats it as an exceptional penalty subject to rigorous judicial safeguards.

Keywords :- Capital punishment, Death penalty, Constitutional validity, Judicial decisions

INTRODUCTION

"An eye for an eye makes the whole world blind."
-Mahatma Gandhi.
Capital punishment is the punishment by which the State, pursuant to a lawful criminal process, causes the death of a person convicted of an offence. It is qualitatively different from other punishments because it is irreversible. The constitutional debate in India therefore involves the relationship between State power to punish and the constitutional protection of life and personal liberty.

Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court has interpreted this guarantee to require fairness and non-arbitrariness in State action. At the same time, the Court has not treated Article 21 as an absolute prohibition on every legally authorized deprivation of life.

The central constitutional position emerged in Bachan Singh v. State of Punjab, where a Constitution Bench upheld the death penalty for murder but restricted its application through the rarest of rare doctrine. The Court treated life imprisonment as the ordinary rule and death as an exceptional punishment.

The enactment of the Bharatiya Nyaya Sanhita, 2023 has not abolished capital punishment. Section 103 continues to prescribe death or imprisonment for life for murder in specified circumstances.

MEANING OF CAPITAL PUNISHMENT

Capital punishment is the legally authorized punishment by which the state takes the life of a person convicted of a legally punishable offence.
The term capital comes from the Latin word caput, meaning "**head**", and historically referred to punishment involving death.
In simple word, Capital punishment is the punishment of death awarded by a court for certain grave offences.
Capital Punishment, also known as the death penalty, is the death sentence awarded by a competent court for capital offences. Capital offences include crimes such as planned murder, multiple murders, repeated grave crimes, rape and murder, terrorism, waging war against the State etc., where the criminal law considers the offender as a gross danger to the existence of the society and provides death as the ultimate punishment.

ORIGIN OF CAPITAL PUNISHMENT

Capital punishment, or the death penalty, is the state-sanctioned execution of a person convicted of a crime. It is one of the oldest forms of criminal punishment and has existed in many civilizations, although the crimes punishable by death and the methods of execution have changed considerably over time.

1. Ancient Origins

The history of capital punishment can be traced to the earliest written legal codes. The Code of Hammurabi, created in ancient Babylon around the 18th century BCE, prescribed death for a number of offences, including certain forms of theft, murder, and sexual offences[1]. In ancient Greece, execution was also used as a legal punishment. The execution of Socrates in 399 BCE, who was sentenced to death for impiety and corrupting the youth, is one of the best-known examples[2].

The Roman Empire used capital punishment extensively. Methods included crucifixion, beheading, burning, and execution by animals. However, the severity of punishment could depend upon a person's social status; Roman citizens generally enjoyed greater legal protections than slaves and non-citizens[3].

2. Capital Punishment in the Middle Ages

During the medieval period in Europe, the death penalty remained common. It was imposed for crimes ranging from murder and treason to theft, heresy, and other offences. Executions were frequently public and were intended not only to punish the offender but also to deter others.

In England, capital punishment became particularly extensive during the 18th century. By the early 19th century, hundreds of offences were theoretically punishable by death, a situation sometimes referred to as the "Bloody Code[4]." Public executions were an important part of criminal justice until reforms gradually restricted both the number of capital offences and the use of public execution.

3. The Enlightenment and Opposition to the Death Penalty

A major change in attitudes toward capital punishment occurred during the Enlightenment in the 18th century. Philosophers began questioning whether the state had the moral right to take life and whether executions actually deterred crime.

The Italian philosopher Cesare Beccaria, in On Crimes and Punishments (1764), argued strongly against the death penalty. He maintained that punishment should be proportionate and that the certainty of punishment was more important for deterrence than its severity[5]. Beccaria's ideas influenced criminal-law reforms across Europe and the Americas.

One of the earliest modern abolitionist developments occurred in the Grand Duchy of Tuscany, where capital punishment was abolished in 1786 under the reforms of Grand Duke Leopold[6]. Although abolition was later reversed, Tuscany's reform became an important landmark in the history of abolition.
[1]

Nineteenth-Century Reform

The 19th century witnessed significant restrictions on capital punishment. Governments increasingly reduced the number of offences carrying the death penalty and sought to make executions less public and less brutal.

In Britain, the Judgment of Death Act 1823 and subsequent reforms reduced the number of crimes punishable by death. The Murder Act 1965 later suspended the death penalty for murder in Great Britain, effectively replacing it with life imprisonment, before permanent abolition followed[7].

In the United States, capital punishment continued to be used, but its administration and methods varied considerably between states. Maine became the first U.S. state to abolish the death penalty in 1837, although it was subsequently reinstated[8].

5. Capital Punishment in India

Capital punishment has a long history in the Indian subcontinent. Ancient Indian legal and political texts recognized severe punishments, including death, for certain serious offences. The Arthashastra, traditionally associated with Kautilya (Chanakya), describes a detailed system of criminal punishments, including capital punishment for particular offences[9].

During British rule, capital punishment was incorporated into the colonial criminal justice system. The Indian Penal Code of 1860 provided the death penalty for certain serious offences, including murder and some offences against the state[10].

After independence in 1947, India retained capital punishment. The Constitution of India protects life and personal liberty under Article 21 but does not completely prohibit the death penalty. The Supreme Court has held that capital punishment may constitutionally be imposed in exceptional circumstances. The landmark Bachan Singh v. State of Punjab (1980) established the principle that the death penalty should be imposed only in the "rarest of rare" cases,

[1]1. Martha T. Roth (ed.), Law Collections from Mesopotamia and Asia Minor, 2nd ed. (Atlanta: Scholars Press, 1997), pp 76-142
2. Plato, Apology, trans. G. M. A. Grube, in Plato: Complete Works, ed. John M. Cooper (Indianapolis: Hackett, 1997).
3. William A. J. Watson, The Roman Soldier (Ithaca: Cornell University Press, 1969); see also W. W. Buckland, The Roman Law of Slavery (Cambridge: Cambridge University Press, 1908).
4. J. M. Beattie, Crime and the Courts in England, 1660–1800 (Princeton: Princeton University Press, 1986).
5. Cesare Beccaria, On Crimes and Punishments, trans. David Young (Indianapolis: Hackett, 1986), chs. VI–XII.
6. Robert Badinter, The Abolition of the Death Penalty, trans. Michael O'Dea (Boston: Northeastern University Press, 2007), pp. 51–55.

7. Murder (Abolition of Death Penalty) Act 1965 (UK), c. 71; Crime and Disorder Act 1998 (UK).

when the alternative option of life imprisonment is unquestionably foreclosed[11]. This principle remains central to Indian death-penalty jurisprudence.

6. Twentieth-Century Abolition Movement

The 20th century saw a major international movement toward abolition. After the Second World War, concern for human rights contributed to greater opposition to state executions. The Universal Declaration of Human Rights (1948) recognized the right to life and protection against arbitrary deprivation of life, although it did not expressly abolish the death penalty[12].

The International Covenant on Civil and Political Rights (1966) also permits capital punishment in countries that have not abolished it, but limits its application to the "most serious crimes." Its Second Optional Protocol, adopted in 1989, aims at the abolition of the death penalty[13].

[2]

European countries progressively abolished capital punishment. The Council of Europe adopted Protocol No. 6 to the European Convention on Human Rights in 1983, abolishing the death penalty in peacetime, followed by Protocol No. 13, which seeks abolition in all circumstances[14].

7. Capital Punishment in the Twenty-First Century

Today, countries are divided between abolitionist and retentionist states. According to Amnesty International, more than two-thirds of the world's countries have abolished the death penalty in law or practice, while a smaller group continues to conduct executions[15].

China, Iran, Saudi Arabia, Iraq and the United States have historically accounted for a substantial proportion of recorded executions, although reliable figures for some countries—particularly China—are unavailable because execution statistics are classified[16].

The contemporary debate focuses on several issues: deterrence, retribution, human rights, wrongful convictions, discrimination, cost, and the possibility of rehabilitation. Supporters argue that capital punishment can provide retribution for exceptionally serious crimes and may deter potential offenders. Opponents argue that the irreversible nature of execution creates an unacceptable risk of executing innocent people and that there is insufficient evidence that the death penalty is more effective than imprisonment in preventing crime.

PROCESS OF DEATH PENALTY IN INDIA

The death penalty in India is imposed only after a criminal trial and a series of judicial safeguards. The process generally begins with the investigation of a serious offence, followed by trial, sentencing, appeals, and, where applicable, review, curative petition, and mercy proceedings. The execution cannot take place merely because a trial court has awarded a death sentence.

1. Investigation and Criminal Trial

When a serious offence punishable with death is committed, the police investigate the case and collect evidence. If sufficient evidence exists, a charge-sheet is filed before the competent court. The accused is then tried according to the procedure established by criminal law.

Under Indian law, the death penalty is prescribed for certain particularly serious offences. Murder, for example, may be punished with death or imprisonment for life under Section 103 of the Bharatiya Nyaya Sanhita, 2023 (BNS)[17].

2. Sentencing by the Trial Court

If the accused is convicted of an offence for which death is a possible punishment, the court must conduct a separate hearing on the question of sentence. The accused is given an opportunity to present circumstances that may justify a lesser sentence.

Under Section 393(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), when a court imposes the death sentence, it must state the special reasons for awarding it[18].

[3]

The Supreme Court has emphasized that the death penalty must be imposed only in the "rarest of rare" cases, after considering both aggravating and mitigating circumstances[19].

3. Confirmation by the High Court

A death sentence passed by a Sessions Court cannot be executed unless it is confirmed by the High Court.

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[2]8. Hugo Adam Bedau and Paul G. Cassell (eds.), Debating the Death Penalty: Should America Have Capital Punishment? (New York: Oxford University Press, 2004).
9. Kautilya, The Arthashastra, trans. L. N. Rangarajan (New Delhi: Penguin Books India, 1992).
10. Indian Penal Code, 1860, Act No. 45 of 1860, especially §§ 121, 132, 194, 302 and 396.
11. Bachan Singh v. State of Punjab, (1980) 2 SCC 684.
12. United Nations, Universal Declaration of Human Rights, G.A. Res. 217A (III), 10 December 1948, Art. 3.
13. United Nations, International Covenant on Civil and Political Rights, 1966, Art. 6; Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, 1989.

14. Council of Europe, Protocol No. 6 to the European Convention on Human Rights (1983); Protocol No. 13 (2002).
[3] 15. Amnesty International, Death Sentences and Executions 2023 (London: Amnesty International, 2024).
16. Amnesty International, Death Sentences and Executions 2023, pp. 8–11.
17. Bharatiya Nyaya Sanhita, 2023, Act No. 45 of 2023, § 103.
18. Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023, § 393(3).

19. Bachan Singh v. State of Punjab, (1980) 2 SCC 684.

Under Section 407 of the BNSS, when a Court of Session passes a sentence of death, the proceedings must be submitted to the High Court, and the sentence cannot be carried out unless the High Court confirms it[20].

The High Court may confirm the sentence, impose another lawful sentence, annul the conviction, order a new trial, or take other action permitted by law[21].

4. Appeal to the Supreme Court

After the High Court confirms the death sentence, the convicted person may have a right to appeal to the Supreme Court of India, depending upon the circumstances of the case. The Supreme Court can examine both the conviction and the sentence.

The Constitution also provides special mechanisms through which the Supreme Court may hear criminal matters, including appeals involving death sentences[22].

5. Review Petition

If the Supreme Court upholds the death sentence, the condemned prisoner may file a review petition. The purpose of review is to ask the Court to reconsider its judgment on limited legal grounds.

In death-penalty cases, the Supreme Court has recognized special safeguards concerning review petitions because the punishment is irreversible[23].

6. Curative Petition

After dismissal of the review petition, the prisoner may, in appropriate circumstances, file a curative petition. This is an extraordinary remedy intended to prevent gross miscarriage of justice.

The Supreme Court established the concept of a curative petition in Rupa Ashok Hurra v. Ashok Hurra (2002)[24].

7. Mercy Petition

After the judicial remedies have been exhausted, the prisoner may seek mercy from the executive authorities.

Article 72 of the Constitution gives the President the power to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commute a sentence in cases involving, among other things, offences against laws within the Union's executive power and sentences imposed by court martial or where the sentence is a sentence of death[25].

[4]

Similarly, Article 161 gives the Governor power to grant certain pardons, reprieves, respites or remissions and to suspend, remit or commute sentences in matters within the State's executive power[26].

8. Consideration of the Mercy Petition

The mercy petition is considered by the appropriate executive authorities. In practice, a petition addressed to the President is considered through the Ministry of Home Affairs, which obtains the necessary material and advice before the matter is placed before the President.

The President's power under Article 72 is an important constitutional safeguard. However, it is not an unlimited personal discretion; the power is exercised within the constitutional framework[27].

9. Warrant and Preparation for Execution

If all judicial and mercy remedies have been exhausted and the death sentence remains in force, the competent court issues the necessary warrant for execution.

The BNSS contains provisions concerning the execution of death sentences and the procedure to be followed by the authorities[28]. The prisoner must also be informed of the warrant and given appropriate opportunity to pursue any legally available remedy.

10. Execution

Under Indian law, a person sentenced to death is ordinarily executed by hanging by the neck until dead, subject to the applicable statutory procedure[29].

The execution takes place only after all required legal procedures have been completed. The Supreme Court has repeatedly emphasized that prisoners facing execution are entitled to procedural safeguards and humane treatment.

11. Safeguards Against Delay and Mental Illness

An important development in Indian death-penalty jurisprudence concerns undue delay in executing a death sentence. The Supreme Court has held that excessive and unexplained delay in deciding a mercy petition can, in appropriate circumstances, justify commutation of the death sentence to

[4]20. Bharatiya Nagarik Suraksha Sanhita, 2023, § 407.
21. Ibid., §§ 407–412.
22. Constitution of India, Arts. 132–134.
23. Mohd. Arif @ Ashfaq v. Registrar, Supreme Court of India, (2014) 9 SCC 737.
24. Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388.
25. Constitution of India, Art. 72.

26. Constitution of India, Art. 161.

imprisonment for life[30].

The mental health of the prisoner may also become relevant. The Supreme Court has recognized that executing a prisoner who has developed severe mental illness can raise serious constitutional concerns under Article 21, which protects life and personal liberty[31].

Flow of the Death-Penalty Process

Investigation → Trial → Conviction → Sentencing → High Court Confirmation → Appeal to Supreme Court → Review Petition → Curative Petition → Mercy Petition → Execution Warrant → Execution

Thus, the death penalty in India is not an immediate consequence of a trial-court conviction. It is subject to multiple levels of judicial scrutiny and executive consideration, reflecting the irreversible nature of the punishment.

STATEMENT OF THE PROBLEM

Statement of the Problem: Capital Punishment

Capital punishment, or the death penalty, is one of the most controversial forms of criminal punishment. It involves the execution of a person by the State after conviction for an offence considered sufficiently serious to warrant death. The central problem is whether the State should have the legal and moral authority to take the life of an individual as a form of punishment. The debate involves competing considerations of justice, deterrence, retribution, human dignity, public safety, and the possibility of judicial error.[32]

In India, capital punishment remains legally permissible but is imposed only in exceptional circumstances. The Supreme Court of India has held that the death penalty should be awarded only in the "rarest of rare" cases, when the alternative option of life imprisonment is unquestionably foreclosed.[33] This standard creates an important legal problem: determining what circumstances are sufficiently exceptional to justify taking a person's life. The application of this principle may also raise concerns about consistency and uniformity in sentencing.

Another significant problem is whether the death penalty actually serves as an effective deterrent against serious crimes. Supporters argue that capital punishment can discourage potential offenders and provide justice to victims and society. Opponents, however, question the existence of conclusive evidence that executions deter crime more effectively than long-term imprisonment.[34] The issue becomes particularly important when punishment involves an irreversible consequence.

The possibility of wrongful conviction presents an additional problem. Courts may make errors because of unreliable evidence, inadequate legal representation, false testimony, or other procedural failures. Unlike imprisonment, an execution cannot be reversed if a conviction is subsequently found to be erroneous.[35] Therefore, the use of capital punishment raises fundamental questions concerning the reliability and fairness of the criminal justice system.

The problem also has a constitutional and human-rights dimension. Article 21 of the Constitution of India protects life and personal liberty and permits deprivation of these rights only according to procedure established by law.[36] [5]At the international level, Article 6 of the International Covenant on Civil and Political Rights recognizes the right to life and places restrictions on the use of the death penalty in countries that have not abolished it.[37] Thus, the continued existence of capital punishment requires examination in light of evolving standards of human dignity and human rights.
[6]

Accordingly, the central problem of this study is to examine whether capital punishment is justified as a form of criminal justice, whether it effectively achieves the objectives of punishment, and whether its continued application in India is compatible with constitutional safeguards, fairness, and human-rights principles.

CAPITAL PUNISHMENT FOR OFFENCES UNDER IPC

The following offences provide with the capital punishment under the Indian Penal Code, 1860:

1) 120B- Punishment of criminal conspiracy.
2) 121- Waging, or attempting to wage war, or abetting waging of war, against the Government of India
3) 132- Abetment of mutiny, if mutiny is committed in consequence thereof.
4) 194- Giving or fabricating false evidence with intent to procure conviction of capital offence.
5) 195A- Threatening any person to give false evidence.
6) 302- Punishment for murder.
7) 305- Abetment of suicide of child or insane person
8) 307(2)- Attempts by life-convicts
9) 364A- Kidnapping for ransom, etc.
10) 376A- Punishment for causing death or resulting in persistent vegetative state of victim

[5]

[6] 32. H.L.A. Hart, Punishment and Responsibility: Essays in the Philosophy of Law (Oxford University Press, 1968), pp. 4–5.
33.Bachan Singh v. State of Punjab, (1980) 2 SCC 684.
34. National Research Council, Deterrence and the Death Penalty (National Academies Press, 2012).
35. Hugo Adam Bedau & Michael L. Radelet, "Miscarriages of Justice in Potentially Capital Cases," Stanford Law Review, Vol. 40, No. 1 (1987), pp. 21–179.
36. Constitution of India, art. 21.
37. International Covenant on Civil and Political Rights, 1966, art. 6.

11) 376AB- Punishment for rape on woman under twelve years of age.
12) 376E- Punishment for repeat offenders.
13) 396- Dacoity with murder

CONSTITUTIONAL VALIDITY OF DEATH PENALTY

When judges had to choose between death sentence and life imprisonment, the Code of Criminal Procedure, 1898, stated death was default punishment. The 1973 amendment brought in a more dramatic shift- death sentence became an exception. The 1970s witnesses' significant engagement on issues concerning death penalty in Supreme Court:

* Jagmohan Singh v State (1972)[38]

* Ediga Anamma v State of Andhra Pradesh (1974)[39]

* Rajendra Prasad v State of UP (1979)[40]

In May 1980 where 05 judges of Supreme Court in Bachan Singh v State of Punjab[41] decided on constitutional validity of death penalty. Court addressed the following question:

[7]

* Does the death penalty violate right to life guaranteed under Constitution?

* Is sentencing procedure unconstitutional because it violates Art 14 of the Constitution?

04 Judges upheld the constitutional validity of the death penalty namely, Justice RS Sarkaria, Justice AC Gupta, Justice

NL Untwalia and Justice YV Chandrachud Justice PN Bhagwati disagreed and wrote a dissent.

1) Majority Ruling

* Death penalty does not violate Article 21 as there were reasonable procedural safeguards built in.

* Death penalty sentencing procedure is neither arbitrary nor give excessive discretion to judges and does not violate Article 14.

2) Minority Ruling

Justice PN Bhagwati in powerful dissent said- "sentencing discretion conferred upon court is totally uncontrolled and unregulated it is standard less and unprincipled." The majority after declaring the validity proceeded to develop a framework for future sentencing judges when deciding between Life Imprisonment and Death penalty-

* Consider aggravating and mitigating circumstances concerning both crime and accused.

* Use of death sentence only in "rarest of rare cases" where option of Life imprisonment is unquestionably

foreclosed.

* Reformation was identified as one of the mitigating circumstanced. The onus was put on prosecution to show that the individuals could not be reformed.

40 YEARS OF DEATH PENALTY SENTENCING: THE UNCERTAIN LEGACY OF BACHAN SINGH

Misinterpretation, Error, and Subjectivity have characterized Bachan Singh's 40-year journey away from work. In the last 40 years, the death penalty has primarily been used to punish criminals. Meaning, the sentencing judge focused primarily on the brutality of the crime, rather than the circumstances of the accused, as required by Bachan Singh. Given the fact that a large percentage of those sentenced to death are poor and lack competent legal representation. Before sentencing judges, very few aspects of their lives are punished. The Supreme Court and research on the death penalty have raised various concerns over the last 40 years. The application of the Bachan Singh framework has been inconsistent and arbitrary. In the same circumstances, similar cases have resulted in different outcomes. The Supreme Court raised itself concern in the following cases:

* Aloke Nath Dutta (2006)[42]

* Santosh Kumar Bariyar (2009)[43]

* Farooq Abdul Gafur (2009)[44]

[8]

[7] 38.(1973), A.I.R. 947 (India).
39. (1974) S.C.R. (3) 329 (India).
40. 1979 S.C.R. (3) 78 (India).
41. Supra note 2.
[8]42. (2007) 12 S.C.C. 230 (India).
43. (2009) 6 S.C.C. 498 (India).

According to a report published in 2016, 74.1 percent of those sentenced to death in India came from low-income families. Sixty-two percent of those sentenced to death lacked a high school diploma. When people cannot obtain adequate legal representation, serious human rights violations occur.[45] At the time of the Bachan Singh decision, only 18 countries had abolished the death penalty (in 1980). After 40 years, 142 countries have formally or informally abolished the death penalty. In March 2015, India's Law Commission recommended that "the death penalty be abolished for all crimes other than terrorism-related offences and war" in its 262nd Report.[46] We sincerely hope that progress toward total abolition will be swift and irreversible," the law commission added.[47]

Justice Kurian Joseph called for a reexamination of the death penalty in Chhannu Lal Verma v State of Chhattisgarh[48] in November 2018. "Bachan Singh has failed to prevent death sentences from being imposed arbitrarily and freakishly, and capital punishment has failed to achieve any constitutionally valid penological goals," he said of Bachan Singh.

Famous instances of Hanging in India

First Hanging in India after independence was of Nathuram Godse and Narayan Apte, convicted for assassination of Mahatma Gandhi.

* 02 females of India were given penalty- Seema Gavit and Renuka Shinde.

* On 14th August, 2004; Dhananjaya Chatterjee.

* On 27th April, 1995- Auto Shankar.

* On 21st November, 2012- Ajmal Kasab.

* On 9th February, 2013- Afzal Guru.

* On 30th July,2015- Yakoob Memon.

* On 20th March 2020- Akshay Thakur, Vinay Sharma, Pawan Gupta and Mukesh Singh.

Methods of Executions:

Some of the common means of execution the accused person/prisoners are as follows:

1) Hanging

2) Shooting

3) Lethal injection

4) Beheading

5) Electrocution

[9]

RESEARCH OBJECTIVES

1. To examine the constitutional validity of capital punishment in India.
2. To analyse Articles 14 and 21 in relation to the death penalty.
3. To trace the development of Supreme Court jurisprudence on capital punishment.
4. To study the rarest of rare doctrine.
5. To examine the role of mitigating circumstances and rehabilitation.
6. To analyse important Supreme Court decisions on capital punishment.
7. To examine the present statutory position under the Bharatiya Nyaya Sanhita, 2023.
8. To identify safeguards relevant to constitutional capital sentencing.

44. (2010) 14 S.C.C. 641 (India).

45. Supra Note 5.
[9]46. Available at: 2022081670.pdf, last accessed on Nov. 29th 2023.
47. Radha Ranjan, "Unraveling the Shadows of Terrorism as a Crime in India," International Journal for Legal Research & Analysis (UGC Approved Journal, ISSN 2582-6433) (2023).
48. (2019) 12 SCC 438

RESEARCH QUESTIONS

1. Is capital punishment constitutionally valid in India?
2. Does the death penalty violate Article 21?
3. How does Article 14 limit capital sentencing discretion?
4. What is the scope of the rarest of rare doctrine?
5. What role should reform and rehabilitation play in death penalty cases?
6. How do delay and supervening circumstances affect execution?
7. Has the BNS 2023 changed the constitutional position on capital punishment?

CONSTITUTIONAL FRAMEWORK

Article 14 – Equality Before Law

Article 14 requires equality before the law and equal protection of laws. In capital cases, this principle is important because sentencing discretion cannot operate arbitrarily. The sentencing process must be based on relevant circumstances and must guard against inconsistent treatment of similarly situated offenders.

Article 21 – Right to Life and Personal Liberty

Article 21 is the principal constitutional provision implicated by capital punishment. The Supreme Court has held that deprivation of life may be constitutionally permissible where authorized by valid law and accompanied by constitutionally fair procedure. In Bachan Singh, the Court upheld the death penalty while requiring exceptional restraint in its application.

Articles 72 and 161 – Clemency Powers

Article 72 confers specified clemency powers on the President, while Article 161 confers corresponding powers on the Governor in relation to matters within the State's executive power. These powers provide an additional constitutional stage at which a death sentence may be considered.

STATUTORY POSITION UNDER THE BHARATIYA NYAYA SANHITA, 2023

The Bharatiya Nyaya Sanhita, 2023 came into force on 1 July 2024 and replaced the Indian Penal Code, subject to its transitional provisions. Section 103 provides death or imprisonment for life as punishments for murder. The BNS therefore retains capital punishment within the Indian criminal-law framework.

The existence of a statutory death penalty does not make death automatic. Judicial sentencing remains controlled by constitutional principles and by the Supreme Court's jurisprudence concerning rarest of rare cases, proportionality, mitigation and individualized sentencing.

HISTORICAL DEVELOPMENT OF DEATH PENALTY JURISPRUDENCE

Indian constitutional jurisprudence initially examined capital punishment primarily through the validity of sentencing laws and procedure. Over time, the Supreme Court moved toward a more individualized sentencing approach. The shift is particularly visible from Jagmohan Singh to Bachan Singh and later cases that emphasized mitigation and the possibility of reform.

The modern position therefore combines legislative authorization with judicial restraint. Capital punishment remains legally available, but the constitutional framework restricts the circumstances in which it may actually be imposed.

MAJOR JUDICIAL DECISIONS

1. ***Jagmohan Singh v. State of U.P.***

In Jagmohan Singh, the Supreme Court upheld the constitutional validity of the death penalty. The decision was an early foundation for later constitutional challenges.

2. Rajendra Prasad v. State of U.P.

Rajendra Prasad reflected judicial concern with the exceptional nature of capital punishment and contributed to the development of restrictive principles concerning its use.

3. Bachan Singh v. State of Punjab

Bachan Singh is the leading constitutional authority. The Constitution Bench upheld the death penalty for murder but held that it should be imposed only in the rarest of rare cases when the alternative option is unquestionably foreclosed. The Court emphasized the value of human life and required courts to balance aggravating and mitigating circumstances.

4. Machhi Singh v. State of Punjab

Machhi Singh elaborated practical considerations relevant to the rarest of rare doctrine and emphasized a balance between aggravating and mitigating circumstances. Later cases have cautioned against treating its categories as a mechanical checklist.

5. Mithu v. State of Punjab

In Mithu, the Supreme Court struck down the mandatory death sentence under Section 303 of the Indian Penal Code. The decision demonstrates the constitutional objection to sentencing provisions that eliminate meaningful judicial consideration of individual circumstances.

6. Triveniben v. State of Gujarat

Triveniben addressed the constitutional relevance of delay after a death sentence. The decision reinforced the principle that Article 21 can remain relevant after the judicial sentence has become final.

7. Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra

The Court emphasized proportionality, mitigation and the possibility of reform and rehabilitation. The case reinforced the need for individualized consideration before imposing the irreversible penalty.

8. Shatrughan Chauhan v. Union of India

Shatrughan Chauhan examined delay in mercy petitions and supervening circumstances. It recognized that circumstances arising after the original sentencing decision can have constitutional relevance.

THE RAREST OF RARE DOCTRINE

The rarest of rare doctrine is the principal limitation on the imposition of capital punishment. It requires courts to determine whether the circumstances of the case are such that life imprisonment is inadequate and death is constitutionally justified.
The doctrine requires an individualized assessment. The seriousness or brutality of an offence is relevant, but it cannot operate as an automatic formula. The court must also consider the offender's circumstances, mitigating factors and the possibility of reform.
The phrase 'rarest of rare' therefore operates as a constitutional sentencing restraint rather than as a statutory definition of an offence.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

Aggravating circumstances may include the manner of commission, number of victims, exceptional circumstances surrounding the offence and other facts increasing culpability. Mitigating circumstances may include age, background, absence of prior criminality, circumstances of the offence, mental and social conditions where legally relevant, and the possibility of reform and rehabilitation.

The balancing exercise is essential because capital sentencing is individualized. A court must not consider only the crime; it must also consider the person convicted and whether the purposes of punishment can be achieved through a lesser penalty.

REFORM AND REHABILITATION

The possibility that an offender can be reformed is central to modern capital sentencing. If evidence demonstrates a realistic possibility of rehabilitation, that factor may weigh against imposing the irreversible penalty.

The Supreme Court has increasingly emphasized the need for meaningful mitigation investigations and evidence concerning the offender's background and capacity for reform. The inquiry is therefore not limited to what happened during the offence; it also concerns the offender's future prospects.

DELAY IN EXECUTION AND ARTICLE 21

Prolonged delay between the final judicial sentence and execution may raise constitutional questions under Article 21. The Supreme Court has recognized that supervening circumstances, including excessive delay in appropriate cases, can be relevant when determining whether execution should proceed.

However, delay does not automatically produce the same legal consequence in every case. The court must examine the nature, cause and circumstances of the delay and the overall constitutional context.

CONSTITUTIONAL AND HUMAN RIGHTS CONCERNS

Capital punishment raises questions concerning dignity, proportionality, arbitrariness and the possibility of irreversible error. The right to life is fundamental, and any deprivation must comply with constitutional requirements.
The human-rights debate also includes concerns about unequal access to legal representation, inconsistent sentencing and the risk that social and economic disadvantage may influence outcomes. These concerns strengthen the need for procedural safeguards and careful judicial reasoning.

LAW COMMISSION OF INDIA – 262ND REPORT

The Law Commission of India published Report No. 262, titled The Death Penalty, in August 2015. The report examined the constitutional, legal and practical dimensions of capital punishment and discussed concerns regarding arbitrariness and administration.

The report remains an important source for understanding the institutional debate over capital punishment, even though it does not itself alter the law declared by the Supreme Court.

ARGUMENTS SUPPORTING RETENTION

First, Parliament may prescribe severe punishment for grave offences subject to constitutional limits. Second, supporters of retention argue that the punishment expresses society's condemnation of exceptionally serious crimes. Third, deterrence is often advanced as a justification, although its effectiveness is an empirical question. Fourth, retention is argued to provide a means of permanently incapacitating an offender in exceptional cases.

These arguments should be distinguished from the constitutional question. The existence of a policy justification does not itself establish constitutional validity; constitutional validity ultimately depends on compliance with the Constitution.

ARGUMENTS AGAINST CAPITAL PUNISHMENT

Opponents emphasize the irreversible nature of execution and the possibility of wrongful conviction. They also argue that rehabilitation and reform are important objectives of criminal justice and that sentencing discretion can be uneven.

Article 21 and human dignity provide the strongest constitutional basis for questioning the death penalty. The concern is particularly acute where procedural inequality, inadequate mitigation investigation or prolonged delay may affect a person's experience of the death sentence.

CRITICAL ANALYSIS

Indian constitutional law adopts neither unrestricted retention nor complete judicial abolition. Instead, it permits capital punishment while imposing a demanding constitutional threshold for its application.

The strength of this framework lies in individualized sentencing and the rarest of rare doctrine. Its continuing difficulty is that concepts such as 'rarest of rare' and 'alternative option unquestionably foreclosed' require judicial judgment. Differences in how courts evaluate aggravating and mitigating circumstances can therefore produce difficult questions of consistency.
Another important issue is the quality of mitigation evidence. A sentencing court cannot meaningfully consider rehabilitation if it does not receive adequate information about the offender's background, circumstances and future prospects. The constitutional framework therefore depends not only on legal rules but also on the quality of the sentencing process. The distinction between the constitutional validity of capital punishment and the validity of an individual death sentence is critical. The former concerns whether the punishment may exist in law; the latter concerns whether its imposition in a particular case satisfies constitutional standards.

FINDINGS

1. The Supreme Court has upheld the constitutional validity of capital punishment in India.
2. Article 21 does not constitute an absolute prohibition on every legally authorized deprivation of life.
3. Article 14 requires protection against arbitrary and inconsistent sentencing.
4. The rarest of rare doctrine is the central judicial restriction on capital punishment.
5. Mitigating circumstances and rehabilitation are relevant to individualized sentencing.
6. Mandatory death sentences that remove meaningful judicial discretion raise serious constitutional concerns.
7. Delay and supervening circumstances may be relevant under Article 21.
8. The BNS 2023 continues to retain death as a punishment for certain offences.
9. The constitutional debate remains significant because execution is irreversible.

SUGGESTIONS

1. Courts should continue to conduct individualized sentencing inquiries in every capital case.
2. Mitigating circumstances should be investigated comprehensively before sentencing.
3. Evidence concerning reform and rehabilitation should receive meaningful consideration.
4. Legal representation in capital cases should be effective and adequately resourced.
5. Sentencing judgments should clearly explain why lesser punishment is inadequate where death is imposed.
6. Mercy petition procedures should operate without avoidable delay while preserving meaningful constitutional consideration.
7. Empirical research on sentencing consistency and the administration of capital punishment should continue.
8. The legal system should maintain heightened procedural safeguards because the punishment is irreversible.

CONCLUSION

Capital punishment occupies a unique and contested position in Indian constitutional law. The Supreme Court has upheld its constitutional validity but has simultaneously restricted its application through stringent safeguards. The jurisprudence beginning with Jagmohan Singh and crystallized in Bachan Singh treats death as an exceptional punishment rather than an ordinary sentencing response.

The constitutional framework is principally shaped by Articles 14 and 21. Equality and non-arbitrariness require consistent and principled sentencing, while Article 21 requires constitutionally fair procedure and protects the dignity of the individual. Subsequent cases have reinforced the relevance of mitigation, rehabilitation, delay and supervening circumstances.

The Bharatiya Nyaya Sanhita, 2023 continues to recognize capital punishment for specified offences. It does not, however, displace the constitutional principles developed by the Supreme Court. The central legal question in an individual capital case remains whether, after considering the offence, the offender, mitigating circumstances, prospects of reform and all relevant constitutional safeguards, the death penalty satisfies the exceptionally high threshold established by law. Accordingly, the constitutional validity of capital punishment in India must be understood as conditional rather than unrestricted. The punishment may exist within the statutory framework, but its imposition remains subject to the Constitution, judicial precedent and rigorous safeguards designed to protect against arbitrariness and irreversible injustice.

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