

# A Study on Execution of Death Penalty.

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## Abstract

India is a country that is developing and simultaneously the crimes are increasing at a high rate. There are many laws to stop and curb crimes, irrespective of these laws the crimes are increasing at a higher rate as the punishments are not adequate for the crimes. There ought to be discipline to abridge the pace of wrongdoing. The principle thought process of a discipline is to give a punishment to the denounced and furthermore to guarantee that the individual who does a wrongdoing needs to languish over his deeds and to demoralize others from doing likewise amiss with the dread of its discipline. There are different disciplines which are forced in India out of which Death Penalty is considered to be the most serious discipline. It is additionally viewed as a legitimate unavoidably as a type of discipline. This exploration paper illuminates the excursion of capital punishment in India, for example, a short Indian recorded foundation of capital punishment, the endeavours made for cancelling capital punishment, why capital punishment is as yet held in India?, About the mercy power which are given to the President and Governor. There are some hypothesis also which have been demonstrated in my paper that is 'whether the Rarest of rare case damage the constitutionality of Article 21 of the Constitution of India?' And how capital punishment is gainful for the general public of India? This paper is an attempt to draw out the reasons on why the punishment of death should be supported and should be utilized frequently in instances of egregious guilty parties.

Keywords- Death penalty, retain, abolish, rarest of rare.

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## Research Methodology

The research paper is written in the doctrinal research methodology which is primarily based on bare acts, books, articles, etc and the secondary sources include commentaries and websites on landmark judgments.

## Introduction

The Death punishment is considered as one of the most discussed points due its unavoidable nature. It is a framework through which criminal equity is given by the courts where an individual is lawfully executed by the state. Through the death penalty society is shielded from those guilty parties who are not restored. The state gives capital punishment to lawbreakers to denounce their activities by granting the offender capital punishment. It is accepted that capital punishment has an obstacle impact, offenders dread the discipline of capital punishment along these lines it gets them far from any sort of unfortunate behavior.

The President and Governor have the powers to pardon or suspend the death sentence. The punishment of death sentence is usually given for abetment of duties, robbery with murder, murder, etc..

There have been eight executions in India including the 4 convicts of the Nirbhaya Rape case and according to NCRB data, there are about 2500 death penalties which have been granted since 2000.<sup>1</sup> The use of Death penalty is considered to be constitutionally valid only if it is used in rarest of the rare cases. Deterrence is the face of capital punishment. India is a firm believer in this aspect, while 70% of the countries in the world has already abolished death penalty.<sup>2</sup>

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<sup>1</sup> **2500 Death Penalties Since the Year 2000, Only 4 Executions**

Sai Vangala-Pavithra M - <https://factly.in/2500-death-penalties-since-the-year-2000-only-4-executions/Top of FormBottom of Form>

<sup>2</sup>**International**

<https://deathpenaltyinfo.org/policy-issues/international>

### Historical Background

The practice of the death sentence has taken place in every country of the world. The official historical background of capital punishment as a codified law was back in the 18<sup>th</sup> century, during that period King Hammurabi of Babylon had codified the punishment of death penalty for about 25 types of crimes. It has also formed a huge portion in the Hittite Code of the 14<sup>th</sup> century; The Draconian Laws of Athens, had only death as their form of punishment for every crime. The forms in which the death penalty took place were very brutal such as drowning, burning alive, being beating to death etc..<sup>3</sup>

### Indian History

The Indian foundation of capital punishment is as old as the Indian culture. The act of Death sentence has been won since old occasions as we discover its reference in original copies and law books of that period. The act of Death sentence occurred with curse of torment and it was applied unpredictably. During the Buddha age when Ahimsa was the standard of lead King Ashoka didn't prohibit the act of Death punishment. The possibility of capital punishment has additionally been uncovered in the Mahabharata which expresses that, if by annihilating an individual or a family the general public is viewed as secure and peril evidence it ought to be accomplished for the wellbeing of the individuals.

One of the best old law-provider Manu additionally said that the act of capital punishment ought to be won in the general public to make a dread among the individuals so they don't perpetrate horrifying wrongdoings and without this training the condition of rebellion will win and individuals will eat up one another like the fish do in the water, the more grounded gobbling up the more fragile.

### India's attempt to remove death penalty

In India a few endeavors were made to annul capital punishment yet they failed.

Before Independence private bill had been introduced in the Legislative Assembly of 1931 to annul capital punishment for criminal offenses which had been dismissed by the British Home Secretary.

At the point when the underlying Lok-Sabha Session was directed the Independent Indian Government had precluded the going from securing a bill for annulling capital punishment. The endeavors made in the Rajya-Sabha meeting in 1958 and 1961 had likewise failed. The Law Commission introduced their reports which presumed that the act of capital punishment will win and the executives must have the power of mercy. This report had been introduced to the Government and the Lok-Sabha, in 1967 and 1971 separately.

### The Doctrine Rarest of Rare

The introduction of the principle of Rarest of Rare was coined in the judiciary after the delivery of a landmark judgement 'Bacchan Singh V State of Punjab [(1980) 2 SCC 684]'. This doctrine got more clarity in the landmark case Macchi Singh V State of Punjab. The doctrine of Rarest of Rare doesn't have a particular legal definition, but it states that death penalty should only be granted to the accused in rare or exceptional cases where the society is in any danger from the life of the criminal. This doctrine can only be applied when the following aspects of the crime are taken into part which is the magnitude of the crime, nature of crime and the criminal, victim of the crime, motive or reason behind commission of crime and method of commission of crime. The punishment of death penalty can be granted only if all these aspects are justified. The debate about the misuse of this punishment is completely groundless.

### Does the constitutional validity of Article 21 get violated by the Rarest of the rare case?

In Jagmohan v. State of U.P AIR 1973 SC 947 Cr.LJ 3301973 SCC162, a debate had occurred testing the legality of capital punishment in the SC. It was asserted that the death penalty had violated a person's entitlement to life, Article 21 of the Indian Constitution an essential fundamental right. In this case, the court dismissed all the contentions and said that the death penalty couldn't be said as infringement of Article 21. In this Case the SC supported the constitutionality of capital punishment and furthermore guaranteed that it would help in forestalling the flare-up of wrongdoings in the general public.

<sup>3</sup> G., Vijay. "A Study on Execution of Death Sentence." <https://Acadpubl.eu/Hub/2018-120-5/3/228.Pdf>.

In *Maneka Gandhi v. UOI* AIR 1978 SC 597, SC held that the execution of capital punishment must take place in an equitable and reasonable strategy. Each wrongdoer would have the right for procedural assurances and in this way ought to rely upon Natural and Procedural laws states as:

- The capital punishment is an exceptional punishment which shall only be executed for special cases.
- The blamed will be furnished with the Right to appeal
- The denounced will be given the privilege of hearing
- Accused has a right to choose a capable legal counsellor
- Accused will be given right to speak freely and articulation in preliminary care
- Death Penalty must be appropriately given by HC
- Death penalty shall be executed only in exceptional case
- The wrongdoer has the legitimate right to appeal for pardon/reduction under Article 72 and Article 161 of Constitution of India before president and governor.
- Individualisation of sentence must be available thinking about individual conditions
- Wrongdoer must not be tormented

In *Deena v. UOI* AIR 1983 SC 1155, the inquiries concerning the execution of capital punishment were purchased up under the watchful eye of the court and it was demonstrated that the method of hanging is certainly not a barbarous type of execution and subsequently Article 21 of the Indian constitution isn't disregarded.

In *Triveni bai v State of Gujarat* the court held that the transgressor must be given reasonable preliminary and the postponement in capital punishment till their execution.

Hence we can say that the Doctrine Rarest of rare case doesn't abuse the legality of Article 21 of the Constitution of India.

*Capital Punishment to accused violates Human Rights in India but is but beneficial to the society.*

According to Article 5 of UDHR, 1948 no individual should be subjected to any kind of torture or cruelty, any harsh or immoral treatment or punishment.<sup>4</sup> The General Assembly of United Nations taught that there is a necessity for elevated requirement of procedural assurance to be trailed by every country where the death penalty is being penetrated and the methodology should be reasonable, sensible and just. In the thirteenth convention of the European convention for the protection of Fundamental Rights and Human Rights was opened for the signatures of the considerable number of individuals for their marks to annul the act of Capital Punishment. As it is considered as one of the most debasing, barbarous and cruel discipline which encroaches the human privileges of the transgressor under Article 3 of the Human Rights convention of European Convention.

Under Article 3 of UDHR every individual has a lawful right of liberty, securing themselves and living their respective lives.<sup>5</sup>

Each state perceives the punishment of lawbreakers. The principle thought process of discipline is avoidance of violations in the general public. There are various speculations of disciplines which are – deterrent theory, retributive theory, reformatory theory, rehabilitative theory and preventive theory. Deterrent theory says that the discipline is an admonition for other people. The principle target of this theory is to prevent the expansion of wrongdoing in the general public by disposing of the criminals. The hindrance discipline like capital punishment ought to be made a model for the general public and the individuals who tend to perpetrate wrongdoings and that in the event that one carries out a wrongdoing he will be rebuffed in the comparable manner. This theory has four justifications – Prevention, Elimination, Isolation and Exemplary danger to potential lawbreakers in the general public.

The Economic and Social Council of the United Nations gave rules for granting of capital punishment which are as per the following –

- Capital discipline ought not be executed in an intrigue or exculpation.
- The inconvenience of capital punishment should just be occurred for offensive violations by the part nations that have not annulled the training; Thus India follows the rules of UNECOSOC as it grants the death penalty just for intolerable wrongdoings.
- Penalty will not be granted to a pregnant female or an unsound individual.
- A minor underneath the age of 16 will not be granted with capital punishment.

<sup>4</sup> Article-5 of UDHR, 1948 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

<sup>5</sup> Under Article 3 of UDHR “everyone has the right to life, liberty and security of person”.

- One must get the right to request in upper court.
- According to Article 14 of ICCPR the death penalty just granted after reasonable and just technique.
- There will not be review impact of the death penalty.

The Indian legal executive uses all the rules of the UNECOSOC for granting capital punishment in the rarest of the rare case as it might influence the general population everywhere and the regulation doesn't damage the rules of UNECOSOC also.

Article 21 of the Constitution of India, says that no individual will be kept away from their basic right to live, yet with the exception of as indicated by the framework set up by the law. This implies if an individual has been rebuffed by the law for capital punishment, it will named to be reasonable and just. In spite of the fact that as indicated by the global vision capital punishment is an infringement of somebody's Human rights yet it doesn't disregard the legality of Article 21 of Constitution of India nor it terms to be uncalled for as per the Indian Constitution, as in the Indian open everywhere it is possibly said that if any individual impacts people in general everywhere over and over by their criminal nature his life ought to be taken off just in the event that it appears to be sensible to the gatekeepers of constitution in light of the fact that here not just the human privileges of the charged are being abused however we additionally need to think from the perspective of the person in question. Assume control over render retribution from the miscreant for an inappropriate they did. Because of these activities there can be a turmoil in the general public and laws can likewise be broken which could demolish the order of the general public.

Hence we have to force severe laws to forestall such activities and we can say that Capital Punishment is helpful for the general public.

#### Clemency Powers

The India Constitution grants special clemency powers to the Indian President and Governor of state under Article 72 and Article 161. When all the lawful cures are given to the wrongdoer are depleted then the blamed has a possibility for presenting a mercy petition to the President of India and the Governor of the State. Hence they are also known as 'court of last resort'. They have powers which they can grant which go as follows: Remission (Reducing the term of sentence) Commutation (a punishment which is less rigorous than the previous punishment), Complete Pardon, Reprieve (Temporary stay of sentence) or Respite.

More than one pardon appeal can be filled. These statutes help at making it sure that the charged is being rebuffed for capital punishment simply after it has been demonstrated that there are no mistakes for the situation and the miscreant is totally liable.

#### Opinions on Retention of death penalty

The discussion between the retention and abolishment of capital punishment has consistently been a universal issue since an extremely prolonged stretch of time.

The most successive contention for maintenance of capital punishment is that it's a basic to stop the act of murder in any case the killers would walk courageous.

The individuals for capital punishment contend that since India is a poor nation it will be unfit to detain all the wrongdoers of shocking crimes. The maintenance of capital punishment makes circumstances for no initiation of crimes. The retentionists support capital punishment in light of the fact that it makes individuals follow the law and order in the overall population. It is likewise considered as a social revenge and the state has full rights to execute the most noticeably awful crook.

The Supporters state that capital punishment is required as a notice or a final offer to the plausible killers and on the off chance that they are alive it may be a danger to the lives of the residents when they are exculpated or are on a parole. One of the significant contention of the supporters is that regardless of whether the abolishment is to be acknowledged, the time right currently probably won't be right for it since the wrongdoing has expanded and the current day society has not yet advanced to that stage.

#### Why does death penalty still prevail in India?

As it is clear that the reformatory theory of punishment has failed significantly in India and there has been an expansion in the pace of wrongdoing consequently the dread of death ought to be incurred in the brains of the criminals to make a superior domain for the general public. India has likewise opposed the resolution which included the abolishment or forbidding of capital punishment by the United General Assembly as it conflicted with the legal enactment of India. The death penalty is considered to be a legal practice in India but it is only executed for the rarest of the rare case such as acts of terrorism, instigation of child's suicide (Section 302 of IPC, 1860), murder (Section 302 of IPC, 1860), second evidence for drug trafficking etc. In current scenario India has witnessed an increase in the murder and rape cases, there should be strict actions taken against the accused hence abolishing death sentence would make no sense. As capital punishment is viewed as a dreaded discipline

than life detainment the individuals would fear perpetrating wrongdoing, if there is an expansion in the execution of capital punishment when the charged is totally demonstrated liable. The Indian trial court has forced 102 cases of capital punishment for assault murder in 2019 which is the highest in last 4 years. Under the direction of our previous Chief Justice Ranjan Gogoi the SC managed around 27 cases of the death penalty which is the highest number since 2001.

### Conclusion

Death is one thing nearly everybody fears so on the off chance that it turns into a punishment for terrible wrongdoings, at that point individuals may fear perpetrating the wrongdoing itself. In the current day situation it wouldn't be wanted to totally annul the act of capital punishment. This practice ought to be held for the welfare of the general public and ought to be granted for horrifying wrongdoings just for the rarest of rare case. Presently the lawsuits are excessively perplexing and long; henceforth the procedure might be moderate and the execution rate is low. In this way the cases will be arranged fast and prompt/suitable discipline is to be given to the miscreant. The punishment of death must be proportionate to the idea of wrongdoing and gravity of the blamed. Capital punishment will not be deferred after its announcement. The terrorists must not be skewered for their violations. So rather than totally cancelling capital punishment we shall save it in the IPC for an exacting impediment impact upon the culprits and to keep up the confidence of equity in the general public by guaranteeing that the miscreant won't be skewered on the off chance that he carries out an appalling wrongdoing. We should not overlook Bentham's theory of pleasure and pain, in this manner based on the research paper it tends to be said capital punishment will be executed in the 'rarest of the rare cases' for the well being of the residents of the society.

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