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AN ANALYSIS OF DEATH PENALTY IN INDIA

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ABSTRACT:

Death penalty which is also called Capital Punishment is when a competent court sentences someone to death for committing a crime against the state that the government has sanctioned. Murder and rape, and sexual abuse are examples of such crimes. Capital punishment is a heavily debated topic which have gained many differing opinions over the years. Capital punishment laws differ from every country.¹this research paper tries to examine the role of politics, social factors and human rights laws on the capital punishment in India. The research paper also discusses if capital punishment prevents people from committing a crime or strikes a sense of fear into people to avoid committing crimes. This research paper tries to bring out and discuss the impact of the doctrine of 'rarest of rare' and also highlights the importance of the law commission reports 2015.²The research paper will also have a detailed discussion on the Rate of Execution and the Commutation of the death penalty in the country. The research paper will also list out the legal proceedings that must be fulfilled in order for the capital punishment to be awarded. In conclusion the paper will discuss whether capital punishment is immoral or moral and also whether it is just to take away someone's life.

KEY WORDS: Penalty, Punishment, Death, Capital, Legality

The coercion used to enforce the 'law of land,' which is one of the pillars of modern civilization, is known as 'punishment.' To maintain peace and order in society, it is the responsibility of the state to punish criminals. There was no clear law or regulation for such offences in the past, and the amount and severity of punishment was mostly determined by the King. With the passage of time, contemporary notions of punishment emerged, and we voluntarily surrendered our rights and the capacity to maintain law and order to the state.

¹Death penalty in India Legal Service India - Law, Lawyers and Legal Resources, [https:// 1 www.legalserviceindia.com/legal/article-3212-death-penalty-in-india.html](https://www.legalserviceindia.com/legal/article-3212-death-penalty-in-india.html) (last visited Aug 4, 2021)

²[https://amity.edu/UserFiles/aibs/ 23fc0Article-XII%20\(Page%2088-92\).pdf](https://amity.edu/UserFiles/aibs/23fc0Article-XII%20(Page%2088-92).pdf) (last visited Aug 4, 2021)

'Capital Penalty' is the most atrocious or, to put it another way, the most severe punishment available today. The punishment of death penalty entails the authorized execution of a person who has committed a crime against the law.³ the state sanctioned capital punishment which is commonly known as the "Death Penalty," in which a person is sentenced to death by the state as a punishment for the atrocities he committed. A guilty defendant's sentence is known as a 'Death sentence,' and the act of carrying out that sentence is known as 'Execution.'

Whenever a court imposes a sentence, it does so on the basis of a theory or premise. These theories are referred to as 'Theories of Punishment,' and they are divided into five categories⁴:

1. Deterrent Theory
2. Reformatory Theory
3. Preventive Theory
4. Retributive Theory
5. Expiation Theory

The term 'abolition of the death penalty' is one of the most widely discussed themes at the United Nations (UN), since it is regarded a violation of human rights.⁵ The UN prioritized the Reformatory Theory of Punishment over the Deterrent Theory of Punishment. In the case of Rajendra Prasad Vs State of Uttar Pradesh, Justice V.R Iyer opined that, the unique reason must be related to the offender rather than the crime." Even if the crime is horrific, the culprit may not be deserving of the death penalty.⁶ when it comes to Punishment Theories, We can argue that the Reformatory Theory has a lot of advantages over the Deterrent Theory.

Because there is a 'Scope of Improvement' in Reformatory Theory, whereas this scope is entirely absent in Deterrent Theory. An example can be, in some jails in India prisoners are given jobs inside prison so that they can earn their own money. This helps them improve their behavior. The topic of death penalty is a very sensitive and widely debated topic across the world.

³ Capital punishment - definition, examples, cases, processes Legal Dictionary, <https://legaldictionary.net/capital-punishment/> (last visited Nov 3, 2021)

⁴Theories of punishment under IPC MCRHRDI, <https://www.mcrrdi.gov.in/> (last visited Nov 3, 2021)

⁵ Death penalty OHCHR, <https://www.ohchr.org/EN/Issues/DeathPenalty/Pages/DPIndex.aspx> (last visited Nov 3, 2021)

⁶ Rajendra Prasad vs. state of uttar pradesh [1979] INSC 33 (9 February 1979) Latest Laws, <https://www.latestlaws.com/latest-caselaw/1979/february/1979-latest-caselaw-33-sc/> (last visited Nov 3,2021)

Countries where the death penalty is still legal have come under pressure to abolish the death penalty as it goes against human rights that are assured to each and every person. In India, however, capital punishment is reserved for the rarest of rare crimes. Death is an extremely serious crime and hence the death penalty must only be utilized as a last resort for any crime. When a punishment is imposed for wrongdoing, there are two basic reasons for doing so:

- 1.) The individual who did the wrong must suffer as a result of his or her actions.
- 2.) The other is that punishing wrongdoers sets an example for others.

In India, cases involving the death penalty are decided using the "rarest of the rare test," which was established in the case of **Bachan Singh v. State of Punjab**. That is to say, the death sentence will only be applied in the most exceptional of circumstances.⁷ State legislatures in India have the power to establish laws within certain areas, according to the Constitution. The judiciary has the authority to decide on the constitutionality of all laws, as provided by the Constitution. The Supreme Court has the authority to alter or declare unconstitutional any laws passed by parliament that contradict the Constitution's provisions. Article 21 of the India constitution guarantees every person the right to life.⁸ Article 21 of the Constitution gives all citizens the right to life and personal liberty, as well as the right to live in dignity. In the name of law and public order, the state can take away or limit one's right to live. However, as established in **Maneka Gandhi v. Union of India** case, this method must follow "due process."⁹ The procedure for ending a person's life must be just, fair, and reasonable. The constitutional legitimacy of capital punishment has been a source of contention in international constitutional courts. The examples in which the death sentence has been used present the possibility of a judicially sanctioned governmental practice of questionable moral decorum, one that infringes on the fundamental right to life. In

⁷Case summary: Bachan Singh v state of Punjab (1980) Legal Bites - Law And Beyond,
<https://www.legalbites.in/bachan-singh-v-state-of-punjab-1980/> (last visited Nov 3, 2021)

⁸ Article 21 of the Constitution of India - The Expanding Horizons Legal Service India,
<https://www.legalserviceindia.com/articles/art222.htm> (last visited Nov 3, 2021)

⁹Case summary: Maneka Gandhi v Union of India (1978) Legal Bites - Law And Beyond,
<https://www.legalbites.in/case-summary-maneka-gandhi-v-union-of-india-1978/> (last visited Nov 3, 2021)

Circumstances involving death sentences, only the president has the authority to confer mercy. The death penalty must be confirmed by the High Court once a convict has been sentenced to death by the Sessions Court. If the convict's appeal to the Supreme Court is Unsuccessful, he may file a "mercy petition" with the President of India. The President of India has the authority under Article 72 of the Indian Constitution to award pardons, reprieves, respites, or remissions of sentence, as well as to suspend, remit, or reduce the sentence of anyone who has been convicted of a crime.¹⁰ The accused can plead for forgiveness under Section 433 and Section 434 of the CrPc.¹¹ In accordance with Article 21 and 22 of the Indian Constitution, the accused has the right to a fair trial. The Supreme Court ruled in **Jagmohan v. State of Uttar Pradesh** that Articles 14, 19, and 21 did not infringe the death penalty. The judge was stated to choose between the death penalty and life in prison based on the circumstances, facts, and nature of the offence that were documented throughout the trial. As a result, the decision to impose the death penalty was made in line with the legal procedure, as required by Article 21.¹² But this judgment was challenged in the case of **Rajendra Prasad vs State of Uttar Pradesh**. Despite the fact that the Law Commission previously stated that capital punishment should not be abolished, it stated in its 262nd report that the death penalty was unable to achieve its goal of deterrence any better than life imprisonment, and that it should be limited to terrorism-related offences or waging war against the state.¹³ The Law Commission determined in its earlier review in 1967 that India could not risk the "experiment of elimination of capital punishment. In 2015 the law commission changed their views on the death penalty. Despite the fact that death sentencing in India is very rarely carried out, the commission recommended that the penalty be struck down. The following are the reasons given by the commission:

¹⁰ Constitution of India https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%2072 (last visited Nov3, 2021)

¹¹ The code of criminal procedure act, 1973|Legislative ... Code of Criminal Procedure, <https://legislative.gov.in/actsofparliamentfromtheyear/code-criminal-procedure-act-1973> (last visited Nov 3, 2021)

¹² Jagmohan Singh vs. the state of U. P [1972] INSC 241 (3 October 1972) Latest Laws, <https://www.latestlaws.com/latest-caselaw/1972/october/1972-latest-caselaw-241-sc/> (last visited Nov 3,2021)

¹³ Government of India 262nd Report, <https://lawcommissionofindia.nic.in/reports/Report262.pdf> (last visited Nov 3, 2021)

- 1) Laws must change with time.
- 2) It does not act as a deterrent.
- 3) The Indian justice system is flawed and is in need of an update.¹⁴

The document went on to say that the concept of "an eye for an eye" had no place in our legal system. Even though the Supreme Court indicated unequivocally that the death sentence will only be applied in the most exceptional of circumstances. There has been no decline in the number of death sentences that have been imposed arbitrarily. Punishment's purpose is retribution, which the death penalty falls short of. The death penalty does not allow an individual to change and it denies an individual of his or her basic human rights. In the later stages the Supreme Court introduced a doctrine called The Doctrine of the "**Rarest of Rare**".

In **Bachan Singh V. State of Punjab**¹⁵, the Supreme Court stated its position on the death sentence, noting that it should be applied only in the rarest of circumstances. The Supreme Court's stance was widely endorsed since it wanted to decrease the usage of capital punishment. The Supreme Court's Ratio Decidenti, or Rule of Law, in the case of Bachan Singh holds that the death sentence is only permissible if it is used as an alternative for life Imprisonment in the rarest of rare cases, where the other choice is absolutely foreclosed, and the same rule applies. The Supreme Court further explained in **Santosh Kumar Bariyar V. State of Maharashtra** that the rarest of rare doctrine only serves as a guideline in upholding the provisions mentioned in Section 354(3) of CrPC and reinforces the stance that life imprisonment is the rule and death punishment is the exception.¹⁶ Another characteristic of the death penalty shown by a study of the decided cases is that it has a particular class prejudice in that it adversely impacts the poor and downtrodden. It would be tough to find a wealthy individual facing the gallows.

¹⁴Government of India 262nd Report, <https://lawcommissionofindia.nic.in/reports/Report262.pdf> (last visited Nov 3, 2021)

¹⁵Case summary: Bachan Singh v state of Punjab (1980) Legal Bites - Law And Beyond, <https://www.legalbites.in/bachan-singh-v-state-of-punjab-1980/> (last visited Nov 3, 2021)

¹⁶Santosh Kumar Satishbhushan Bariyar v. state of ... - casemine Santhosh Kumar Bariyar vs State of Maharashtra, <https://www.casemine.com/judgement/in/5609aeb4e4b01497114147bf> (last visited Nov 3, 2021)

This is because the lower sections of society have far less resources when compared to the richer sections of society and hence a bias is formed which discriminates against them. The Supreme Court established three conditions for the imposition of the death penalty in **Machhi Singh v. the State of Punjab**. These were the following:

- 1) When there is something unusual about the offence that makes a sentence of "Life Imprisonment" inadequate?
- 2) Whether the circumstances of the crime are such that there is no other option except to impose a death sentence, even if any mitigating factor is given maximum weightage?¹⁷

The death penalty is legal in India, however just seven people have been executed between 1998 and 2018. There were 1303 capital sentence judgments between 2004 and 2013, however just three criminals were executed during that time. Between 2004 and 2012, not a single execution was carried out.¹⁸ In the last 14 years only 8 people have been awarded the death sentence the most recent being the accused in the Nirbhaya case. The pandemic has severely impacted many aspects of life, including the operation of the Indian judiciary. The amount of death sentences imposed by the session's court has decreased dramatically as a result of these factors. Prior to the COVID-19 crisis, 62 percent of death sentences were imposed before the lockdown was enforced on March 24, 2020, however reports claim that the figures would have been substantially higher in the absence of the COVID-19 situation.

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¹⁷ Analysis of the rarest of the rare doctrine The Law Communicants,

<https://thelawcommunicants.com/analysis-of-the-rarest-of-the-rare-doctrine/> (last visited Nov 3, 2021)

¹⁸ India: Supreme Court Death Penalty Verdicts Statista, <https://www.statista.com/statistics/1103211/india-prisoners-on-death-penalty-cases-in-supreme-court-by-verdict/> (last visited Nov 4, 2021)

In the year 2020, the state of Uttar Pradesh has the most number of death sentences imposed by the session's court.¹⁹All these cases were considered to be the rarest of rare cases and hence the death penalty was awarded to the accused. There is a certain legal procedure that needs to be followed when convicting an accused of the death penalty. Once a death sentence has been handed down by a session (trial) court, the judgement must be confirmed by a High Court before it may be carried out. The sentenced defendant has the option of appealing to the Supreme Court once his sentence has been upheld by the High Court. If this is not possible, or if the Supreme Court dismisses the appeal or refuses to hear the petition, the convicted individual may file a 'mercy plea' with the President of India and the State Governor. The Maharashtra cabinet has passed two bills that amend the Indian Penal Code and the Protection of Children from Sexual Offences Act to impose the death penalty for non- homicidal rape and acid attack.²⁰These amendments strengthen the penalties for a range of sexual violence offences by restricting the investigation period to 15 days and the trial and disposition of the case to 45 days from the filing of the charge sheet.

When the accused is given the death penalty, it is more than just a punishment; we are ending or killing a person in the name of justice and law. Killing someone is immoral and indicates a lack of regard for human life. Advocating against the death penalty does not imply support for the criminal.

When the death sentence is enforced, it eliminates the possibility of improvement that could have changed a person's life; this is why democracies all over the world advocate for reformative theories of punishment and oppose deterrent theories of punishment. No person has the right to take away another person's life no matter how heinous the crime is.

¹⁹Is there an alternative to capital punishment? ALL INDIA LEGAL FORUM, <https://allindialegalforum.in/2021/07/09/is-there-an-alternative-to-capital-punishment/> (last visited Nov 7, 2021)

²⁰Shakti Act, 2020 PRS Legislative Research, <https://prsindia.org/bills/states/the-shakti-criminal-laws-maharashtra-amendment-bill-2020> (last visited Nov 7, 2021)

We consider ourselves a "civilised society," but in the name of justice, we execute another human being. The death sentence is established on the deterrent theory, which sets an example by instilling fear in the minds of others. However, there are other ways to create a leading example, such as through reformatory theory. Capital punishment is an ancient and barbaric notion that should be eliminated since it entails the killing of a human being, which is wrong because life is valuable and death is natural. Rather than sticking to the deterrent theories, democracies could thrive if the reformatory theory is applied. It allows prisoners who are capable of working a chance to contribute towards the economy as well as help the prisoner gain a sense of independence. The primary objective of punishments is to deter future crimes, which the death penalty failed to do, and to reform the criminal, which the death penalty clearly can't do. There is no proof that the death sentence deters other criminals from committing crimes. A sentence like capital punishment should be substituted by alternatives like those stated above in a country like India, where the Constitution protects the human rights of 1.3 billion people. Although capital punishment is brutal, it can also be ineffective, resulting in the deaths of innocent individuals. Since God gave us life, only God, not the State, has the authority to take it away from us. Taking all of this into account, appropriate new laws should be created to ensure the successful execution of alternatives to capital punishment, as well as advice from specialists in the field.