

Capital Punishment in India: A Complex Issue

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ABSTRACT

Capital punishment or Death Penalty is a topic of intense debate globally due to its ethical, legal, and social implications. Its history reflects a spectrum of human motivations, from the quest for retribution to the aspiration for justice tempered by compassion. The ongoing dialogue surrounding the death penalty underscores the delicate balance between the preservation of human rights, the pursuit of justice, and the moral obligations of a society that seeks to affirm its values while grappling with its darker impulses. This research paper provides an in-depth analysis of capital punishment, examining its historical context, legal frameworks, psychological effects, the broader societal impact and varied arguments both in favor and against it. Through a comprehensive review of academic literature, legal cases, and empirical studies, this paper aims to shed light on the complexities surrounding capital punishment and its effects on individuals and society.

Keywords: Capital Punishment, Death Penalty, Legal Aspects

INTRODUCTION

Capital punishment, often referred to as the death penalty, has been a subject of extensive legal deliberation globally, including India. In India, this issue has garnered considerable attention due to its ethical, moral, and legal implications. While some argue that it serves as a deterrent and ensures justice, others emphasize its potential for miscarriages of justice and the ethical concerns surrounding the taking of a human life. As a diverse and culturally rich nation, India's legal framework surrounding capital punishment has evolved over time, reflecting complex moral, ethical, and social considerations. This paper explores the legal aspects of capital punishment in India, including its historical context, legal provisions, judicial interpretations, and the ongoing debates regarding its use.

It is execution of a person (offender) sentenced to death as a punishment after conviction by a court of law for a criminal offense. Extrajudicial executions carried out without due process of law, are different from capital punishment. Capital Punishment stands for the most severe form of punishment given only for the extremely heinous, grievous and detestable crimes against humanity¹. By common usage in jurisprudence, criminology and penology, capital sentence means a sentence of death².

EVOLUTION

Capital punishment has been practiced in India for centuries under and is deeply rooted in its social and cultural history. Historical records indicate that various forms of execution were prevalent in different regions of India. Over time, these practices evolved and were codified into legal frameworks under different rulers and colonial powers.

1. Ancient and Medieval Periods: The concept of punishment, including capital punishment, has been present in Indian society since ancient times. Various ancient Indian texts, such as the Manusmriti and

Arthashastra, prescribed different forms of punishment for different crimes, including death penalty for serious offenses. However, these punishments were often guided by the principles of dharma (righteousness) and were not always carried out in a uniform or systematic manner.

2. Colonial Period: The British colonial rulers introduced a more structured legal system in India, which included the formal codification of laws and regulations. The British colonial government expanded the use of the death penalty and established various laws that mandated it for certain crimes. The Indian Penal Code of 1860, enacted during British rule, retained and expanded the scope of the death penalty for various serious offenses.
3. Post-Independence Era: After India gained independence in 1947, the issue of the death penalty became a matter of debate and discussion. The Indian Constitution, adopted in 1950, initially retained the death penalty as a permissible form of punishment. The Indian Penal Code (IPC) of 1860, inherited from the British colonial era, outlined offenses for which the death penalty could be imposed. Over time, amendments were made to reduce the number of offenses that warranted the death penalty, and legal safeguards were introduced to ensure fair trials and due process. The Constitution itself did not explicitly prohibit or mandate the use of the death penalty, leaving it up to the discretion of the legislature. The Constitution of India, adopted in 1950, included provisions safeguarding the right to life and personal liberty under Article 21. However, it also allowed for the deprivation of life in accordance with the procedure established by law.
4. 1970s and 1980s: In the 1970s and 1980s, there was a global trend towards the abolition of the death penalty, and India also saw increased public and legal discourse on the issue. In 1973, the Supreme Court of India delivered a landmark judgment in the case of *Rajendra Prasad vs. State of Uttar Pradesh*, where it held that the death penalty should be imposed only in "the rarest of rare" cases. This judgment laid down guidelines for the application of the death penalty and emphasized the need for extreme caution in its imposition.

In the subsequent years, there have been ongoing debates about the abolition of the death penalty in India. Public opinion and legal experts have been divided on the issue, with arguments both in favor of its retention as a deterrent and as a form of retribution, and arguments against it on grounds of human rights, the risk of wrongful convictions, and the lack of conclusive evidence proving its deterrence value. The 2012 Nirbhaya gang rape case triggered widespread protests and discussions about the efficacy of the death penalty as a deterrent.

LEGAL FRAMEWORK AND LANDMARK CASES

In the modern era, capital punishment in India is governed by the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC). The IPC outlines the various crimes for which the death penalty can be imposed, such as murder, terrorism-related offenses, and certain cases of espionage. While the constitutionality of the death penalty has been upheld by the Indian judiciary, the courts have also placed restrictions on its application, emphasizing the need for a fair trial and adherence to due process. Landmark cases like *Bachan Singh v. State of Punjab* (1980)⁴ and *Machhi Singh v. State of Punjab* (1983)⁵ led to the establishment of guidelines for determining when the death penalty could be imposed.

Bachan Singh vs. State of Punjab (1980)⁴ case introduced the "rarest of rare" doctrine, which stipulates that the death penalty should only be given in the rarest of rare cases, where the crime is heinous and the alternative of life imprisonment is unquestionably foreclosed. Another significant case was *Machhi Singh*

v. State of Punjab in 1983⁵, which further refined the "rarest of rare" doctrine and laid down specific guidelines for judges to consider when deciding whether to impose the death penalty.

Dhananjay Chatterjee v. State of West Bengal (1994)⁶ case highlighted issues of fair trial, as his defense argued that he did not receive proper legal representation and that his confession was extracted under duress. The case sparked debates about the death penalty's implementation and the risk of wrongful convictions. Dhananjay Chatterjee was the last person to be executed in India before the unofficial moratorium on the death penalty. In Rajiv Gandhi Assassination Case (1999)⁷, the execution of the convicts in the Rajiv Gandhi assassination case marked one of the notable instances of the death penalty being carried out in India.

Nirbhaya Gang Rape Case (2012)⁸ led to widespread protests and discussions about the death penalty as a response to heinous crimes after the brutal gang rape and murder of a young woman in Delhi. In 2012, the execution of Ajmal Kasab⁹, the lone survivor of the 2008 Mumbai terror attacks, marked the end of an unofficial eight-year moratorium on the death penalty.

Subsequently, there was a resurgence in the use of the death penalty, particularly in cases involving heinous crimes like rape and murder. In Yakub Memon Case (2015)¹⁰, Yakub Memon was convicted for his involvement in the 1993 Mumbai bombings. His case prompted debates about the death penalty's effectiveness as a deterrent and raised concerns about procedural fairness. His execution led to discussions about the ethical implications of capital punishment. In 2015, the Law Commission of India recommended the abolition of the death penalty for all crimes except terrorism-related offenses. This proposal was met with mixed reactions from legal experts, human rights activists, and the general public.

These cases reflect the complex legal, moral, and social considerations surrounding the death penalty in India. The country's legal system continues to grapple with questions about the appropriateness, fairness, and efficacy of capital punishment.

PSYCHOLOGICAL IMPACT

Capital punishment has a profound psychological impact on various stakeholders involved in its administration and those affected by it. It touches on themes of fear, morality, trauma, closure, and societal values. It's essential to consider these psychological dimensions when discussing and evaluating the use of the death penalty as a form of punishment in any society.

1. Emotional Toll on Individuals Involved:

- a. Death Row Inmates: Individuals awaiting execution on death row often experience extreme psychological distress. The uncertainty of their fate, the prolonged anticipation of death, and the isolation from the outside world can lead to anxiety, depression, and even deteriorating mental health.
- b. Executioners: Those tasked with carrying out executions may experience cognitive dissonance and moral conflict. The act of taking another person's life, even in accordance with the law, can lead to emotional trauma, guilt, and the development of post-traumatic stress disorder (PTSD).
- c. Victims' Families: The families of victims also undergo psychological turmoil. While some may find closure and a sense of justice through the execution of the perpetrator, others may continue to grapple with grief, anger, and a sense of emptiness. Re-Traumatization: The legal process leading up to an execution can re-traumatize victims' families as they are forced to relive the details of the crime repeatedly.
- d. Families of Convicts: Family members of convicts often experience intense emotional turmoil, ranging from shock and disbelief to grief and anger. Families may face social stigma and isolation due to their

association with a convicted criminal. They may feel isolated and judged by their communities. The process of legal proceedings, appeals, and the looming execution can result in prolonged trauma for the families, impacting their mental and emotional well-being.

2. Ethical and Moral Dilemmas:

- a. **Dehumanization:** The process of capital punishment may inadvertently dehumanize both the offender and those involved in the execution process. This dehumanization can have broader societal implications, contributing to a culture of violence and desensitization.
- b. **Retribution vs. Rehabilitation:** The ethical debate between retribution (punishment as payback) and rehabilitation (focus on reforming the individual) plays a significant role. Capital punishment emphasizes retribution, potentially neglecting opportunities for rehabilitation and personal transformation.
- c. **Consequential Moral Distress:** For those involved in the legal system, making decisions about life and death can result in profound moral distress. Judges, jurors, and legal professionals may face internal conflicts between their personal moral values and the requirement to uphold the law.

3. Deterrence and Behavioral Psychology:

- a. **Deterrence Hypothesis:** The concept of deterrence posits that the threat of severe punishment, such as death, can deter individuals from committing serious crimes. However, research findings on the effectiveness of the death penalty as a deterrent are mixed and inconclusive.
- b. **Risk Perception:** Behavioral psychology suggests that individuals may not always accurately assess the risks associated with their actions. Factors such as impulsivity, emotional states, and lack of long-term thinking can influence criminal behavior, potentially rendering the concept of deterrence less effective.

4. Psychological Impact on Society:

- a. **Desensitization:** Frequent exposure to media coverage of executions and discussions about capital punishment can desensitize society to violence and death, potentially eroding empathy and compassion.
- b. **Socialization of Violence:** The endorsement of state-sanctioned violence through capital punishment can indirectly contribute to a culture where the use of force as a solution to problems is normalized.

5. Human Rights and Mental Health:

- a. **Right to Life:** The psychological perspective on capital punishment raises questions about the universal human right to life. The imposition of the death penalty challenges the inherent worth and dignity of every individual, regardless of their actions.
- b. **Mental Health Considerations:** Individuals facing execution often have histories of trauma, mental illness, and adverse life circumstances. Failing to consider these factors can lead to a disproportionate impact on vulnerable populations and raise ethical concerns about the fairness of the process.

6. Society and Public Opinion:

- a. **Debate and Divisions:** The existence of the death penalty can lead to public debates and divisions regarding its ethical implications, effectiveness, and potential for miscarriages of justice.

- b. Psychological Impact on Society: The use of the death penalty can contribute to a society's collective psychology by shaping its values, attitudes toward crime, and perceptions of justice.
- c. Empathy and Empowerment: Some members of society may feel empathy for the individuals sentenced to death and their families. Others might feel empowered by the idea of retribution and the state's power to punish.

6.Policymakers:

- a. Policy Reflection: Policymakers involved in decisions about capital punishment may grapple with the ethical implications of their choices. They must balance public sentiment, crime prevention, and human rights, which can lead to internal conflicts.
- b. 'Public Scrutiny: The decisions of policymakers regarding the death penalty can subject them to public scrutiny and criticism. This external pressure can impact their mental well-being.

In conclusion, the psychological perspective on capital punishment highlights the intricate web of emotions, ethics, and human behavior entwined within this controversial practice. While proponents argue for its deterrent effect and retribution, opponents emphasize its potential for psychological harm, moral dilemmas, and the broader implications for society's values and ethical standards. As societies continue to evolve and engage in discussions about justice and human rights, understanding the psychological dimensions of capital punishment is crucial for informed decision-making and policy reform.

ARGUMENTS IN FAVOR OF CAPITAL PUNISHMENT

1. Deterrence: Proponents argue that the death penalty serves as a deterrent, preventing potential criminals from committing serious crimes due to the fear of losing their own lives.
2. Retribution and Justice: Some believe that capital punishment provides a sense of retribution to the victims' families and society at large, by ensuring that the perpetrator faces a punishment equal to the severity of the crime.
3. Preventing Recidivism: Advocates assert that executing a criminal removes the possibility of them reoffending, thereby protecting society from further harm.

ARGUMENTS AGAINST CAPITAL PUNISHMENT

1. Risk of Wrongful Execution: One of the most significant concerns is the potential for miscarriages of justice, where innocent individuals could be wrongly convicted and executed. The irreversible nature of the death penalty makes this risk especially troubling.
2. Ethical and Human Rights Concerns: The death penalty raises ethical dilemmas, as it involves the deliberate taking of a human life by the state. Many consider it a violation of the fundamental human right to life and believe that society should not be in the business of killing.
3. Ineffectiveness as a Deterrent: Some studies suggest that the death penalty may not be an effective deterrent against crime. Factors such as socioeconomic conditions, education, and law enforcement play a more significant role in crime prevention.

CONTEMPORARY DISCOURSE AND CHALLENGES:

In recent years, the global trend has been moving towards the abolition of the death penalty, with an increasing number of countries abolishing or placing moratoriums on its use. In India, while the death penalty continues to be applied, there is a growing public debate about its efficacy, fairness, and alignment

with modern human rights standards. Activists, scholars, and legal experts are advocating for more stringent safeguards to prevent wrongful convictions, fair and transparent trial processes, and a broader discussion about the overall effectiveness of capital punishment as a crime deterrent. Capital punishment remains legal in India and is imposed in certain cases. However, there have been growing calls for its abolition, and the country's approach to the death penalty continues to evolve in response to changing societal values, international human rights standards, and legal developments. However, according to other views, the life of one person at the cost of numerous others or potential victims in the society is considered morally wrong (Singh and Verma, 2022)³. While some argue that swift and certain punishment is essential, others highlight the need to address the root causes of such crimes through social reforms and better law enforcement. India's international commitments, such as being a signatory to the International Covenant on Civil and Political Rights (ICCPR), have also prompted discussions about the abolition of the death penalty.

CONCLUSION

Capital punishment remains a contentious and complex issue in India, reflecting the country's historical, cultural, and legal complexities. The debate surrounding its morality, efficacy, and potential for miscarriages of justice underscores the need for continued introspection and reform within India's legal system. As the nation progresses and engages in broader conversations about human rights and justice, it is essential to weigh the competing arguments and strive for a balanced approach that respects the value of human life while addressing the needs of victims and society as a whole.

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