DEATH PENALTY IN INDIA: JUSTICE SERVED OR JUSTICE DENIED?

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ABSTRACT

This paper examines the concept of the death penalty in India. It explores whether capital punishment stands as justice served or justice denied. It analyses the legal framework governing capital punishment, including relevant provisions under criminal law and the constitutional protections available to individuals. It also discusses the role of the judiciary, particularly how courts have tried to restrict the use of the death penalty to exceptional cases by following the principle of the "rarest of the rare" doctrine. The paper presents a balanced approach by exploring arguments both in favour of and against the death penalty. On one hand, it is considered a means of delivering justice, acting as a deterrent to heinous crimes and assisting in maintaining public confidence in the legal system. On the other hand, it raises several concerns, such as wrongful convictions, the irreversibility of the punishment, and its impact on human rights, particularly the right to life and dignity while also, underlining how the death penalty may sometimes be applied unfairly. Altogether, he paper signifies that notwithstanding legal safeguards and judicial efforts, he debate surrounding capital punishment remains unresolved, giving rise to the question of whether the death penalty results in justice served or justice denied.

Key Words: *- Human Trafficking, Vulnerable Groups, Legal Framework, Prevention & Rehabilitation, Community-NGO Collaboration*

Introduction

In the modern legal system which firmly emphasizes the protection of human rights, the death penalty stands as one of the most controversial punishments under criminal law. While some believe it ensures retribution and deterrence, others consider it unjust and a violation of human rights. The death penalty, alternatively known as capital punishment, is a punishment sanctioned by the state that involves executing a person who has been sentenced to death by a court of law. In a country like India where the Constitution guarantees Right to life as a fundamental right under [1]Article 21,the continued existence of the death penalty as a form of punishment raises serious legal and moral questions and appears highly ironic.

In India, the Constitutional validity of the death penalty has been examined by the judiciary in various cases. One of the landmark Supreme Court judgments in this regard is [2]Jagmohan Singh v State of Uttar Pradesh (1973) In this case, a 5 judge bench of the Supreme Court upheld the Constitutional validity of the death penalty under [3]Section 302 of IPC. The court held that the discretionary power given to judges regarding sentencing is not violative of [4]Article 14,19 & 21 of the Constitution of India. Since, the death penalty in India is imposed in accordance with the procedure established by law. However, The Supreme Court adopted a more restrictive approach towards the application of the death penalty with the introduction of the 'Rarest of the rare" doctrine, which originated from the landmark judgment in [5]Bachan Singh v State of Punjab (1980).

The 'Rarest of the Rare' Doctrine

The 'Rarest of the Rare' doctrine was developed by the Supreme Court with the objective of restricting the death penalty to exceptional cases, primarily those involving offences that are extremely brutal or Heinous in nature. Before the introduction of this doctrine, courts often faced a dilemma while deciding whether a convict should be sentenced to the death penalty or life imprisonment. For instance, in cases where two individuals commit the same offence, the

[1] Article 21, Part lll of the Constitution of India, 1950
[2] AIR 1973 SC 947
[3] Section 302 , Indian Penal Code,1860
[4] Article 14,19 and 21 , Constitution of India , 1950
[5] AIR 1980 SC 898 ; (1980) 2 SCC 684 ; (1980) 2 SCR 550

question arises as to what parameters should guide the court in determining the appropriate punishment for the accused.

This issue was addressed in the landmark judgment of the Supreme Court in [6]Bachan singh v State of Punjab (1980) In this case, the accused Bachan Singh was sentenced to death under [7]Section 302 of IPC where the Supreme Court, by a majority of 4:1,upheld the constitutional validity of the death penalty under [8]Article 21 of the Constitution of India. The Court further held that the death penalty should be imposed only when life imprisonment is unquestionably inadequate. It also places an obligation on the judges to provide 'Special Reasons' for awarding the death sentence as required under [9]Section 354(3) of CRPC. Moreover, the Supreme Court introduced the 'Balanced Sheet Approach' which requires courts to balance the Aggravating and Mitigating factors of a case before imposing the death penalty. Aggravating factors are those circumstances which encourage the court of law to impose the death penalty. These include the brutality of offence, premeditation, offences that shock the conscience of society, multiple victims, methods of the offence, exceptional depravity, and the status of the victim. While Mitigating factors are those circumstances which discourage the court from awarding the death sentence, persuading the court to impose a lesser punishment. These may include the mental and emotional state of the accused, age, reformative potential, influence or duress, provocation or sudden provocation, and moral justification. Through this judgment, the Supreme Court set a precedent for evaluating the gravity of offenses, ensuring that the death penalty is applied judicially with strong justification, keeping in mind that life imprisonment is the rule and the death penalty is the exception.

Legal Framework

Following the principles laid down in the 'rarest of the rare' doctrine, the application of the death penalty in India is governed by constitutional provisions, judicial precedents, statutory law, ensuring that capital punishment is imposed only under strict legal scrutiny. [10]Section 393 of BNSS corresponding to [11]Section 354 (4) of CRPC, mandates that the court may impose the

[6] AIR 1980 SC 898 ; (1980) 2 SCC 684 ; (1980) 2 SCR 550
[7] Section 302 , Indian Penal Code,1860
[8] Article 21, Part lll of the Constitution of India, 1950
[9] Section 354(3) of the Code of Criminal Procedure , 1973
[10] Section 393 of Bharatiya Nagaraj Suraksha Sangita , 2023
[11] Section 354(4) of Code of Criminal Procedure , 1973

death penalty only if it is able to specify the 'special reasons' for choosing this sentence. [12]Section 393(5) of BNSS corresponding to [13]Section 354(5) of CRPC provides the mode of execution of the death penalty, which in India is carried out by hanging the accused to death. [14]Section 23 of BNSS explicitly prohibits a chief judicial magistrate or any subordinate magistrate from passing the death sentence aiming to prevent errors in cases related to capital punishment.[15] Section 258(2) of BNSS corresponding to [16]Section 235(2) of CRPC Provides for mandatory pre-sentencing hearings ,requiring separate proceedings on punishment after the conviction. [17]Section 407 of BNSS replacing [18]Section 366 of CRPC mandates that any death sentence passed by a Sessions Court must be confirmed by the High Court, providing a scope for judicial review at a higher level. Convicts sentenced to death may also seek mercy petitions from the Governor under [19]Article 161 of the Constitution of India or the President under [20]Article 72 of the Constitution of India, which allows the executive to review, commute, or pardon the death sentence, thereby providing an additional layer of review beyond the judiciary.

Under the Indian Criminal Law, the death penalty is prescribed only for certain offences that are extremely grave or brutal in its impact. For instance, the law provides certain statutory provisions, which enumerate the crimes for which capital punishment may be imposed. These includes murder, aggravating sexual offences, waging of war, mob lynching, acts of terrorism, threats to the security of the state and other particularly grave offences. The application of these provisions is clarified through key judicial precedents. In [21]Machhi Singh v State of Punjab (1983) the Supreme Court reaffirmed the 'rarest of the rare' doctrine by imposing the death penalty on multiple murderers, balancing aggravating factors such as number of victims and brutality of the crime, against the mitigating factors emphasising that the death penalty remains an exception, not the rule. In a recent Supreme Court judgment [22]Manoj and ors v State of

[12] Section 393(5) of Bharatiya Nagaraj Suraksha Sanhita ,2023
[13] Section 354(5) of Code of Criminal Procedure , 1973
[14] Section 23 of Bharatiya Nagarik Suraksha Sanhita , 2023
[15] Section 258(2) of Bharatiya Nagarik Suraksha Sanhita , 2023
[16] Section 235(2) of Code of Criminal Procedure , 1973
[17] Section 407 of Bharatiya Nagarik Suraksha Sanhita , 2023
[18] Section 366 of Code of Criminal Procedure , 1973
[19] Article 161 of Constitution of India,1950
[20] Article 72 of Constitution of India , 1950
[21] 1983 AIR 957 , 1983 SCR (3) 413 , 1983 SCC (3) 470
[22] 008 INSC 1090

Madhya Pradesh the Supreme Court established guidelines for the trial courts making it mandatory to consider the mitigating circumstances and the possibility of reform, and required the state to provide psychological reports of the convicts.

Controversy : Justice served or Justice denied

Although the Supreme Court has delivered several judgments addressing the issues related to the death penalty and its application in India, it still remains one of the most controversial and debated topics in the country. Some believe that the death penalty ensures retribution and acts as a deterrent to heinous crimes, while others view it as a violation of human rights and contrary to the fundamental principles of the Constitution of India. This ongoing debate surrounding the death penalty is often demonstrated through arguments both in favour of and against its existence in criminal law.

Supporters of the death by penalty put forward several arguments to justify its continued existence in the criminal justice system. One such argument in favour of the death penalty is the principle of retributive justice as it is based on the principle of 'Lex Talionis' commonly referred to as 'an eye for an eye principle' which suggests that punishment should be proportionate to the gravity of the offence. It is often argued that in cases involving extreme brutality, taking the life of the offender is the only just way to restore moral balance, as the offender is considered to have forfeited their own right to life. Further, supporters contend that capital punishment ensures 'ultimate incapacitation', permanently preventing the offender from committing further crimes. Additionally, it is based on the principle of 'just deserts' which holds that the severity of punishment must correspond to the gravity of the crime. In this view the death penalty ensures justice by imposing the ultimate punishment for taking a human life and may also provide a sense of closure to the victim's family members by acknowledging their loss and suffering. Another significant argument in favour of the death penalty is that it ensures deterrence, as the fear of the ultimate punishment may discourage the potential offenders from committing heinous or brutal crimes. It serves as a strong warning to society, reinforcing the idea that grave offences will attract grave punishments and harsh consequences. Further, it helps maintain public confidence in the criminal justice system, as it reinforces society's faith in the ability of the legal system to deliver justice.

Opponents of the death penalty raise strong concerns against its continued use in the criminal system. One of the most serious concerns associated with the death penalty is the possibility of wrongful conviction, particularly because of the irreversible nature of the punishment. Such wrongful convictions may arise due to several factors, including inadequate legal representation, coerced evidence or false confessions, faulty forensic evidence, unreliable witness testimony and systematic flaws within the criminal justice system. In many instances, the death penalty has been observed to be disproportionately applied to minorities, poor, marginalized communities, who often lack access to quality legal representation. According to the Death Penalty in India: Annual Statistic Report (2016-2025) published by [23]The Square Circle Clinic (NALSAR University of Law) , the Sessions Court handed down 1,130 death sentences during this period. However, appellate courts later identified widespread errors in many of these judgments, leading to the acquittal of 364 individuals who might otherwise have been wrongfully executed. Another major criticism of the death penalty is that it is considered a violation of fundamental human rights. It is often argued that capital punishment constitutes a cruel, inhumane and degrading form of punishment, particularly due to the psychological suffering experienced by the prisoners while awaiting execution on death row, combined with the physical act of its execution itself. Collectively, these impacts are considered as a form of torture. [24]Article 21 of the Constitution of India provides the right to life and personal liberty to every person. From this perspective, the act of sentencing an individual to death through judicial execution is considered a violation of the principles of human dignity and fundamental rights.

Conclusion

Both supporters and opponents of the death penalty continue to debate its existence and relevance in the modern legal system. Despite the legal framework developed by the courts and the repeated efforts of the judiciary to regulate its application referring to the 'rarest of the rare' doctrine, the issue of capital punishment remains highly contested. While the law attempts to ensure that the death penalty is restricted only in the most exceptional circumstances, concerning justice, fairness, and the protection of fundamental human rights continue to challenge the Indian criminal justice system. Therefore, the debate remains unresolved, and the question still persists whether the death penalty represents justice served or justice denied.

[23] Project 39A , National Law University , Delhi
[24] Article 21, Part lll of the Constitution of India, 1950

In this context, the future of capital punishment in India depends on the continued efforts of the judiciary towards the cautious application of this law with a strong emphasis on fairness, human dignity and due process. Ultimately, the true purpose of justice lies not only in punishing those who commit offences but also in safeguarding the rights of every individual