

# Capital Punishment and Its Relevancy in Modern Indian Society

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## Abstract

Punishments are meant to uphold both law and order in the society and the capital punishment is regarded to be the severe most of them. Since the beginning of time, it has created a long history as a form of punishment. There are different techniques used for execution purposes in various nations. But the defenses against use of capital punishment have remained unchanged over time. It is considered by many that the capital punishment is one of the major reasons for violating the morality of the society and it also motivates retaliation. This is because of which many nations have abolished the concept of capital punishment, while some have done so only to bring it in use in case of certain events of extraordinary cases such as war crimes and so on. Both the UNGA as well as ICJ oppose the application of capital punishment. And even though many nations have abolished this concept, yet the countries like India, China, Pakistan and United States still practice it. In case of India, it is only in the “rarest of rare” events wherein the collective conscience of the community get shocked by the heinous crime conducted by the offender, that the capital punishment method is used. While the main objective of the execution of capital punishment is to satisfy the society’s feeling towards the hatred for crime, it should rather be curtailed as death penalty is not surety to vanish crime from the society. Even a single mistake through admission of facts may lead to the death of an innocent. Rehabilitation of an accused must be the main purpose rather than his/her death and focus must not be to eliminate a criminal, but to eliminate the crime.

Keywords: *Law and order, morality, execution, rarest of rare, rehabilitation.*

## INTRODUCTION

The term capital came from the Latin word “capitalis” which means head. Hence, in a capital crime accused had been punished by beheading. The discussion of the death penalty is the most important one today. The existence of the death penalty has been questioned as immoral as national human rights movements grow. It is a strange argument, though, to maintain one person's life at the expense of many other society members, and it is unethical.

When someone commits a crime, there is a provision for punishment to help the person understand what he has done and what he should not have done. Even a young child who has no intention of engaging in wrongdoing receives punishment from his mother. In order for him to understand the distinction between a good act and a bad act, and how greatly different their effects are from one another.

Every punishment has the same goal, which is that there must be a serious repercussion for the offence. There are two primary justifications for applying punishment: the first is the conviction that the offender should suffer and that it is right and just to punish that person; the second is the conviction that punishing offenders deters others from committing the same wrongdoing. Capital punishment also possesses the same motive.

In the world we live in today, crime rates are steadily rising. There have been more homicides, kidnappings, rapes, terrorist attacks, and incidents involving child abuse. The World Population Review of 2022 estimates that India has an overall crime rate of 44.43. Laws and punishments to discourage and prevent crime must be implemented right away in such a situation. One of the major tenets of modern civilization, punishment is the use of coercion to uphold the law of the state. To keep law and order in society, the state must punish violators. The harshness of the punishment was entirely up to the monarch of the state because there was no formal law or code that supervised these offences in the past. Modern views of punishment developed over time, and the state was granted the authority to uphold law and order as well as voluntary control over our rights. The penalties might be anything from fines and jail time to the death penalty and life in prison. The "death penalty," usually referred to as "capital punishment," is currently the toughest or most severe punishment. The goal of the death sentence is to prevent people from acting in a certain way by making them fearful of the repercussions. This penalty is imposed for serious and traumatic crimes against society as a whole, including murder, rape, rape in conjunction with murder, etc. When a crime is so heinous that it has the potential to terrorize society as a whole, the death penalty is applied, however not all of the offences listed above necessarily call for the death sentence. Only offences that meet the criteria for the "rarest of rare doctrine" are subject to the death penalty.

### **CAPITAL PUNISHMENT IN INDIA: STATUTORY PROVISIONS**

In India, there are two ways to put someone to death: Hanging and Shooting. In India, hanging is used to carry out all death sentences. In the Mahatma Gandhi case, Godse was the first person to get the death penalty after the country gained its freedom. Apex Court proposed that the death sentence be used in India only in the rarest of situations. Both hanging and gunshot are recognized as acceptable methods of death in the military court-martial system under the terms of the 1950 Army Act.

The Indian Penal Code of 1860 covers various offences punishable by death. They are discussed as under-

- Anyone who makes an effort to wage war against India or is successful in doing so could receive the death penalty.<sup>1</sup>
- Anyone who commits or aids in the commission of a mutiny by one of these individuals so that mutiny will be committed as a result of their aid and assistance can be put to death.<sup>2</sup>
- Falsifying evidence is punished by the death penalty if done in order to get a conviction for a crime that carries the death penalty. An individual who commits such a crime may be put to death.<sup>3</sup>
- Murderers are subject to the death penalty.<sup>4</sup>

<sup>1</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 121.

<sup>2</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 132.

<sup>3</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 194.

- Anyone helping or encouraging a minor or a person with intellectual disabilities to commit suicide is subjected to the death penalty.<sup>5</sup>
- The crime of kidnapping someone with the intent to hurt or kill could get executed.<sup>6</sup>
- For rapes that leave the victim dead or in a persistent vegetative state<sup>7</sup>
- Repeat rape offenders<sup>8</sup>
- murder and dacoity<sup>9</sup>

There are certain other legislative Acts which include death penalty for particular offences such as-

- Everyone participating in the act of Sati, whether directly or indirectly faces the death penalty.<sup>10</sup>
- Those who participate in the manufacturing or distribution of narcotics or psychoactive drugs in a preset amount or who provide financial support based on prior convictions are subjected to death sentence.<sup>11</sup>
- Fabricating evidence that results in a scheduled caste or tribal member's conviction and execution is punishable by death.<sup>12</sup>
- The death penalty may also be applied to a number of offences that military personnel have committed in violation of military statutes.<sup>13</sup>

The following offences and crimes are punishable by death:

- Serious murder: According the Act of 1860, it is a capital offence.<sup>14</sup> Apex Court ruled that death sentence is only constitutionally permissible when meted out as an unusual punishment in "the rarest of the rare" circumstances.<sup>15</sup>
- Other crimes that result in death: A person who murders someone while engaging in an armed robbery is subject to the death penalty under the Indian Criminal Code. Participation in organized crime is punished by death if it results in death.
- Any particular category of explosive that is used to set off an explosion that poses a risk to life or significantly damages property is punishable by death.
- According to the Criminal Law Act of 2013, anyone who causes harm in a sexual assault that leads in death or leaves the victim in a "persistent vegetative condition" may be executed.

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<sup>4</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 302.

<sup>5</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 305.

<sup>6</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 364A.

<sup>7</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 376A.

<sup>8</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 376E.

<sup>9</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 396.

<sup>10</sup> The Commission of Sati (Prevention) Act, 1987 (Act 3 of 1988).

<sup>11</sup> The Narcotic Drugs And Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 31A.

<sup>12</sup> The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989).

<sup>13</sup> The Air Force Act, 1950, (Act 45 of 1950).

The Navy Act of 1957, (Act 62 of 1957).

The Army Act of 1950, (Act 46 of 1950).

<sup>14</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 302.

<sup>15</sup> *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

- The death penalty is applied to gang rapes.
- A person who is found guilty of raping a girl who is younger than 12 years old may receive a death sentence or a 20-year prison term combined with a fine, according to the 2018 Criminal Law Ordinance. The 2018 amendment additionally includes the death penalty or life in prison for an under-12-year-old girl who is raped in a group.<sup>16</sup>
- Kidnapping that does not end in death is an offence that is punishable by death.<sup>17</sup>
- A person who is found guilty of committing, attempting to commit, aiding, or conspiring in any of a number of drug trafficking offences, or financing the use of specific types and quantities of narcotic and psychoactive drugs, may get the death penalty.
- A person who participates in a criminal conspiracy to commit a capital offence faces the death penalty.
- Attempts to murder persons who have been given a life sentence are punishable by death if the victim is wounded.
- Anyone who gives testimony knowing that it could convict someone from a scheduled caste or tribe for committing a capital offence on the basis of that testimony will face the death sentence.

The following are the persons exempted from capital punishment-

- **Minor:** According to the law in India, a minor who is under the age of 18 at the time of committing a crime is not executed.
- **Pregnant Women:** Clemency must be granted to a pregnant woman sentenced to death according to a 2009 amendment.
- **Intellectually Disabled:** According to IPC, a person while committing a crime who was mentally ill or is not able to understand the nature of the act or the act is wrong, then that person can be held liable under the law and can be punished with the death penalty.

## CAPITAL PUNISHMENT IN INDIA: HISTORY AND EVOLUTION

The history of the death penalty in India is broken down into following sections for better organization:

- **Ancient India:** Punishment has been a fundamental element of society ever since the dawn of humanity. Two simple methods of eliminating the anti-social elements of society—the death penalty and exile, were present and served as society's best examples of punishment and deterrence. In ancient scriptures and books, death penalty is mentioned. The use of torture replaced death penalty to have a more draconian effect on society. Historical and mythological epics, have also argued for the necessity of the death penalty by stating that the king's top priority is to protect society from threats of all kinds, which can be accomplished by putting the wrongdoer to death. Ashoka did not believe that the death penalty was unfair even in the Buddha's time, when Ahimsa was the moral code. Deterrence and mental health were the core principles of the Dand Niti in India.

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<sup>16</sup> *Asifa Bano v. Union Territory of Jammu & Kashmir*, AIR 2022.

<sup>17</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 364 A.

- Mughal era: The government of great Mughal Empire mainly adhered to the Quranic laws. When conflicts developed, judges largely took into account Quranic teachings while also having power to impose arbitrary punishments. There was no uniform application of the law throughout the world. Akbar held extremely tolerant views and thought the death penalty should only be enforced in extreme cases of sedition and only after careful study.
- Before and after independence era: It wasn't until 1931 that the question of the death sentence came up in the British India legislative assembly when Shri Gaya Prasad Singh, a member from Bihar, attempted to present a measure to do away with the death penalty for offences included by the Indian Criminal Code. During two discussions in the Legislative Assembly prior to independence, then-Home Minister Sir John Thorne made it plain what the government's position was towards the death penalty in British India. The death sentence for any offence for which it is now authorized is still in effect, according to the government.

### **CONSTITUTIONAL PROVISIONS WITH REGARD TO CAPITAL PUNISHMENT IN INDIA**

It is a general notion that no person shall be denied the "right to life" that is guaranteed to each and every citizen of India.<sup>18</sup> IPC imposes death penalties for various offences, including criminal conspiracy, murder, war against government, aiding mutiny, dacoity with murder, and anti-terrorism. In situations when death sentences are involved, only the president has the authority to grant compassion. High Court must confirm Sessions Court's death sentence after it has been handed out in a case. States must adhere to specific instructions on the process for handling requests for mercy submitted by or on behalf of death-row inmates. The Ministry of Home Affairs shall set out appeals to the Supreme Court and requests for special leave to appeal by such convicts to that court. President of India has the authority to pardon, reprieve, respite, or remit punishment, as well as to suspend, remit, or lessen the sentence of any individual who has been found guilty of an offence.<sup>19</sup> In the interest of law and public order, the state has the authority to revoke or restrict even the right to exist. Nonetheless, this process must follow "due process," as determined in a relevant judgment.<sup>20</sup> This "due process" that ends a person's sacred life must be just, fair, and reasonable.

The death penalty should be used as an extraordinary punishment and can only be imposed under rare circumstances. The right to be heard belongs to the accused and the sentence should be tailored to each person's unique situation. The High Court must approve the death punishment and there is a right to appeal to the Supreme Court.<sup>21</sup> The accused has a right to ask for pardon, commutation, etc. of his sentence.<sup>22</sup> Apart from the judicial power, the President and governor have discretion to intervene in the case's merits.<sup>23</sup> The judicial authorities have a limited scope of review, and they must make sure that the President or governor is in possession of all pertinent documents and materials. Yet, the core of the governor's authority should not depend on a person's race, religion, caste, or political ties, but rather on the application of the law and sensible matters.

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<sup>18</sup> The Constitution of India, art. 14.

<sup>19</sup> The Constitution of India, art. 72

<sup>20</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; (1978) 1 SCC 248

<sup>21</sup> The Constitution of India, art. 136.

<sup>22</sup> The Indian Penal Code, 1860 (Act 45 of 1860), ss. 433, 434.121.

<sup>23</sup> The Constitution of India, arts. 72, 161.

The accused is also entitled to a speedy and fair trial without being faced with any torture.<sup>24</sup> The accused is also entitled to freedom of speech and expression while in custody.<sup>25</sup> The accused has a right to legal representation from officially appointed and qualified counsel.<sup>26</sup>

## CAPITAL PUNISHMENT: ROLE OF INDIAN JUDICIARY

The following judgments show the viewpoints of the Indian judiciary with regard to capital punishment.

- In a relevant judgment, the judge decided between the death penalty and life in prison based on the circumstances, the evidence, and the type of crime that was presented throughout the trial. Hence, as required by Constitution, the decision to impose the death penalty was made in line with the legal process.<sup>27</sup>
- In another case, the judge decided that the death penalty would not be appropriate unless it could be demonstrated that the criminal posed a threat to society. Additionally, it was determined that I.P.C. Section 302's provision for the death penalty did not contradict the fundamental tenet of the constitution.<sup>28</sup>
- In another landmark judgment, Apex Court acknowledged the State's power to revoke a person's right to life in line with a legal process that is equitable, fair, and reasonable.<sup>29</sup>
- In another relevant judgment, validity of the death sentence was once more contested and according to Apex Court, hanging is a legal and constitutional mode of execution within limitations.<sup>30</sup>
- In another case, death penalty under Section 303 IPC was ruled to be unconstitutional because it violates the protections listed in Constitution of India with regard to equality and liberty of individual<sup>31</sup>
- In a ruling by three-judge bench, it was declared that death sentence can only be imposed in the most extreme circumstances when the community will expect those in positions of judicial power to do so.<sup>32</sup>
- In recent judgment, Apex Court decided that death penalty only applies where the alternative opinion is unquestionably forfeited. In this case, a number of recommendations were offered for a better evaluation of the characteristics and reach of rehabilitation such as- taking in account the mitigating circumstances at trial stage, information must be provided to the trial court by accused and state, additional data with regard to illness and unstable behavior must be considered, accused must be given chance to defend himself/herself, reports from authorities in prison are relevant and so on.<sup>33</sup>

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<sup>24</sup> The Constitution of India, arts. 21, 22.

<sup>25</sup> The Constitution of India, arts. 21, 19.

<sup>26</sup> The Constitution of India, art. 22.

<sup>27</sup> *Jagmohan v. State of U.P.*, AIR 1973 SC 947.

<sup>28</sup> *Rajendra Prasad v. State of U.P.*, AIR 1979 SCC(3)646

<sup>29</sup> *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

<sup>30</sup> *Deena Dayal v. Union of India*, (1983) INSC 129.

<sup>31</sup> *Mithu v. State of Punjab*, AIR 1983 SC 473.

<sup>32</sup> *Macchi Singh & Others v. State of Punjab*, 1983 SCR (3) 413.

<sup>33</sup> *Manoj v. State of Madhya Pradesh*, AIR 2022 SCC 677.



- In another recent judgment, Apex Court affirmed that the crime was perpetrated with severe depravity, especially given the victim's fragility and the way it was carried out, thus leading to death sentence.<sup>34</sup>

## CONCLUSION AND SUGGESTIONS

India disagreed with the United General Assembly's vote to abolish or outlaw the death penalty because it conflicted with its legal system. The death penalty is never used in India even though it is regarded as a legal punishment for crimes like murder, child suicide, and terrorism. In the current situation, where India has experienced an upsurge in rape and murder cases, where harsh actions should be taken against the perpetrators, abolishing the death sentence would not make sense. The death penalty is perceived as a more terrifying punishment than life imprisonment, thus if it were employed more frequently when the accused is fully found guilty, people would be less motivated to commit crimes. While, on the other hand, the death penalty is regarded to be extremely serious subject because it involves taking someone's life, which is a very delicate matter. This is the reason why the death penalty is questioned in nations like China, India, the United States, and Arab nations.

After weighing the advantages and disadvantages of the death penalty and considering the criminal justice systems of many nations, we can only conclude that the death penalty is appropriate. Thus there will be no improvement in crime rates even in the absence of the death penalty, but rather a sharp increase because criminals will no longer be motivated by dread of death. We are unable to envision what would happen if the death penalty were abolished in such a nation, even though crime is rising as a result of the threat of the death penalty.

The death penalty can also offer some comfort to the victims' families and aid in getting rid of bugs known as criminals who have committed crimes that are so abhorrent that they cannot be forgiven and who should not be allowed to roam free since doing so will cause more harm than good. Also, the claim that it is cruel is unfounded because there is no use of torture nowadays, and the death penalty is administered in the most humane way imaginable.

Furthermore, even if we decided to keep the criminal behind bars, there is a chance that he could manage to escape, and if we give them a life sentence, it also means that we are providing him with food and a place to sleep for the rest of his life in exchange for the crime he committed, which is unfair to the victim and his family. However, the death penalty is only applied in the rarest of circumstances in India in an effort to uphold society's morals and rights. This practice is unassailable because even if one person is saved, society as a whole cannot be put in jeopardy.

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<sup>34</sup> *State of Rajasthan v. Manoj Pratap Singh*, AIR 2022.