

SENTENCING POLICY IN INDIA

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Abstract: *When making these "rarest of rare" decisions, judges often substitute their own personal preferences for established legal standards. That's why it's important to establish uniform rules for determining whether a situation qualifies as very unusual. The decision to carry out the death punishment must be made with all necessary diligence and sober reflection; it should not be made hastily. Therefore, the accused has no chance to redeem himself by changing his ways if he is sentenced to death. The death penalty debate highlights a plethora of interconnected problems and the muddled understanding of its penological functions. It also raises the question of whether the crime control model or the due process model of punishment is more appropriate for contemporary India.*

Keywords: rarest of rare, death penalty, hurriedness, forefront, punishment, crime, Modern India.

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1. INTRODUCTION

The use of the death penalty as a form of punishment dates back to prehistoric times. The word "death penalty" refers to the legal need, under certain legal systems (such as the Indian Penal Code), to execute an individual convicted of a capital offence.

There are three theories of punishment:

- (i) According to the deterrent hypothesis, punishment's purpose is twofold: first, to deter the offender from repeat offences, and second, to serve as an example to the rest of society.
- (ii) The victim is entitled to retaliation, according to the retributive notion.
- (iii) According to the notion known as "reformatory," the goal of punishment is to help offenders change their ways.

In this study, we will examine a number of examples to define "rarest of rare" and determine its applicability. After this, an analysis of India's position on the death penalty in light of global trends



towards its abolition will be conducted. Since 1980, this country's continued use of the death penalty has been a divisive subject. While the death penalty remains the ultimate punishment in principle, in practise it can only be imposed in the most extreme of circumstances. On occasion, even the "rarest of rare circumstances" notion has been challenged. As with the general public, the judges' opinions on this matter are split. In this study, we evaluate the benefits and drawbacks of abolishing the death penalty.

2. METHODOLOGY

The current study is based on research that sets out to identify legal weaknesses and provide solutions to such weaknesses. The goal of the study is to compare nations that have abolished the death sentence. For this work, we used a qualitative approach to research, comparing and contrasting judicial rulings.

2.1 Cases on Death Penalty-An Analysis

Case I: In *Bachan Singh vs State of Punjab*¹ AIR 1982 SC 1325, The constitutionality of the death penalty was maintained by four judges. To express his disagreement, Judge Bhagwati issued a separate dissenting opinion. However in the Bachan Singh case it was ordered that consideration be given to both the offence and the accused. In recent years, judges imposing the death penalty have put more emphasis on the severity of the crime than on the individual circumstances of the accused.

Case II: In *Machi Singh vs State of Punjab*², AIR 1983 SC 957 The accused committed the murder of 17 people, including men, women, and children, as they slept because of longstanding familial animosity with the victim's family. According to a Supreme Court ruling, judges must issue death sentences when the population is so terrified that it believes the judges would do so regardless of their own opinions. The court considers many elements while considering the decision to impose the death sentence, such as the "manner of conduct of murder," "reason for the conduct of killing," "anti-social or socially odious character of the crime," "volume of violent act," and "character of victim of murder."

Case III: ³*Ediga Anamma* case is another landmark judgment, where As the Court's official spokesperson, Judge Krishna Iyer made the observation that the defendant's youthful or advanced age may be considered while deciding whether or not to commute the death sentence to life in prison. The societal and psychological contexts of a person must be taken into account before the death sentence is applied.

Case IV: *Deen Dayal* case⁴ - The Supreme Court heard arguments on whether or not Section 354 (5) of the Criminal Procedure Code of 1973 violated the Constitution. When a health doctor from AIIMS testified in behalf of the Government, the Court sided with them and affirmed section 354(5). The court ruled that Article 21 of the Constitution does not prohibit the use of a technique that involves hanging the prisoner by the neck.

Case V: In *Dhananjay Chatterjee* case⁵ - The perpetrator of the assault and murder of a student was sentenced to death. The Supreme Court concluded that while determining a punishment, courts must consider the victim's vulnerability, the offender's behaviour, and the gravity of the crime. Because the security guard, who was meant to keep people safe, did such a heinous act, the whole social fabric has been jolted.

Case VI: In a latest instance (*Nirbhaya* case) involving the horrific rape and murder of a paramedical student, the Supreme Court applied the aforementioned principles, noting that it must consider the interaction effect of both the intensification and lowering factors, and must attack an equilibrium between them in order to determine which way the scales of justice tilt. The offender's youth, the offender's parents' helplessness and sickness, the offender's post-conviction sorrow and his exemplary

¹ *Bachan Singh v State of Punjab*, AIR 1982 SC 1325.

² *Machhi Singh v State of Punjab*, AIR 1983 SC 957.

³ *Ediga Anamma v State of Andhra Pradesh*, 1974 AIR 799, 1974 SCR (3) 329.

⁴ "Deena @ Deena Dayal Etc. Etc v Union Of India And Others, AIR 1983 SC 1155."

⁵ "Dhananjay Chatterjee v State of West Bengal &Ors., (1994)2 SCC 220."



prison behaviour, and so on, were all mitigating circumstances; yet, the aggravating circumstances outweighed them.

2.2 'Rarest of Rarest' Doctrine Invocation

While the "rarest of rare" theory was developed in the Bachhan Singh¹⁴ case and the Machi Singh¹⁵ case, the concept that judges have of crime and law is a determining element. The death sentence in the case of Ediga Anamma was commuted to life in prison due to the female defendant's mental illness, her family's impoverished situation, and the fact that she was arrested in a small community. The border between "rarest of rare" and "ordinary case" is blurry, but the judgement ultimately lies with the courts. Dhananjay Chatterjee and the Mukesh and another vs. State of NCT of Delhi (Nirbhaya) cases both resulted in death sentences for those found guilty of raping and murdering victims.

But, in Kumudi Lal vs. State of Uttar Pradesh, the victim did not make the petitions for aid until after the appellant had already been convicted, therefore the court awarded the appellant the advantage of changing the death sentence to life in prison. A 14-year-old girl who had gone out to the fields to pee was the victim in that instance. A higher court may be required to evaluate the question of death punishment in India due to the apparent inconsistency in the Supreme Court's statements.

That the 'rarest of rare' test's implementation rests on the whims of the Court and might thus result in erroneous rulings is evident. The judiciary's use of the death penalty is inconsistent and unpredictable. Sometimes the accused receives the death penalty, and sometimes they do not. Moreover, the death penalty is often changed to a sentence of life in prison. Too much judicial discretion may be disastrous for the criminal law justice system if it were used in this way. The reformatory concept of punishment, on the other hand, holds that the offender should be given a second opportunity. Proponents of abolishing the death penalty often cite three primary arguments:

- (i) Death penalty's irrevocability and the possibility of executing the wrong person.⁶
- (ii) There is no justification for using the death penalty as a form of punishment. There is no conclusive evidence that the death sentence serves as a deterrence. The punishment's punitive impact is at odds with international norms and good taste. The death penalty negates any possibility of redemption.
- (iii) The use of any method of execution is barbaric, degrading, and depraved.

2.3 Doing Away with the Death Penalty

India will be in step with other nations that have abolished the death penalty and hence will be honouring its international treaty obligations in their entirety if it follows suit and does the same. (Autri Saha & Pritika Rai Advani, 2009).⁷

The right to one's own life is firmly supported by the UDHR, which was established by the United Nations General Assembly in 1948. Torture, as well as other cruel, inhuman, or degrading punishments, are outlawed under Article 5 of the UDHR. Death sentences are only to be imposed for the "most heinous crimes" and in accordance with the ICCPR, as stated in Article 6 of the ICCPR. Yet, the phrase "most severe offences" is not defined elsewhere and may be used in a number of different ways. Other countries may expand its scope to encompass further offences. Also, on December 15, 1989, the International Convention on the Rights of the Child (ICCPR) approved the Second Optional Protocol, which sought to abolish the death sentence. Unfortunately, the death sentence is still legal in certain nations, including India, China, the United States of America, Iran, and Japan, despite widespread worldwide condemnation. Therefore, India has kept the death penalty despite global trends, but only for the "rarest of rare situations" and "specific reasons."⁸

Historical Perspective on the Death Penalty

⁶ "Swasit Mahapatro, Rarest of rare doctrine and the concept of Social engineering, 1(5) Journal of International Academic Research for Multidisciplinary 277(2013)."

⁷ "Autri Saha & Pritika Rai Advani, The Death Penalty: A New Perspective in Light of Santosh Bariyar Case, 2 NUJS L. Rev. 669(2009)."

⁸ "Monica Sakhrani & Maharukh Adenwalla, Death Penalty: Case for Its Abolition, 40(11) EPW 1026 (2005)"



In 2003, “the Law Commission in its 187th Report observed that medical science has made enough progress to reconsider Deen Dayal’s position.”⁹ The Commission believes that killing should be available as a means of carrying out death sentences.

The 262nd report from the Law Commission recommends abolishing the death penalty everywhere except for cases involving acts of terrorism and the commission of acts of war.¹⁰

To begin, the panel unanimously believes that capital punishment is ineffective as a deterrent.

Second, the Commission believes that the pitiful state of police investigation, unwarranted delay, and inadequate portrayal to the accused by the lawyers during all phases of proceedings makes it impossible to rule out the possibility of “error while rendering the death penalty as punishment. The Commission has suggested that adequate compensation be provided to the victims and security be provided to the witnesses and victims so that restorative justice can be achieved.”

Finally, the Commission noted that judges often lack principle when deciding whether or not to impose the death sentence, that it is difficult to determine which instances qualify as “rarest of rare,” and that the justice system often fails because of inconsistencies in the “rarest of rare” theory.

A triumvirate of commission members claimed that the intrinsic fallibility of humans does not warrant universal abolition of the death sentence because of the possibility of indeterminacy and mistake in judgement.

According to Death Penalty India Report,

(i) “74.1% of India’s Prisoners sentenced to death are very poor and belongs to backward and religious minority sections of the society.”

(ii) “62% of India’s prisoners have not completed their secondary school education.”¹¹

Those in society who are economically or religiously disadvantaged. If a prisoner is low-income and illiterate, he is more likely to have inadequate legal counsel and to miss several court appearances because he does not realise the significance of doing so. It is expected that everyone would be treated equally before the law in the United States.

Inconsistencies are a major issue. The calibre of legal counsel is essential to the result of any lawsuit. If you are poor, you may forget about hiring a good barrister to represent you, and you will have no idea what is happening with your case.

2.4 Capital Punishment

The retributive justification for capital punishment. Members of the victim's family are encouraged to seek vengeance against the perpetrator. The death penalty is final and cannot be overturned, regardless of the merits of the case. Miscarriages of justice and the wrongful conviction of innocent people are possibilities when the death penalty is used. It may be claimed that judges, who too may have strong feelings about whether or not the death sentence should be kept, are also susceptible to making mistakes in their rulings. The death penalty may actually increase the likelihood that rape victims will be killed if it is implemented.

If the penalty for murder is also the penalty for rape, then the perpetrators of rape are more likely to murder their victims to reduce the likelihood of being caught. It might be claimed that the death sentence is often imposed by the judiciary in accordance with the Utilitarian concept, which seeks to ensure that the greatest possible number of individuals in a community are happy. Suggestions for improving the current situations relating to death penalty as related to women safety are as follows:

(i) A new law or a modification to the current law is needed to provide a comprehensive process in imposing the death penalty. According to a study on the death penalty in India conducted by the National Law University in Delhi, the vast majority of those sentenced to death come from economically disadvantaged backgrounds, suggesting that the “rarest of rare” doctrine should be reevaluated because it has failed to live up to its promise.

⁹ “Law Commission of India, Mode of Execution of Death Sentence and Incidental Matters, Report no. 187 (October 2003).”

¹⁰ “Law Commission of India, The Death Penalty, Report no.262 (August 2015), <http://lawcommissionofindia.nic.in/reports/Report262.pdf>”

¹¹ “National Law University Delhi, Death Penalty India Report (2016). Available at https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5b4ced7b1ae6cfe4db494040/1531768280079/Death+Penalty+India+Report_Summary.pdf”



- (ii) Given the gravity of the issue at hand (a person's life being taken), the death sentence should be handed down only when a unanimous decision in favour of execution has been reached by a panel of thirteen judges after careful consideration of the evidence and application of the law.
- (iii) All instances where the death sentence has been granted by lower courts must be considered by the Supreme Court, and the State must cover the costs of the individual being punished with the death penalty. This would right the wrong done to the poor when they are given the death sentence but cannot afford to appeal their conviction to the Supreme Court.
- (iv) By hosting discussions, hosting seminars and conducting conferences with the active participation of legal practitioners, law schools in cooperation with the Bar Council of India and States may assist generate fresh ideas pertaining to the execution of the death sentence.
- (v) It has been observed that rape victims often feel too ashamed to disclose the crime or wait too long before doing so. It is thus imperative that victims of rape get enough counselling to restore their confidence and motivate them to take immediate action.
- (vi) Disposal times for rape cases, which now take between four and ten years, should be shortened.
- (vii) When incarcerated, certain jurisdictions in the US treat sex offenders with psychotherapy because they see them as neurotic. Inmates in Indian prisons do not have access to such care. The idea is that if the criminals are given psychiatric help, they would feel remorse for their actions and refrain from committing similar crimes in the future.

3. CONCLUSION

The vast majority of nations have done away with the death sentence, according to a global survey. In addition, rape criminals are more likely to kill the rape victims if the death penalty is the penalty for murder and rape. It is for this reason that the Law Commission, in its 262nd report, proposed that the death sentence be abolished for all crimes save those involving acts of terrorism and the commission of acts of war. The only acceptable uses of the death penalty are for acts of terrorism and war crimes. As current sanctions are sufficient, there is little justification for the death penalty, which may be regressive rather than preventative.

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