

## CAPITAL PUNISHMENT- AN ANALYTICAL STUDY

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**Best Citation** – AVIKA SINGHAL, CAPITAL PUNISHMENT- AN ANALYTICAL STUDY, *Indian Journal of Legal Review (IJLR)*, 3 (2) of 2023, Pg. 213-218, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT

Capital punishment refers to the authority given by law to slaughter a person who has committed a serious crime. There are various theories of punishments like retributive theory, reformative theory, preventive theory and deterrent theory. Punishment of death has been in use since ancient times, with some societies believing it to be a necessary form of deterring crime. However, some believe it to be an inhumane and cruel practice, violating human rights law and hence it has been a subject of heated debate since time immemorial. In India, the provision of capital punishment is legal, however its imposition is strictly reserved for those exceptional cases which fall under the doctrine of “rarest of rare” as elucidated by the Indian judiciary through its various judgements. Apart from this, there are other provisions and precedents of supreme court that ensures the rational use of punishment of death, like, pardoning power of president and governor, bachan singh guidelines, etc .

In the present paper, I have also included the status of other countries regarding the provision of capital punishment. When analysed globally, it is seen that the globe is divided majorly into two perspective- the Retentionist and the Abolitionist. The Retentionist are the ones who have retained the provision of capital punishment as they believe that deterrence is an effective way by which crimes can be prevented in a society. The Abolitionist are the ones who have abolished this provision as they perceive it to be a violation of basic human rights i.e. Right to life.

### INTRODUCTION

Capital punishment refers to the authority given by law to slaughter a person who has committed a serious crime. It has been in existence for centuries and has been imposed in a variety of crimes, including murder, rape, and treason. Although a controversial practice, capital punishment is still used in many countries around the world. The main argument given by the proponents behind its imposition is to deter further crime in the society. However, its effectiveness as a deterrent to crime is still not very clear and remains a grey area.

There are a number of arguments given in favour and against capital punishment. Some of them are mentioned below:

#### ARGUMENTS GIVEN IN FAVOUR:

- It provides a strong deterrent effect against those who are considering committing a crime.
- Another argument in favor of capital punishment is that it is a way to ensure that particularly dangerous criminals are kept off the streets. This is because once someone has been convicted of a capital crime and

sentenced to death, they can never commit another crime.

- A number of countries that had previously abolished the provision of death penalty had to reinstate it.
- The abolition of capital punishment will increase the risk to police officers because in many cases it is seen that the criminals, after their release, chase for the people who got them convicted.
- There are some cases where the nature and gravity of the crime is so heinous that any punishment other than death penalty cannot do justice.

#### ARGUMENTS GIVEN AGAINST:

- It is a cruel and inhumane form of punishment as it involves the taking of a human life.
- It is irrevocable in nature. For instance, there can be a case where an innocent person is put to death due to an erroneous decision.
- It is often applied in a discriminatory fashion because some persons don't have sufficient financial assistance to defend themselves as compared to others.
- There is not much evidence to support the ability of death penalty to deter.<sup>473</sup>

The conditions of death row in prisons around the world are often shockingly inhumane. Most people think of death row as a place where prisoners are kept, awaiting the execution of their death order. But what many don't know is that death row inmates are often subjected to some of the most inhumane conditions imaginable. In many countries, death row inmates often face extreme levels of overcrowding, with some prisons having more inmates than cells. In some cases, death row inmates are deprived of basic necessities such as food and water. This can lead to starvation and dehydration, with some prisoners having to

resort to eating food scraps and drinking dirty water. Death row inmates are also often denied access to medical care and basic hygiene. This means that they may suffer from a variety of illnesses, including tuberculosis, and are unable to maintain basic hygiene standards.<sup>474</sup>

Ultimately, the question of whether to support capital punishment or not is a complex one. There are numerous convincing arguments on both the sides, so it is up to each person to determine their position.

#### CAPITAL PUNISHMENT IN INDIA

In India, the constitutionality of capital punishment has always been a subject of heated debate and contention. Its validity has been challenged several times before the judiciary. A number of arguments were raised for its abolition stating that it violates the fundamental right to life as guaranteed by the constitution. However, all the arguments challenging this provision failed as it was laid down through various judgements that though the constitution guarantees right to life through article 21 but also states that it is subject to some reasonable restrictions and hence the provision of capital punishment is legal. Also, in India, its imposition is strictly reserved for those exceptional cases which fall under the "doctrine of rarest of the rare" as elucidated by the judiciary in *Bachan Singh vs. State of Punjab*. Till date, India is a retentionist country where the imposition of capital punishment is legal and constitutional.

Some categories of offenses that are punishable by death as provided by the Indian law are:

- MURDER
- TERRORISM
- RAPE
- TREASON

<sup>473</sup> Law Commission of India, *Capital Punishment*, 53-66 (1967).

<sup>474</sup> *Death Row Conditions*, Death Penalty Worldwide (Sept. 4, 2012), <https://deathpenaltyworldwide.org/publication/death-row-conditions/?version=html> (last visited on 30 march,2023).

- ESPIONAGE
- MILITARY OFFENSES

**PARDONING POWERS IN INDIA:**

Indian constitution provides clemency powers to the president and the governor through article 72 and 161.

Article 72 states that “The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.” Article 161 extends these powers to the governor of a state. The main aim behind such provision is to protect the innocent from punishment in case of faulty or erroneous judgement.<sup>475</sup>

Not only this but there are some categories of offenders excluded from capital punishment in India. Some of them are:

- Minor i.e., any person below the age of 18 years
- Pregnant woman
- Any person who is of unsound mind at the time of committing the crime

In the case of *Mithu v. State of Punjab*<sup>476</sup>, supreme court held that section 303 of IPC is unconstitutional as it provides for a mandatory punishment of death to the person who commits murder while serving a life sentence. Even in the judgements of *India Harm Reduction Network v. Union of India* (2011) and *State of Punjab v. Dalbir Singh* (2012), the Indian judiciary reiterated that the provision of mandatory capital punishment is unconstitutional.<sup>477</sup>

The law commission of India published its 35<sup>th</sup> report on the subject of capital punishment under the chairmanship of justice J.L Kapur. The commission in this report concluded in para 3

of page 354 that “Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment.”<sup>478</sup>

**Bachan Singh vs. State of Punjab: Case Analysis**

**Name of the Case** – Bachan Singh v. State of Punjab

**Citation of the Case** – AIR 1980 SC 898, 1980

**Facts of the case-**

The present case deals with the brutal murder of Desa Singh, Durga Bai, and Veeran Bai by the appellant i.e. bachan singh. This case is an appeal filed by the appellant in the supreme court against the order of high court upholding the punishment of death penalty given by the sessions court.

**Issue/s in Hand-**

1. Is the provision of capital punishment given under section 302 of IPC unconstitutional?
2. Is the provision of capital punishment violative of the fundamental right to life given under article 21 of Indian constitution?
3. Whether section 354(3) of CrPC unconstitutional on the ground that it gives the court unrestricted power to impose death penalty arbitrarily just by their own discretion?<sup>479</sup>

**Rules Involved-**

The rational of Bachan Singh case primarily dealt with the constitutional validity of section 302 of IPC and section 354(3) of CrPC as well as their impact on article 21 of the Indian constitution.

<sup>475</sup> *In Case of Clemency Powers Can President Investigate Evidence*, <https://www.legalserviceindia.com/legal/article-7504-in-case-of-clemency-powers-can-president-investigate-evidence.html> (last visited on 6 april,2023).

<sup>476</sup> *Mithu v. State of Punjab*, A.I.R 1983 S.C. 473 (India)

<sup>477</sup> *Database — Cornell Center on the Death Penalty Worldwide*, <https://deathpenaltyworldwide.org/database/> (last visited on 30 march,2023).

<sup>478</sup> Law Commission of India, *Capital Punishment*, 354 (1967).

<sup>479</sup> Radhika Maheshwari, *Bachan Singh Vs State Of Punjab – Case Analysis*, lawcorner.in (Aug, 21, 2016), <https://lawcorner.in/bachan-singh-vs-state-of-punjab-case-analysis/>. (last visited on 2 april, 2023)

- Section 302 of IPC – “Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.”

- Section 354(3) of CrPC – “When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.”

- Article 21 of Indian constitution – **“No person shall be deprived of his life or personal liberty except according to a procedure established by law”**

This case was a landmark judgement in Indian history as it propounded the “rarest of rare” doctrine which deals with the provision of capital punishment.

- Doctrine of “rarest of rare case” – The doctrine states that the death penalty should only be imposed in cases where the crime is so heinous and the circumstances so aggravating that death is the only just punishment for it.

#### **Judgement-**

The honorable supreme court of India dismissed the appeal filed by Bachan Singh with a majority judgement of 4:1.

- **Majority Opinion –**

The court held that the impugned sections of IPC and CrPC that deals with capital punishment are neither unconstitutional nor violative of article 21 of the Indian constitution as the fundamental rights given under it are not absolute and reasonable restrictions can be imposed for public benefit. It was also noted by the bench that the term “special reasons” given under section 354(3) of CrPC only refers to an “exceptional reason” arising out of an extraordinary situation.

- **Minority Opinion –**

Justice P.N. Bhagwati who gave the minority judgement was of the opinion that there are no legislative guidelines so as to

decide when the life of an individual should be taken by imposing death penalty. He held that the punishment of death penalty is irrational and section 302 of IPC is ultra vires to article 21 of Indian constitution and hence unconstitutional.

The Court laid down certain guidelines which are to be considered by the courts while pronouncing a death sentence:

- Death sentence should be imposed only in the “rarest of rare cases” since life imprisonment is the rule and capital punishment an exception.

- The personal circumstances of the accused, the nature and seriousness of the crime, and the manner in which it was committed are some of the relevant factors which must be taken into account by the court while determining whether or not to sentence the accused to death.

#### **Analysis/ Conclusion of the Case-**

This case was a revolutionary judgement in Indian history as it dealt with the issue of capital punishment and its conflict with the fundamental rights. The court opined that the order of death sentence should not be imposed arbitrarily except in the cases where the circumstances, gravity and nature of the crime is so gruesome that any punishment other than death penalty cannot do justice. Not only this but the mitigating and aggravating factors should also be considered while deciding the case.

The “rarest of rare doctrine” propounded by this judgement is remarkable in nature. It reaffirmed the ruling that capital punishment should be an exception. As far as article 21 is concerned, the imposition of death penalty is neither in conflict nor unconstitutional as it is not an absolute right and reasonable restrictions can be allowed for public benefit.

However, as stated by Justice P.N. Bhagwati, there are no legislative guidelines so as to decide



when capital punishment should be imposed and it still remains on the discretion of court which can at times prove to be unreasonable.

To conclude, it can be said that it was a must needed judgement for India. The decision taken in this case has had a profound impact on the use of death sentence in India. Prior to the ruling, the death penalty was imposed in a large number of cases, often without any consideration of the mitigating factors. The ruling has led to a drastic reduction in the number of death sentences imposed by courts in India.

### STATUS OF CAPITAL PUNISHMENT IN OTHER COUNTRIES

1. CHINA – In China, capital punishment has been used since time immemorial and is still legal. According to a global report published by amnesty international in 2021, China is the world's leading executioner with the number of death penalties imposed to be in thousands.<sup>480</sup>

2. JAPAN – The punishment of death penalty is legal in Japan. The most common method of execution used in Japan is by hanging, where the subject is blindfolded before the trapdoor is opened to initiate the execution.<sup>481</sup>

3. CANADA – In Canada the punishment of capital punishment stands abolished.

4. FRANCE – France is also one of the abolitionist country whose law do not provide for the imposition of capital punishment.

5. UNITED STATES OF AMERICA – Some of the states in The United States have retained the provision of death penalty while some have abolished it. Hence, categorizing it as a retentionist or an abolitionist country as a whole would be incorrect.

6. SINGAPORE – Capital punishment is legal

in Singapore and the last known execution took place in the year 2022.

7. SOUTH KOREA – Provision of death penalty is illegal in south korea and article 34 of its constitution provides for the right to life with no exceptions to it.

8. TAIWAN – Capital punishment is legal in Taiwan. Though article 15 of its constitution provides for right to life, it is subject to some exceptions.<sup>482</sup>

### CONCLUSION

The issue of the validity of punishment of death has been raging in our country for a long time. Proponents of this issue argue that execution of a serious offender is a necessary deterrent against heinous crimes like murder, rape and treason. They believe that capital punishment is the only way to ensure that the perpetrators of such crimes do not walk free.

On the contrary, the opponents contend that it violates human rights as it is a cruel and inhuman punishment. They point out the fact that there is no proof to support the claim that capital punishment deters crime. They also argue that the death penalty is often imposed on the poor and marginalized sections of society and is biased against them.

The Indian Constitution allows for the imposition of death penalty only in cases of "the rarest of rare" crimes. This means that the crime must be of an exceptionally heinous nature, and that any punishment other than death penalty would not do justice. In recent years, the Supreme Court of India has taken a more cautious approach when imposing the death penalty.

When analyzed globally, it is observed that some countries have retained the provision of death penalty including India while some have abolished it. Even some of the retentionist countries, allow for its imposition only for a few selected crimes like rape, treason, etc. The

<sup>480</sup> Amnesty International, *Death Sentences and Executions 2021*, 26-28 (2021) [Death sentences and executions 2021 - Amnesty International](https://www.amnesty.org/en/documents/inf11/2021/04/01/) (last visited on 2 april,2023).

<sup>481</sup> *Countries with Death Penalty 2023*, worldpopulationreview.com <https://worldpopulationreview.com/country-rankings/countries-with-death-penalty> (last visited on 4 april,2023)

<sup>482</sup> *Database — Cornell Center on the Death Penalty Worldwide*, <https://deathpenaltyworldwide.org/database/> (last visited on 30 march,2023)

number of capital punishment imposed every year is decreasing with human rights law gaining momentum.

Ultimately, the imposition of capital punishment is a subjective matter and it should be dealt according to the facts and nature of every individual crime. It must be noted, that sometimes the crime done is so grave and heart wrenching in nature that the only punishment which can do justice is death sentence and hence it must not always be seen as a violation of human rights.

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