

Efficacy and Ethics of Capital Punishment in India: A Critical Examination of Judicial Trends and Legislative Framework

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Abstract: *Capital punishment continues to be one of the most debated and controversial aspects of criminal justice in India. While it is legally recognized and constitutionally valid, its application is restricted to the “rarest of rare cases.” This research paper critically examines the efficacy of the death penalty as a deterrent and evaluates its ethical implications in light of constitutional principles and human rights standards. It further analyses the legislative framework governing capital punishment and traces the evolution of judicial trends through landmark decisions. The study highlights that despite the existence of procedural safeguards, issues such as arbitrariness in sentencing, risk of wrongful convictions, and lack of conclusive evidence regarding deterrence continue to challenge the legitimacy of capital punishment. The paper concludes that India is gradually moving towards a more restrictive approach, reflecting a shift towards reformatory justice and human dignity.*

Keywords: Capital Punishment, Death Penalty, Deterrence, Human Rights, Rarest of Rare Doctrine, Judicial Trends, Legislative Framework, Article 21

I. INTRODUCTION

Capital punishment, often referred to as the death penalty, represents the most severe form of punishment imposed by the State. It is typically reserved for the gravest offences such as murder, terrorism, and certain aggravated forms of rape. In India, the retention of the death penalty is justified on the grounds of deterrence, retribution, and the need to protect society from dangerous offenders. However, its continued existence raises significant legal, moral, and ethical questions.

The Indian Constitution guarantees the right to life under Article 21, which can only be curtailed through a procedure established by law that is fair, just, and reasonable. The Supreme Court has played a crucial role in shaping the jurisprudence of capital punishment by limiting its application. In the landmark judgment of *Bachan Singh v. State of Punjab*, the Court upheld the constitutional validity of the death penalty but introduced the “rarest of rare doctrine,” thereby restricting its imposition to exceptional circumstances where life imprisonment is inadequate.

Despite these safeguards, concerns remain regarding the fairness, consistency, and necessity of capital punishment. This paper aims to critically analyse whether the death penalty serves its intended purpose and whether it aligns with modern constitutional and human rights values.

II. LITERATURE REVIEW

The issue of capital punishment has been extensively examined by scholars, jurists, and international organizations. The Law Commission of India (262nd Report, 2015) conducted a comprehensive study on the death penalty and recommended its abolition for all offences except terrorism-related crimes. The report highlighted concerns such as arbitrariness in sentencing, delay in execution, and lack of deterrent effect.



Classical criminologist Cesare Beccaria, in his work *On Crimes and Punishments*, strongly opposed capital punishment, arguing that it is neither necessary nor effective in preventing crime. He advocated for proportionate punishment and emphasized the importance of reformatory justice.

International organizations such as Amnesty International have consistently criticized the death penalty as a violation of the right to life and human dignity. Their reports indicate a global trend toward abolition.

Legal scholars like Andrew Ashworth emphasize the importance of fairness, proportionality, and consistency in sentencing, arguing that capital punishment often fails to meet these standards.

Empirical research on deterrence presents mixed findings. While some studies suggest that capital punishment may have a limited deterrent effect, many others conclude that there is no conclusive evidence linking the death penalty to reduced crime rates.

Overall, the literature reflects a shift from retributive justice toward human rights-based approaches and reformatory theories of punishment.

LEGISLATIVE FRAMEWORK GOVERNING CAPITAL PUNISHMENT IN INDIA

The statutory framework of capital punishment in India is primarily governed by criminal laws such as the Indian Penal Code, 1860 (now largely replaced by the *Bharatiya Nyaya Sanhita, 2023*), along with various special legislations. These laws prescribe the death penalty for specific offences that are considered extremely serious in nature.

Under the Penal Code, offences such as waging war against the State, abetment of mutiny, fabrication of false evidence leading to execution of an innocent person, murder, kidnapping for ransom, and certain aggravated forms of rape may attract the death penalty. Special legislations such as the *Narcotic Drugs and Psychotropic Substances Act, 1985* and the *Commission of Sati (Prevention) Act, 1987* also provide for capital punishment in exceptional circumstances. Additionally, military laws such as the *Army Act, Air Force Act, and Navy Act* prescribe the death penalty for grave offences affecting national security and discipline.

The procedural framework governing capital punishment is equally significant. A death sentence can only be awarded by a Sessions Court and must be confirmed by the High Court. The accused has the right to appeal before the Supreme Court, followed by review and curative petitions. Finally, the convict may file a mercy petition before the President or the Governor under Articles 72 and 161 of the Constitution. This multi-layered process reflects the seriousness of the punishment and aims to minimize the risk of miscarriage of justice.

JUDICIAL TRENDS AND THE EVOLUTION OF DEATH PENALTY JURISPRUDENCE

The Indian judiciary has played a pivotal role in shaping the law relating to capital punishment. Initially, in **Jagmohan Singh v. State of Uttar Pradesh**, the Supreme Court upheld the constitutional validity of the death penalty, holding that it did not violate Articles 14, 19, and 21 of the Constitution.

However, a significant development occurred in **Bachan Singh v. State of Punjab**, where the Court introduced the “rarest of rare doctrine.” According to this principle, the death penalty should be imposed only when life imprisonment is insufficient and when the circumstances of the case are exceptionally grave. This doctrine was further elaborated in **Machhi Singh v. State of Punjab**, where the Court laid down guidelines for determining such cases, including the manner of commission of the crime, motive, and impact on society.

The judiciary has also addressed issues of arbitrariness and inconsistency in sentencing. In **Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra**, the Court emphasized the need for a cautious approach due to the irreversible nature of the death penalty. Similarly, in **Shankar Kisanrao Khade v. State of Maharashtra**, the Court acknowledged inconsistencies in sentencing and called for a more principled approach.

In **Mithu v. State of Punjab**, the Supreme Court struck down mandatory death penalty provisions as unconstitutional, thereby reinforcing the importance of judicial discretion and individualized sentencing.

Overall, judicial trends indicate a gradual shift toward restricting the use of capital punishment and emphasizing fairness, proportionality, and human rights.



EFFICACY OF CAPITAL PUNISHMENT: DETERRENCE DEBATE

One of the primary justifications for retaining the death penalty is its supposed deterrent effect. Proponents argue that the fear of death discourages individuals from committing serious crimes and thus contributes to maintaining law and order. It is also argued that capital punishment prevents repeat offences by permanently removing dangerous criminals from society.

However, empirical evidence on deterrence remains inconclusive. Several studies have failed to establish a clear link between the death penalty and reduction in crime rates. Countries that have abolished the death penalty have not experienced a significant increase in serious crimes, which raises doubts about its effectiveness as a deterrent.

Moreover, the Supreme Court of India has not relied heavily on deterrence as a justification for capital punishment. Instead, it has focused on principles such as proportionality and the “rarest of rare” doctrine. The lack of conclusive evidence suggests that the deterrent value of the death penalty is uncertain and cannot be considered a strong justification for its retention.

Arguments Supporting Deterrence:

- Creates fear among offenders
- Prevents repetition of crimes
- Ensures public safety

Arguments Against Deterrence:

- No conclusive empirical evidence
- Crime rates unaffected in many countries
- Life imprisonment equally effective

Analysis: Most modern studies conclude that the deterrent effect of capital punishment is uncertain and unproven. The Supreme Court has also not strongly relied on deterrence as a justification.

ETHICAL AND HUMAN RIGHTS CONCERNS

The ethical debate surrounding capital punishment is deeply rooted in the principles of human dignity, justice, and the right to life. One of the most significant concerns is that the death penalty violates the fundamental right to life guaranteed under Article 21 of the Constitution. Although the Supreme Court has upheld its constitutionality, it has consistently emphasized that the procedure for depriving life must be fair, just, and reasonable.

Another major concern is the irreversibility of the death penalty. Once executed, any mistake in the judicial process cannot be corrected. This becomes particularly problematic in light of the possibility of wrongful convictions, which may arise due to errors in investigation, faulty evidence, or judicial bias.

The application of the death penalty also raises concerns about arbitrariness and discrimination. Studies and judicial observations have shown that individuals from economically and socially disadvantaged backgrounds are more likely to be sentenced to death due to lack of effective legal representation. This undermines the principle of equality before law.

Furthermore, the death penalty is often criticized as cruel, inhuman, and degrading punishment. The phenomenon of prolonged detention on death row leads to severe psychological suffering, as recognized by the Supreme Court in **Triveniben v. State of Gujarat**. Delays in execution have also been considered a ground for commutation of death sentences, as seen in **Shatrughan Chauhan v. Union of India**.

From a reformative perspective, capital punishment is fundamentally flawed because it eliminates the possibility of rehabilitation and reintegration of the offender into society. Modern criminal jurisprudence emphasizes reformative justice, which seeks to transform offenders rather than punish them harshly.



INTERNATIONAL PERSPECTIVE

Globally, there has been a significant shift toward the abolition of capital punishment. International human rights instruments such as the International Covenant on Civil and Political Rights recognize the right to life and impose strict limitations on the use of the death penalty. Many countries have abolished it either in law or in practice, reflecting a growing consensus that capital punishment is incompatible with modern human rights standards.

India, however, continues to retain the death penalty, although its application is limited. The Indian judiciary has occasionally referred to international trends while interpreting constitutional provisions, indicating a gradual alignment with global human rights norms.

III. CONCLUSION

Capital punishment in India presents a complex interplay between legal principles, ethical considerations, and societal interests. While the legislative framework provides for the death penalty in exceptional cases, the judiciary has significantly restricted its application through doctrines such as “rarest of rare.”

The analysis in this paper reveals that the death penalty does not have a clearly established deterrent effect and raises serious ethical and human rights concerns. Issues such as arbitrariness, wrongful convictions, and delay in execution further weaken its justification.

In light of these challenges, there is a growing need to reconsider the continued use of capital punishment in India. A shift toward reformatory justice, coupled with stronger safeguards and judicial consistency, would better align the criminal justice system with constitutional values and human rights principles.

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