

Death Penalty in India- Inconsistency in the Rarest of the Rare

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Abstract:

This research is centered on examining the penological perspective of the implementation of the principle of capital punishment. The imposition of death penalty is inherently a grave and weighty issue. This paper aims to provide a complete analysis of the many settings in which the death penalty is employed, with a specific focus on highlighting the shortcomings associated with the "rarest of the rare" approach. This study will also examine how the Bachan Singh and Machhi Singh case has set the framework for death penalty in India and how there have been deviations from this preset. The paper aims to highlight how death penalty prevails in India and is inconsistent in application.

Keywords: Alternative mode of punishment; capital punishment; death penalty; rarest of rare

Introduction:

Punishment intends to elicit negative emotions, ensure individuals receive appropriate consequences for their actions, and serve as a deterrent for the broader society. The implementation of diverse punitive measures, including capital punishment, is deemed imperative when these penalties effectively serve any of the aforementioned objectives.

Death penalty is also commonly known as capital punishment, represents the most severe and last measure of punishing the guilty. The term "capital punishment" pertains to the legal execution of a death sentence upon an individual who has been convicted of a grave offense and sentenced to death.¹

The present situation necessitates an empirical examination of the discourse around capital punishment above all other topics. The implementation of capital punishment is deemed essential for the effective operation of the criminal justice system in India. The moral implications of capital punishment are being contested by the burgeoning human rights movement in India. However, this reasoning is peculiar, as it is inconceivable and, indeed, morally objectionable to prioritize the preservation of one person's life within a society at the cost of the lives of several other individuals or potential victims.²

The year 2023 will mark the passage of 43 years since the Supreme Court of India, in the case of Bachan Singh v State of Punjab³, rendered a majority decision of 4-1 affirming the legality of the death penalty. Justice Bhagwati expressed dissenting views in this matter. The Court established a comprehensive sentence structure to guide future courts in administering the death penalty. The decision rendered by the Court in Bachan Singh was predicated upon the perceived efficacy of capital punishment. The rationale

¹ Sana Humd., Dr Haris Umar and Dr Mohd Wazid Khan, 'Abolition of Capital Punishment in India: The Need of the Hour' (2022) 4(2) Society And Sustainability 40-48. <<https://doi.org/10.38157/ss.v4i2.517>> accessed 08 September 2023.

² Arun Verma and Sushil Kumar Singh, 'A Study of Capital Punishment in India' [2022] ResearchGate

³ Bachan Singh v. State of Punjab (1980) 2 SCC 684

behind the Court's ruling in Bachan Singh was based on an evaluation of the perceived effectiveness of capital punishment.⁴

The analysis of the Supreme Court's decision in the Bachan Singh case,⁵ whereby the affirmation of the death penalty occurred, holds significance as it acknowledges the efficacy of the existing sentencing framework in ensuring uniform application of this kind of punishment. This observation suggests that the realization of a uniform implementation of capital punishment is highly improbable, even when ideal conditions are assumed. The presented evidence provides support for the possible deduction of inherent inconsistency, which may be integrated into a more comprehensive theoretical framework for assessing the advantages of capital punishment.⁶

Historical Approach of Death Penalty

The historical roots of capital punishment can be traced back to the earliest stages of human civilization. The practice in question has historical roots dating back to the inception of human civilization and has persisted as a method of punishment throughout the ages. The utilization of the death penalty by ancient Greeks and Romans can be attributed to the influence of their own mythologies.⁷ Both Socrates and Jesus expressed opposition against the death penalty, a stance that contemporary law can acknowledge. One of the earliest documented codes, it was formulated by the monarch of the initial empire some two or three millennia prior to the advent of Christianity.⁸

The imposition of capital punishment was a prevalent practice throughout Indian history, encompassing both the Mughal and British eras.⁹ In 1946, British India Home Minister Sir John Thorne expressed a strong stance against the abolition of the death penalty for any offense for which it was currently applicable back in the day.¹⁰

Legislative History of Capital Punishment

In the context of India, the legal framework encompasses a diverse range of around 200 to 300 statutes that delineate the various criminal repercussions. The primary body of criminal legislation in India is predominantly included within the Indian Penal Code of 1860¹¹. India's legal framework encompasses a total of 18 fundamental legislations, consisting of 59 distinct provisions that pertain to the imposition of capital punishment. Thirteen out of the total 59 provisions are encompassed inside the Indian Penal Code (IPC)¹². The death penalty is encompassed not just within the Indian Penal Code (IPC), but also within 16 other fundamental statutes.¹³

⁴ Pranav Verma, 'The Inevitable Inconsistency of the Death Penalty in India' (2021) 6(2) Cambridge Law Review, ResearchGate 27-65.

⁵ Bachan Singh v. State of Punjab (1980) 2 SCC 684

⁶ S Muralidhar, 'Hang Them Now, Hang Them Not: India's Travails With The Death Penalty' (1998) 40(1/4, Human Rights Special Issue) Journal of The Indian Law Institute 143-173.

⁷ Monica Miller and R David Hayward, 'Religious Characteristics and the Death Penalty' (2008) 32(2) Law And Human Behaviour, ResearchGate <www.researchgate.net/publication/6291018_Religious_characteristics_and_the_death_penalty>

⁸ Sushant Kadam and Jyoti Dharm, 'Capital Punishment in India : A Critical Study' (2020) 9(6) Alochana Chakra Journal 2566-2568

⁹ David T. Jhonson, 'Ch 17 the Death Penalty in India' in N Prabha Unnitan (ed), Crime and Justice in India (Sage Publications Ltd. 2013) 367-388 <<https://doi.org/10.4135/9788132114109>>

¹⁰ *ibid*

¹¹ Indian Penal Code (1980) s120B, s121, s132, s194, s195A, s302, s303, s305, s307, s364A, s376A, s376E, and s396.

¹² *ibid*

¹³ Sana Humd., Dr Haris Umar and Dr Mohd Wazid Khan (n 1)

The imposition of the death penalty as the prevailing form of punishment for the crime of murder was instituted in accordance with Section 367(5) in India. Furthermore, the court was obligated to provide written justifications for its determination to impose a sentence of life imprisonment instead of the death penalty. The aforementioned observation suggests that lawmakers tend to exhibit a preference for capital punishment as opposed to other penalties, such as life imprisonment.¹⁴

In 1955, the Code underwent a revision wherein Section 367(5) was completely eliminated and substituted with a new subsection addressing an unrelated subject matter. The aforementioned alteration has been construed as an indication of a shift in societal attitudes regarding the death penalty, suggesting a departure from its conventional status as the customary or default penalty for the crime of murder. Alternatively, it may suggest a lack of legislative favoritism towards either the sentencing of life imprisonment or capital punishment.¹⁵

The Indian Penal Code¹⁶, which regulates criminal offenses within our nation, grants Judges the discretion to impose either a life imprisonment sentence or the capital punishment. The determination of whether a person should be sentenced to life or death as a consequence of their crime is within the purview of the judicial system. The idea of equality, which serves as a fundamental value against which all laws are to be evaluated, is enshrined in Article 14¹⁷ of the Indian Constitution. However, when examined from this perspective, it becomes evident that the death sentence is not constitutionally prohibited in India. The question of the legitimacy of capital punishment has been subject to multiple legal challenges in light of the provisions outlined in Article 14 and Article 21. However, the Supreme Court has consistently maintained its stance on this matter.¹⁸

Bachan Singh V. State of Punjab 1980¹⁹

The Supreme Court, in the case of Bachan Singh, established a thorough framework for sentencing to guide courts in determining death penalties that align with the legislative policy outlined in Section 354(3) of the 1973 Code. The fundamental aspect of this sentencing framework revolves around the notion of weighing aggravating factors, which are related to the offense, against mitigating factors, which are individual to the offender. In order to avoid restricting the discretionary powers of the judiciary, the Court released a non-exhaustive compilation of aggravating circumstances.²⁰

The Court in the case of Bachan Singh has issued instructions to sentencing courts, urging them to adopt a broad and inclusive interpretation of mitigating circumstances. Despite the Court's broad and inclusive interpretation of mitigating considerations, it introduced an additional line of inquiry to address situations where aggravating circumstances surpass mitigating ones.²¹ This examination aimed to determine the existence of any unequivocally excluded alternatives to capital punishment.²²

Consequently, it can be observed that the Bachan Singh sentencing system exhibits a stringent threshold for the imposition of capital punishment. In addition to being carefully considered in light of mitigating

¹⁴ Code of Criminal Procedure, 1898 [Repealed], section 367(5)

¹⁵ Pranav Verma, 'The Inevitable Inconsistency of the Death Penalty in India' (2021) 6(2) Cambridge Law Review, ResearchGate 27-65.

¹⁶ Indian Penal Code (1980)

¹⁷ The Constitution of India, 1950, Article 14

¹⁸ Sushant Kadam and Jyoti Dharm (n 8)

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

²⁰ Pranav Verma (n 4)

²¹ *ibid*

²² Bachan Singh (n 3)

variables, it is advisable to define aggravating elements in a specific and limited manner, while conversely, mitigating factors should be broadly construed. It is imperative for the Court to be persuaded, at the final phase of the examination, that all potential sentence alternatives, excluding the death penalty, are unequivocally ruled out if, despite such deliberation, the aggravating factors surpass the mitigating factors.²³

The court's inclination to adopt a more lenient approach towards sentencing was evident in the concluding paragraph of the majority ruling. The field of human rights jurisprudence believes that this action should only be used in extremely exceptional circumstances, when all alternative avenues have been thoroughly explored and proven ineffective.²⁴

Machhi Singh v. State of Punjab 1983²⁵

The court in the case of Machhi Singh v. State of Punjab²⁶ encapsulated the principles established in Bachan Singh and delineated the task of delivering the verdict to be undertaken by the presiding judge. According to the source, prior to exercising the choice, it is necessary to establish a state of equilibrium between the factors that worsen a situation and those that alleviate it. This is achieved by constructing a comprehensive assessment of both aggravating and mitigating situations, with particular emphasis placed on the latter.²⁷

In the landmark case of Machhi Singh vs. State of Punjab²⁸, the Supreme Court of India laid down a significant precedent by establishing a set of three essential conditions that must be met before the imposition of the death penalty. This ruling has had a profound impact on the legal landscape surrounding capital punishment in the country. The Court's decision in Machhi Singh vs. State of Punjab has been widely regarded as a pivotal moment in the evolution of India's jurisprudence on the death penalty. By delineating these prerequisites, the Court sought to ensure that the ultimate punishment of death is administered in a fair and just manner, with due consideration given to the gravity of the offense and the rights of the accused. The first prerequisite outlined by the Court is the consideration of the extreme culpability of the offender. In other words, the Court emphasized that the death penalty should only be imposed in cases where the crime committed is of such an exceptionally heinous nature that it shocks the collective conscience of society. This requirement serves as a safeguard against the arbitrary or disproportionate use of capital punishment. The second condition established by the Court is the requirement of the existence of special reasons justifying the imposition of the death. The criteria mentioned above encompass the following factors: In the present discourse, it is imperative to explicate the underlying reasoning behind the exceptional character of this specific circumstance, thereby providing a sound basis for the imposition of the most severe penalty. In the subsequent discourse, it is imperative to expound upon the exceptional circumstances that render a life sentence devoid of any possibility of release insufficient. And lastly, when considering the mitigating component as the primary factor, it seems that there is no alternative but to impose the death punishment when examining the details of the case.²⁹

²³ *ibid*

²⁴ Bachan Singh (n 3)

²⁵ Machhi Singh v. State Of Punjab (1983) 3 SCC 470

²⁶ *ibid*

²⁷ S Muralidhar (n 6) 143-173

²⁸ Machhi Singh v. State of Punjab (1983) 3 SCC 470

²⁹ *ibid*

Furthermore, the court has cautioned legislators against enacting any legislation that would impose the death penalty, asserting that such a step would be in violation of the constitution.³⁰

Rarest of Rare

In line with the legal precedent established in the Machhi Singh³¹ case, it is imperative for the trial court to meticulously evaluate both aggravating and mitigating elements. Subsequently, the court should only impose the death penalty if it is determined to be the most lenient form of punishment available, considering all relevant facts. It is evident that, in all instances, the court's rationale for affirming or reversing a capital punishment verdict is contingent upon a particular facet of the crime in question or the offender's involvement in its commission. In many instances, the offender's past record and the potential for their reformation or rehabilitation are disregarded.³²

The Bachan Singh³³ case resulted in the formulation of the "rare to rare cases doctrine" by the Supreme Court of India, which aids judges in determining whether to impose a sentence of life imprisonment or the death penalty. The information provided did not offer any elaboration on the specific circumstances that are considered to be the most remarkable. Consequently, the unresolved matter of defining the boundaries within which judges might exercise their discretion has led to increased ambiguity and inconsistency in judicial decisions.

Ultimately, the Supreme Court rendered a classification of atypical circumstances in the Machhi Singh case. Efforts have been made to ensure equitable categorization, while maintaining the fundamental principles established in the Machhi Singh case. In the case of Dharm Bhagre vs. State of Maharashtra³⁴, it was concluded that the matter of punishment is up to judicial discretion. The determination of a suitable sentence for a crime is influenced by several factors, including the purpose, severity, and circumstances surrounding the offense.

The case of Jagmohan Singh v. State of Uttar Pradesh exhibits significant similarities that warrant attention and analysis. In a unanimous decision rendered by the court, with Justice Palekar presiding, it was determined that the imposition of the death penalty is justified in cases where the act of murder demonstrates extraordinary degrees of brutality, violence, or encompasses the deliberate execution of a prominent figure within the societal framework. The court's ruling reflects a consensus among the justices that the severity of the crime committed necessitates the ultimate punishment, thereby emphasizing the gravity of the offense and the need for a proportional response from the judicial system. By establishing this precedent, the court aims to deter potential offenders from engaging in heinous acts of violence and to uphold the principles of justice and societal order. The utilization of capital punishment, also known as the death penalty, was initially designed to be implemented exclusively in the most egregious and heinous criminal cases.³⁵

³⁰ Sushant Kadam and Jyoti Dharm (n 8)

³¹ Machhi Singh v. State Of Punjab (1983) 3 SCC 470

³² S Muralidhar, 'Hang Them Now, Hang Them Not: India's Travails With The Death Penalty' (1998) 40(1/4, Human Rights Special Issue) Journal of The Indian Law Institute 143-173.

³³ Bachan Singh v. State of Punjab (1980) 2 SCC 684

³⁴ Dharm Bhagre V. State of Maharashtra (1972)

³⁵ Rajkumari and Rip Daman Pratap Singh, 'The Doctrine of Rarest of Rare': A Critical Analysis' (2022) 2(4) Indian Journal of Integrated Research in Law 1-8, <<https://ijirl.com/wp-content/uploads/2022/08/THE-DOCTRINE-OF-RAREST-OF-RARE-A-CRITICAL-ANALYSIS.pdf>>

Conclusion

The criteria used to ascertain the examples that qualify as the rarest of the rare are subject to ongoing scholarly discourse and deliberation. Despite the absence of a specific delineation, this approach has been utilized in instances when a significant degree of misconduct was implicated. According to Article 21 of the Indian Constitution, every individual is entitled to the fundamental rights of life and personal liberty, subject to reasonable restrictions. This implies that the imposition of death penalty is not in breach of the provisions outlined in this article.

In India, the utilization of the capital punishment is limited to the rarest cases, resulting in a significantly low incidence of application. From 2004 to 2015, the number of individuals executed amounted to only four.³⁶

The courts have confirmed the validity of the affair. The main aim of this attempt is to guarantee the safeguarding and conservation of persons' lives and basic liberties. The financial and ethical costs associated with a life sentence without the possibility of parole exceed those of a comparatively shorter death sentence. One potential benefit is the prevention of jail overcrowding. It provides significant assistance in promoting the well-being of crime victims.³⁷

In order to ensure the efficient dispensation of justice, all social contract models concur that the state possesses the authority to impose punitive measures onto the wrongdoer. Due to their lack of remorse for their malevolent actions, it might be argued that the removal of incorrigible and dangerous criminals from society would provide overall benefits. The primary purpose of the administration of justice is to function as a mechanism for both deterring potential offenders and providing a kind of punishment. This statement is vital in safeguarding the well-being of society and functions as a substitute for personal vindictiveness and retribution.³⁸

The mitigation of possible misuse and exploitation of the death penalty can be achieved via the implementation of well-designed legislation and the execution of sentences by authorized authorities. Nevertheless, it is imperative to examine the anomalies inherent in the application of the "rarest of the rare" criterion and establish a comprehensive legal framework to impose capital punishment on those found guilty of rape, murder, and other heinous offenses.

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