



AN IN DEPTH STUDY OF THE JUSTNESS AND FAIRNESS OF CAPITAL PUNISHMENT IN INDIA

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ABSTRACT

The use of the death penalty has been a controversial topic globally, with various countries holding differing opinions on its use. While some countries have abolished the death penalty, others still use it as a form of punishment for certain crimes. In India, the death penalty is provided as a punishment for certain crimes under the Penal Code. However, it is not a mandatory punishment and is only used in rarest of rare cases where the circumstances of the case are such that the death penalty is necessary to restore the collective conscience of society. The Supreme Court of India has upheld the constitutionality of the death penalty in India, but it has also laid down guidelines for the application of the rarest of rare doctrine to ensure that the death penalty is not awarded arbitrarily.

The modern democracies move towards a more rehabilitative and restorative approach to justice, calls for the abolition of the death penalty have grown louder. Many argue that the death penalty does not address the root causes of crime and fails to provide any meaningful rehabilitation to offenders. Instead, the focus should be on reforming and rehabilitating offenders and ensuring that they do not re-offend. The study aims to find the justness and fairness of the capital punishment and the reliability in rarest of rare case and its application by our judiciary system. The study marks that though the judiciary has the discretionary power to award capital punishment but by following the public demand so that one may live safely without fear.

Key Words: 'Rarest of rare case' Death penalty, Abolish, Constitutionality

CHAPTER –I

"The highest expression of love in the nature of God" suggests that taking a life, even that of a convicted criminal goes against the idea of love and compassion that is often associated with religious beliefs"

Martin Luther King Jr.

1.1 INTRODUCTION

The Bachan Singh v. State of Punjab¹ case in 1980 laid down the principle that the death penalty should be awarded only in the "rarest of

rare" cases, and that the court must consider the aggravating and mitigating circumstances of the crime before deciding on the punishment.

The United Nations has consistently advocated for the abolition or restriction of the use of the death penalty, while also recognizing the right of each country to decide its own legal system and penalties. The UN General Assembly has passed several resolutions calling for a moratorium on the use of the death penalty with the ultimate goal of abolition. In addition, the UN has established minimum standards for the use of the death penalty, such as the

requirement that it should only be used for the most serious crimes and that procedural safeguards must be in place to ensure a fair trial. These standards are outlined in the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by a majority of countries.²

It is important to consider the balance between punishment and protection of human rights in the criminal justice system. The "Doctrine of rarest rare" provides guidelines for when the death penalty can be applied, but its justness and fairness is still under debate. It is important for the judiciary to carefully consider the circumstances of each case and ensure that fair and reasonable procedures are followed, in accordance with international standards. Ultimately, the goal should be to ensure justice and protection of human rights for all individuals involved in the criminal justice system.

1.2 NEED OF THE STUDY

The concept of capital punishment seems to contradict the principles of non-violence or 'Ahimsa' in a country like India. The use of violence as a means of punishment is a contentious issue that has been debated for years. Some argue that capital punishment is a necessary deterrent to crime and a way to protect society from dangerous criminals. Others argue that it is an inhumane and barbaric practice that violates human rights and does not effectively deter crime.

The researcher's interest in exploring the justness and fairness of capital punishment in India is a relevant and important area of study. It is important to critically examine the application of the death penalty in rarest of rare cases and whether it aligns with the principles of justice and fairness. It is also important to consider whether there are alternative methods of punishment that can effectively deter crime without resorting to the use of violence.

1.3 DEATH PENALTY STATISTICS IN INDIA

The Delhi National Law College has published the 6th edition of the Death Penalty in India. The Annual Statistical Report provides up-to-date information on the use of the death penalty in India, along with legal and international developments on the subject. As of 31 December 2021, there were 488 death row inmates across India (an increase of about 21% from 2020), with Uttar Pradesh having the highest number of 86.

This is the highest number of inmates on death row since 2004, according to prison statistics released by the National Criminal Records Service. Sex-related homicides accounted for the majority of death sentences handed down by trial courts, and death sentences were upheld by the High and Supreme Courts. Of the 54 sex crimes with the death penalty in 2019, 40 (74.07%) had victims under the age of 12. This accounts for his 39.21% (40 out of 102) of all death sentences³

1.4 RESEARCH METHODOLOGY

Life imprisonment or death penalty under certain conditions of Indian Penal Code as an alternative punishment. Section 303 of the Indian Penal Code Guidelines on when a guardian of the Constitutional Court should impose the death penalty or impose a sentence of life imprisonment or less. The judiciary is allowed to exercise its discretion and reasoning, but follows the rarest case guidelines set out in *Macchi Singh v. Punjab State*⁴ Researcher will attempt to analyze the case in relation to key issues regarding the death penalty.

With respect to sources of study, it is submitted that though there exist two types of data: primary and secondary, since this study has to do with the analysis of concepts that are doctrinal in nature, the research undertaken includes the usage of Secondary Sources inclusive of journals, articles, judgements, books among various other sources.

1.5 THE OBJECTIVES OF THE STUDY

The study aims to elaborate the following objectives:

1. To understand the meaning, nature, and principles of 'rarest of rare' crimes in India.
2. To identify that Capital Punishment is the only reason to create fear in mind of public, so that they stop doing heinous crimes.
3. To analyze whether the death penalty in India is just and fare.
4. To find that does death penalty should be abolished in India also according to Human Rights.

1.6 DATA COLLECTION

As the study being Doctrinal in nature the review and the study occurred from various books from School of Law library, Online Database, e-books and from various case, research papers etc.

1.7 SCOPE OF THE STUDY

The research paper, in its very essence, is of a socially sensitive pertinence, the scope extends to the budding lawyers, police, Media, Government Agencies, the law and policy makers to utilise the findings. The study also looks forward to the new ideas and suggestions the concept of death the modern society. The research has met some unavoidable limitations.

1.8 HYPOTHESIS

1. The Doctrine of 'rarest of rare case' does not violate the constitutionality of Article 121 of the Constitution of India.
2. The capital punishment contributes benefits to the society, though it violates the Human Rights in India
3. Judiciary in India use their discretionary power keeping in mind the welfare of public at large.

CHAPTER II

REVIEW OF LITRATURE

The review has been aimed to analyze what has been done by other scholars and to know who has been undone so that being researcher I may contribute my ideas and findings:

2.1 In (ICCPR, 1979)⁵ In the International Covenant on Civil and Political Rights (ICCPR, 1976), the concept of "most serious crime" emerged during the drafting of Article 6 which provides the right to life. The interpretation of this concept is vast and states that capital punishment should only be provided for the most serious crimes, but only a minority of states had abolished capital punishment until 1954.

2.2 (ECOSOC, 1984)⁶ According to safeguard guaranteeing protection of right of those facing execution of death penalty of 1984⁵⁷the death penalty should not go beyond international crimes with lethal or another extreme consequences.

2.3 United Nation Secretary General⁷ It is true that the 6th report of the Law Commission of India states that the crime for which the death penalty is awarded should be of such nature that it endangers the life of the victim. As for the statement about 46 countries abolishing the death penalty for ordinary crimes in 1986, it is possible that it refers to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which was adopted by the United Nations General Assembly in 1989 and entered into force in 1991. The Protocol provides for the abolition of the death penalty, except for the most serious crimes, such as those involving intentional killing. As of 2021, 89 countries have ratified the Protocol.

2.4 (Mahapatro, 2013)⁸ Roscoe Pound was an American legal scholar and educator who introduced the theory of "social engineering" in jurisprudence. According to Pound, the law is a tool for social engineering, which means it should be used to engineer social behaviour and improve society's well-being. He believed that the primary goal of law should be to bring maximum satisfaction to the greatest number

of people, while balancing the interests of society and individuals. In the context of the death penalty, Pound's theory suggests that the rarest of rare cases should be punished by capital punishment to serve as a deterrent to potential offenders and to protect society from such individuals.

2.5 (International commission against death penalty, 2010)⁹ In 1972, the U.S. Supreme Court ruled in *Furman v. Georgia* that the way the death penalty was being applied was unconstitutional, citing concerns about arbitrariness and discrimination. This ruling effectively suspended capital punishment across the country.

Four years later, in 1976, the Supreme Court upheld new death penalty laws in *Gregg v. Georgia*, allowing states to reinstate capital punishment if certain procedural safeguards were in place. Since then, many states have continued to use the death penalty, but others have abolished it or placed moratoriums on its use.

2.6. In *Rooper v. Simmons*¹⁰ The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment. This means that the government cannot use any form of punishment that is considered excessively harsh, barbaric, or degrading.

2.7 (Agrawal A., 2000)¹¹ The debate surrounding the death penalty is complex and multifaceted, and opinions on the issue can vary widely depending on a number of factors, including personal beliefs, religious and cultural background, and political ideology.

2.8 (International Commission against Death Penalty, 2010)¹² Argentina abolished the death penalty for ordinary crimes in 1922, under President Hipólito Yrigoyen, not in 1916. The death penalty for military offenses was abolished in 1956, and in 1984, the country ratified a new constitution that prohibited the use of the death penalty in all cases.

In 1994, Argentina passed a law that abolished the death penalty for all crimes, including those

committed for political reasons. This was done in the aftermath of the country's "Dirty War," a period of state terrorism during which thousands of people were killed or disappeared by government forces. Regarding Cambodia and the Philippines, they are actually located in Southeast Asia, not South Asia. Cambodia abolished the death penalty in 1989, while the Philippines abolished it in 2006.

Mexico abolished the death penalty for all crimes in 2005, and the United States suspended the use of capital punishment between 1972 and 1976 following a series of Supreme Court decisions that declared the application of the death penalty to be unconstitutional.

2.9 (Maharashtra Prisons Rule, 1971)¹³ On admission of convict in prison regarding date of his execution and entry in prison he will inform to state government and will take solicitor order from state government for execution convict person should be kept in especially trail after the mercy petition has been rejected state government will choose the date of execution of death penalty and will inform to his family member.

Mahatma Gandhi was a prominent advocate for the abolition of the death penalty in India. He was a strong believer in the principle of ahimsa, or nonviolence, and argued that the death penalty was a form of violence that was inconsistent with the values of a just and humane society.

2.10 Mahatma Gandhi said, "An eye for an eye will only make the whole world blind." He believed that punishment should focus on rehabilitation and redemption rather than retribution and revenge. He also emphasized the importance of forgiveness and compassion, stating that "hates the sin, but not the sinner."¹⁴

While Gandhi did not live to see the abolition of the death penalty in India, his ideas and philosophy continue to influence debates about the use of capital punishment in the country and around the world.¹⁴

2.11 The Working Group on Human Rights (WGHR) opposed the death penalty awarded to the accused in the Delhi gang rape case in 2012, arguing that the retributive nature of the death penalty is as violent as the crime committed. The WGHR also criticized the Justice Verma Committee's recommendation to introduce capital punishment for rape, stating that there is no scientific basis to claim that it serves as a deterrent. Instead, they argue that stricter punishments could increase impunity and reduce convictions.

The Ministry of Home Affairs in India has also stated that death penalty is not a deterrent to murder. The Supreme Court of India has set out principles for the rare use of the death penalty in the *Bacchan Singh v. State of Punjab* case.

During the Universal Periodic Review of Indian Human Rights in 2012, the United Nations Human Rights body made 169 recommendations, including 18 related to the abolition of the death penalty in India. However, the Indian government did not accept any of these recommendations.¹⁵

CHAPTE III

THEORIES OF PUNISHMENT IN DEATH PENALTY

Punishment is the infliction of some form of pain, penalty, suffering, or confinement upon a person by the authority of the law, typically as a result of a judgment and sentence by a court, for a crime or offense committed by that person or for their omission of a duty enjoined by law¹⁶. It is a key component of the criminal justice system and is aimed at maintaining law and order in society.

H.A.L. Hart, a renowned legal philosopher, identified these five elements of punishment in his book "Punishment and Responsibility: Essays in the Philosophy of Law".

1. The punishment sanctioned against a person must either cause inconvenient suffering or ultimately make him aware of the wrong he has committed to another person.

2. Penalties are imposed on individuals only for violations of the national legal order.

3. The punished person is the actual perpetrator or wrongdoer of the punishable crime

4. Punishment should only be imposed by humans on the perpetrator, and the perpetrator cannot choose his own punishment.

5. Such penalties can only be imposed on wrongdoers by judicial authorities established in the national legal order.

3.1 DETERRENCE THEORY OF PUNISHMENT

The theory of deterrence is based on the belief that the punishment imposed on criminals can deter them from committing crimes in the future. This theory has two main components: specific and general deterrence. Specific deterrence focuses on deterring the individual offender from committing another crime by imposing a punishment that is severe enough to deter them from doing so.

In medieval England, for instance, severe and insensitive punishments were imposed on those who committed petty or frivolous crimes, as a way of deterring others from committing similar crimes. In India during the Mughal Empire, criminals who committed petty crimes were often killed or maimed as a way of deterring others from engaging in such activities.¹⁷

3.2 RETRIBUTIVE THEORY OF PUNISHMENT

The theory of retribution justifies punishment as a way of getting even with the offender for the harm they have caused. The basic principle of this theory is that a wrongdoer deserves punishment because they have committed a crime and have violated the rights of the victim or society. Retribution aims to restore the balance of justice by punishing the offender with a penalty that is proportionate to the harm caused. The punishment serves as a form of payback or revenge for the harm inflicted on the victim or society.

This theory has been criticized for being too harsh and not effective in reducing crime rates.

Some argue that it promotes the cycle of violence and does not provide any rehabilitation or reform for the offender. However, proponents of retribution argue that it is necessary to hold offenders accountable for their actions and to deter others from committing similar crimes. The theory of retribution has been used in many legal systems around the world, including the United States, where it is still used as a justification for the death penalty in some states.¹⁸

3.3 PRINCIPLE OF JUS DESERT

The concept of justice in criminal law has indeed undergone a significant shift in recent times. One of the primary reasons for this shift is the increasing emphasis on the principle of fairness in punishments. This principle requires that the punishment meted out should be proportional to the gravity of the offense committed. However, there is still a lack of consensus on the exact nature and extent of punishments that should be imposed. To gain a better understanding of this principle, it is necessary to examine the available literature, including juristic and judicial writings, which can help to elucidate the meaning and scope of the principle of jus desert.¹⁹

In Letha V State of Haryana²⁰ In this case, the Supreme Court emphasized the importance of proportionality in criminal sentencing and the principle of just desert as the foundation for every criminal sentence. The Court held that punishment should be commensurate with the seriousness of the offense, and that the punishment should not be disproportionately harsh. This principle of proportionality is a fundamental aspect of criminal law, as it ensures that the punishment is fair and just.

The statement you provided accurately summarizes **Justice Chinnappa Reddy's** observation in the case of **Bishnu Deo Shaw v. State of W.B.²¹** In this case, the Court considered the validity of the retributive theory of punishment, which is based on the idea of

punishing wrongdoers to exact revenge or retribution for their crimes.

Overall, Justice Chinnappa Reddy's observation highlights the need to move away from the retributive theory of punishment and towards a more rehabilitative approach that focuses on the beneficial results of punishment. This approach considers the potential for punishment to promote positive change and improve society, rather than simply exacting revenge on wrongdoers.

The statement you provided accurately reflects **Justice Krishna Iyer's²²** disapproval of the retributive theory of punishment in the **Rajendra Prasad case**. In this case, the Court was considering the constitutional validity of the death penalty, which is the ultimate form of retributive punishment.

Justice Krishna Iyer argued that punishment should not be based solely on the principle of "lex talionis" or "an eye for an eye." He criticized the retributive theory of punishment and argued that it does not take into account the rehabilitative or reformatory aspects of punishment. He also questioned whether the death penalty could ever truly serve the purpose of retribution, as it does not bring the victim back to life or undo the harm caused by the crime.

In his observation, **Justice Krishna Iyer** also highlighted the emotional toll that the death penalty can have on those involved in the process. He noted that the "cold death" of the convicted person cannot hear the cries or see the tears of those affected by the crime, and that the death penalty can perpetuate a cycle of revenge and violence.

In the **Ram Narain case,²³** the Court emphasized that the general purpose of punishing convicted defendants in an advanced civilized society is to deter the offender from committing the crime again. The punishment should be designed to persuade the offender that the crime he committed will not be rewarded, both in his personal interest

and in the broader interest of society. The Court also highlighted the importance of proportionality in sentencing, with punishment that is neither too harsh nor too lenient.

Similarly, in **Bablu v. Rajasthan**,²⁴ the Court reiterated that punishment should not be excessive and should be proportional to the offense committed. The principles of just desertification, which prevent the punishment of innocent people, also apply to the guilty.

3.4 PREVENTIVE THEORY OF PUNISHMENT

The theory assumes that criminals are rational actors who will weigh the potential consequences of their actions before committing a crime. Therefore, by imposing harsh penalties, the theory aims to increase the cost of committing a crime and decrease the likelihood of it occurring.

While imprisonment is an effective way to prevent criminals from committing further crimes, it is not a foolproof method. Some argue that imprisonment may have unintended consequences, such as the potential for offenders to become more hardened criminals due to the negative influence of other inmates or the prison environment.

Moreover, there is a growing recognition that punishment should not be solely focused on preventing future crimes, but also on rehabilitating offenders and reintegrating them into society. This approach recognizes that offenders may have underlying issues such as addiction, mental illness, or poverty that contribute to their criminal behavior. By addressing these issues and providing support, offenders may be less likely to reoffend and become productive members of society.²⁵

3.5 REFORMATIVE THEORY

The reform theory of punishment emphasizes the importance of understanding the social and economic factors that contribute to criminal behavior. According to this theory, criminals should not be viewed as inherently bad or evil, but rather as individuals who have been

influenced by their circumstances. Therefore, the goal of punishment should not be solely to punish, but also to rehabilitate and reintegrate offenders into society.

Critics of the reform theory argue that prison should be a place of punishment, not rehabilitation. They argue that if prisons become too focused on rehabilitation, they will no longer be effective deterrents to crime. Moreover, they argue that criminals who commit heinous or barbaric crimes should be punished severely, and rehabilitation should not be the main focus.

However, proponents of the reform theory argue that punishment should not be about retribution or revenge, but about changing behaviour. They argue that punishment should be used as a tool to transform offenders into better human beings who can contribute to society. They also argue that providing education, job training, and other opportunities for personal growth within the prison system can help offenders turn their lives around.²⁵

CHAPTER IV

VARIOUS APPROACHES IN INDIA

4.1. JUDICIAL APPROACH IN INDIA

The Indian judicial approach has been broadly focused on reforming and protecting the rights of offenders. The Supreme Court of India has consistently held that the ultimate objective of punishment is not only to punish the offender but also to reform them and bring them back into mainstream society.

the statement made by Justice Saghir Ahmad in the T.K Gopal v. Karnataka case highlights the need for punishment and reformation of criminals. The Supreme Court of India has consistently held that punishment is not an end in itself, but a means to achieve the ultimate goal of reformation and rehabilitation of offenders.

The court has also recognized the importance of treating prisoners with dignity and

compassion, and has repeatedly emphasized the need to protect the fundamental rights of prisoners. In several landmark cases, such as **Sunil Batra vs. Delhi Administration** and **Charles Sobhraj case**, the court has emphasized the importance of providing prisoners with basic amenities such as food, water, sanitation, and medical care.

Furthermore, the court has also recognized the need to provide vocational and educational training to prisoners to help them acquire skills that will enable them to reintegrate into society. In **State of Maharashtra v. Manubhai Pragaji Vashi**, the Supreme Court held that the right to education is a fundamental right that extends to prisoners as well, and that the state has a duty to provide adequate educational facilities to prisoners.

Overall, the Indian judicial approach towards prison reformation and prisoner rights has been focused on balancing the need for punishment with the principles of rehabilitation, reformation, and protection of human rights.

Justice Saghir Ahmad in the case of T.K. Gopal v. Karnataka²⁶ the observation reflects the view that while punishment is necessary for criminals, it should also be coupled with efforts to reform them. The courts in India have emphasized the importance of recognizing the basic human rights of prisoners and treating them with compassion and dignity, as part of the prison reformation process.²⁷

The Supreme Court's observations in **State of M.R. v Bala @ Balram**²⁸ the Court emphasized that while punishment is necessary for crimes, it should be proportionate to the offense and not based on a desire for revenge. The court reiterated that it is the duty of the judicial officer to take into account the principles of proportionality and appropriateness when determining the penalty for a crime. The criminal justice system is designed to prevent vigilantism and ensure that justice is served in a fair and equitable manner. Therefore, it is important that the penalty imposed is

commensurate with the seriousness of the crime and is not based on a desire for revenge or retribution.²⁹

The Supreme Court's observations in **State v. Munna Choubey**³⁰ the Court emphasized that crimes that have a significant impact on public order and public interest, such as crimes against women, dacoities, kidnappings, embezzlement of public funds, treason, and other crimes of moral depravity or misdemeanour, should be seen as exemplary. This means that the punishment for such crimes should not only be proportionate to the offense but should also act as a deterrent to others who may be tempted to commit similar crimes. The court recognized the social impact of such crimes and emphasized the need to send a strong message that such behaviour will not be tolerated.

Justice Fazal Ali's observations in Maru Ram³¹ the judge raises an important issue regarding the challenges of prison reformation and the need to balance punishment and rehabilitation. The judge questions the prevailing belief that all criminals can be reformed, especially those who have committed heinous crimes resulting in the loss of innocent lives.

The judge highlights the fact that not everyone is capable of undergoing the transformative process of rehabilitation, and it may be unrealistic to expect the current generation to produce individuals like Valmiki, who is believed to have transformed from a notorious criminal to a sage. The judge's observations raise important questions about the effectiveness of prison reformation programs and the need for a nuanced approach that takes into account the individual circumstances of each case.

4.2 RELIGIOUS APPROACHES

4.2(i) HOLY BIBLE

The Old Testament of the Holy Bible contains passages that suggest the principle of "an eye

for an eye, a tooth for a tooth" as a means of punishment for certain crimes, including murder. However, it is important to note that this principle is part of the ancient Hebrew law, and was meant to ensure that punishment was proportional to the crime committed. It is also true that some passages in the Bible suggest that the death penalty is a just punishment for murder. The application of these principles to modern justice systems is a complex and ongoing ethical debate.³²

4.2 (ii) HINDU MYTHOLOGY

In Hinduism, the concept of punishment for criminal acts is based on the principles of dharma, or righteous conduct, and karma, or the consequences of one's actions. According to Hindu teachings, a just punishment should be proportionate to the crime committed and should serve as a deterrent to future criminal behaviour.

The decision to punish a criminal is generally left to the king, who is expected to act as a just and fair ruler. In ancient India, the king was considered to be the protector of dharma and responsible for maintaining law and order in society. However, in modern times, this role has been taken over by the judiciary and other law enforcement agencies.³³

4.3 HISTORY

It is interesting to see how the implementation and justification of capital punishment have evolved over time in different cultural and political contexts. It is worth noting that the use of the death penalty is a highly controversial and divisive issue, with strong arguments both for and against it. Some argue that it is a necessary and just punishment for the most heinous crimes, while others contend that it is a cruel and inhumane practice that is not effective in deterring crime and can lead to the execution of innocent people.

In recent years, there has been growing debate and activism in India and around the world calling for the abolition of the death penalty.

Many argue that alternative forms of punishment, such as life imprisonment without parole, are more humane and effective in addressing crime and promoting justice.

4.4 INCEPTION OF THE DOCTRINE – THE BACHAN SINGH TEST

In 1980, the Supreme Court proposed the most unusual doctrine in the Bachan Singh case. Since then, life imprisonment has been the rule and the death penalty the exception, as it is only used in the most serious cases in India. In the Machhi Singh³⁴ case, the court established specific criteria for assessing when a case falls into the "rarest" to "rarest" range.

The criteria are analyzed as follows:

1. How the murder is committed – if the murder is committed in such a gruesome, absurd, diabolical, defiant or reprehensible way that it causes outrage in the community.

For example,

A. when a person set the victim's house on fire and burned them alive.

B. Victims have been tortured for inhumane acts and died as a result.

C. The incidents like the victim's body is mercilessly mutilated or cut into pieces.

2. Murder motives – if the murder is intended as sheer depravity and cruelty.

For example,

A. A hired killer only kills for money.

B. Cold-blooded murder with deliberate plans to seize property or other selfish interests.

3. Socially heinous crimes – when a person belonging to a lower class is murdered.

This includes the case of the bride's burns, commonly known as Dowry Death.

4. The magnitude of the crime – when the proportion of crime is very high,

5. Personality of the Victim

For example

When the Victim of the Murder is an innocent child, a helpless woman or person of infirmity or a public figure, etc

4.5 SCOPE OF THE DOCTRINE

In the landmark case of *Jagmohan Singh v. State of U.P.* (1973), the Supreme Court of India upheld the constitutionality of the death penalty and held that it serves as both a deterrent and a means of expressing society's abhorrence for the most heinous crimes. The court also stated that in the absence of conclusive evidence, it would be unwise to abolish the death penalty.

This decision was later affirmed and expanded upon in *Bachan Singh v. State of Punjab* (1980), in which the court held that the death penalty should only be imposed in the "rarest of rare" cases, and only after a careful consideration of all relevant factors.

The following propositions were emerged from the case of *Bachchan Singh*:

- I. The extreme measure of imposing the death penalty should only be used in extreme cases of conviction.
- II. Consider the offender's circumstances before choosing the death penalty; spirit. (rising condition and descending condition)
- III. Life imprisonment is the rule; the death penalty is the exception.
- IV. In other words, the death penalty should only be used when life imprisonment proves to be a completely insufficient punishment given the exact circumstances of the crime.
- V. All stimulus and relaxation conditions need to be balanced and sufficient weight given to relaxation conditions to allow a balance between the two.³⁵

4.6 ANALYSIS OF THE CONSTITUTIONAL VALIDITY

The court held that the death penalty is constitutional but subject to certain limitations and safeguards. The court also emphasized that the right to life is a fundamental right under the Constitution and should not be taken away except in accordance with the procedure established by law.

In *Jagmohan Singh v. Uttar Pradesh*, the court further held that the death penalty can only be awarded in the rarest of rare cases where the alternative punishment is unquestionably inadequate and where the convict's guilt is established beyond any doubt. The court also stressed that the death penalty should be imposed only after giving the convict a fair opportunity to present his case and after considering all relevant mitigating and aggravating circumstances.³⁶

It is important to note that the Supreme Court's decision does not make the death penalty mandatory or desirable in all cases. Each case has to be examined on its own merits, and the death penalty should be imposed only in exceptional circumstances.

As for the inconvenience of the death penalty, it is a matter of ongoing debate and discussion, both in India and around the world. Some argue that the death penalty is a necessary deterrent and a just punishment for heinous crimes, while others believe that it is cruel, inhuman, and degrading and violates human rights. Ultimately, the decision on the death penalty rests with the judiciary and the legislature, and it is up to them to decide whether to retain, modify or abolish it.

Article 14 provides equality before the law and equal protection of the laws and prohibits discrimination on the basis of religion, race, caste, sex, or place of birth. The Supreme Court has interpreted this article to mean that similarly situated individuals should be treated equally under the law, and any law or action that discriminates against a particular group of people must have a reasonable and justifiable basis.

Article 19 of the Indian Constitution guarantees certain fundamental freedoms to all citizens. The Supreme Court has held that these freedoms are not absolute and can be subject to reasonable restrictions in the interest of public order, morality, or the sovereignty and integrity of India.

As the Article 21, guarantees the right to life and personal liberty and the Supreme Court has interpreted this article to mean that the state cannot deprive a person of their life or liberty except in accordance with fair, just, and reasonable procedures established by law. This article has been used to challenge the constitutionality of the death penalty, and the Supreme Court has held that the death penalty can be imposed only in the rarest of rare cases and after following strict procedural safeguards.

It is true that the Supreme Court's interpretation of these three articles has been different in some respects, but this is because each article serves a different purpose and protects different rights. The Supreme Court has consistently held that each of these articles must be interpreted in light of the other articles and the overall scheme of the Constitution.

In the Maneka Gandhi case, the Supreme Court rejected the argument that it had applied different standards of interpretation to these articles. It held that each article must be interpreted in light of the other articles and the fundamental principles of justice, fairness, and equality enshrined in the Constitution. The court also emphasized that the Constitution is a living document and must be interpreted in a dynamic and evolving manner to meet the changing needs of society.³⁷

4.7 WORKING OF THE DOCTRINE

The rare-to-rare-case doctrine developed in the **Bachan Singh case** provided some guidance to judges on when to impose the death penalty. However, the issue of how to exercise discretion in these cases remained open, leading to confusion and inconsistency in judicial decisions. The lack of clear guidance led

to calls for the Supreme Court to provide more specific criteria for the application of the doctrine. This led to the development of the "rarest of rare" doctrine in the Machhi Singh case, which ranked cases from rarest to rarest to provide more clarity on the application of the doctrine.

In the **Machhi Singh case**, the Supreme Court ranked cases from rarest to rarest to provide more clarity on the application of the rare-to-rare-case doctrine. This ranking system was intended to provide guidance to judges in determining when the death penalty should be imposed. The Court also retained the essence of previous judgments, which attempted to achieve class equality in the application of the death penalty. Overall, the Machhi Singh case provided a more structured approach to the application of the rare-to-rare-case doctrine and sought to address some of the confusion and inconsistency in judicial decisions that had arisen from the lack of clear guidance.

In the Dharm Bhagre v. State of Maharashtra and Jagmohan Singh v. State of Uttar Pradesh cases, the Supreme Court emphasized that the question of punishment is a matter of judicial discretion, and that relevant factors such as the motive, scale of the crime, and method of committing the crime should be taken into account in determining the appropriate punishment. Judge Parekar in the Jagmohan Singh case further specified that the death penalty could be imposed in cases where the murder was conceptually devastating and execution brutal, or if a high-ranking person was involved, thereby impacting society. These cases provide additional guidance to judges in exercising their discretion in determining whether the death penalty is an appropriate punishment in a given case³⁸.

4.8 RAREST OF RARE' DOCTRINE IN INDIA

The rarest of the rare doctrine is a controversial issue in India as there is no clear definition of what constitutes the rarest of the rare cases. However, the Supreme Court has provided

guidance on how to apply this doctrine in cases where the death penalty is being considered. The increasing crime rate and the complexity of crimes have led to a demand for harsher punishment, including the death penalty, to deter criminals. The Machhi Singh case has set the standard for determining whether a case falls under the rarest of the rare category and whether the death penalty is a suitable punishment.

While the Supreme Court of India has held that the death penalty does not violate Article 21 of the Indian Constitution, there are ongoing debates about the constitutionality and morality of the death penalty in India. Some argue that the death penalty is a violation of human rights and that there is a risk of wrongful convictions, while others argue that the death penalty is a necessary tool to combat serious crimes and to maintain law and order.

Regarding the 2015 report by the Law Commission of India, it recommended the abolition of the death penalty for all crimes except terrorism-related offenses and waging war against the country. The report cited concerns about the arbitrary and discriminatory application of the death penalty, as well as the possibility of executing innocent people. However, it should be noted that the recommendations of the Law Commission are not binding on the government or the courts, and the death penalty continues to be imposed in India for various crimes.

The High Court of Delhi considered the report of the probation officer and concluded that the petitioner may be rehabilitated. Therefore, the court decided to decline the death penalty and instead sentenced the petitioner to life imprisonment for an offense under Section 302 of the IPC. The court believed that the petitioner would have ample opportunity to assess the positive effects of the prison measures during his life sentence.³⁹

4.9 DEFICIENCIES IN SENTENCING

Despite such specific legal guidance on the issue of the death penalty, studies show that when a group of former judges were asked what they believed to be the rarest cases, they said they were doctrinal individuals. A report by Project 39A of the Delhi National Law College (formerly known as the Death Penalty Center) found no judicial uniformity or uniformity in the application of the rarest test. Other Project 39A studies have revealed serious socioeconomic biases in the use of the death penalty. Faced with such institutional shortcomings of the death penalty, there have been serious efforts in recent years to consider and assess mitigating factors. One of the earliest examples of this kind is **State v. In Bharat Singh 2014**, the Delhi High Court ordered the government to appoint probation officers to submit reports on two aspects. The likelihood that the defendant will commit future crimes and the likelihood of recovery and rehabilitation.

After considering the report of the probation officer, the High Court of Delhi declined to confirm the death penalty and stated that:

In view of the above reports, the court is pleased to conclude that petitioner may be rehabilitated. The applicant has been detained since April 2011. In the course of serving his life sentence, he will have ample opportunity to assess the positive effects of his prison measures. As a result, the court refused to uphold the death penalty recommended against the applicant by the court of first instance, and instead sentenced the applicant to life imprisonment for an offense, especially under section 302, IPC.

In the case of, Rajendra **“Pralhadro Wasnik V. State of Maharashtra”** the Apex court observed that,

The laws established by the various decisions of this court establish the possibilities (possibility, impossibility, impossibility) of rehabilitation of prisoners in society before the death sentence is handed down.) must be seriously scrutinized by the courts .

This is one of the mandates of the "for specific reasons" requirement in Section 354(3) of the Cr.PC. This is a life-threatening act and should not be taken lightly. To carry out this task, the public prosecutor's office is obliged to present evidence to the court that the convicted person is unlikely or likely to be rehabilitated. This can be achieved, among other things, by recording material regarding his behaviour in prison, his behaviour outside of prison, medical evidence of his mental state, contacts with family members, etc.⁴⁰

In the case of **Mofile Khan** Case, (2021) it was observed that, one of the mitigating circumstances is that the accused may be rehabilitated. The state is obliged to obtain proof of the rehabilitation and non-rehabilitation of the defendant. The death penalty should not be imposed except in very rare cases where alternatives to lighter sentences are undoubtedly precluded (Bachan Singh v Punjab). To confirm that the goal of punishment of correction is unattainable and that life imprisonment is utterly futile, courts emphasize clear evidence that convicted persons are not eligible for correctional and rehabilitation programs.

In the case of **Manoj & Ors v. Madhya Pradesh State**, the Supreme Court required the State to return all "reports from all probation officers" regarding the defendants and reports "regarding their conduct and the nature of the work they performed." Most importantly, the order also mandates that a trained psychiatrist and local psychology professor conduct psychiatric and psychological evaluations of prisoners. Built on the cornerstone of the rare case, the focus is on ensuring that potential for reform is assessed in a scientific and detailed manner.

Therefore, based on the **Bachan Singh case**, the Supreme Court has shown a strong tendency to cite relevant extenuating material, and a new wave of legal thought has emerged. The Supreme Court now requires the High Court and Sessions Court to fairly assess whether an

offender can be rehabilitated. These observations, read in conjunction with the Bachan Singh case, were read in order to allow the sentencing court to reset and reaffirm the most unusual doctrines while awaiting a judicial body composed of justices U.U Lalit, S. Ravindra Bhat interpreted the guiding principles in this regard,⁴¹

CHAPTER V

CONCLUSION AND SUGGESTIONS

5.1 CONCLUSION

The preamble of India, "**We the People of India**," directly states that India is a democratic state. A country where the general public predominates laws are made to help people live with dignity without violating the rights of others. If the accused commits a crime, it must be punished by the state by law because it affects public figures or innocent victims.

The death penalty is the most severe punishment in society. As a member state of the Universal Declaration of Human Rights, our country has not abolished the death penalty, but limits its scope by applying it on rare occasions. After the research theme that the death penalty is rarely fair? The answer is yes...

The death penalty, considered cruel and inhumane in some jurisdictions, the right to life and human dignity enshrined in the Indian Constitution, which is constitutional in India and some other countries, requires criminals to be executed if found guilty of certain crimes by a court of competent jurisdiction. In other words, the same Constitution that provided for these rights also provided for the death penalty for certain crimes. In India, the issue of the death penalty is hotly debated and has attracted the attention of governmental and non-governmental organizations as well as the general public. India is an active member of the United Nations and a signatory to most international human rights instruments, but the death penalty remains in our norm. According

to our Singh case, it must be imposed in exceptional cases,

India is a country with different cultures and different types of people have different lifestyles. Crime is not a trend in the modern realm, but it has been practiced since antiquity. The death penalty was used in ancient times to commit petty crimes, but the only logic behind it is to save the general public and save the death penalty.

In time, many countries abolished the death penalty. Our country has not abolished the death penalty. The only reason is the public. The death penalty rarely violates human rights principles. ICCPR guidelines for countries that do not want to abolish the death penalty say that the death penalty can be imposed, but that certain conditions must be met. The gang rape in Delhi has been called the most brutal case in history when the country rallied to demand justice for a young girl, prompting Damini to save the country's future and changed criminal law.

From all the above analysis and evidences it was clearly proved that awarding the capital punishment on' rarest of rare 'is just and fare as it was laid down in the landmark Bachan Singh Case.

The purpose of this is to prevent the social evils and for the welfare of the society.

Therefore, it can be concluded that the one who is doing an act which is so brutal and will going to affect public at large that accused should be awarded with capital punishment in order to eradicate the waste and to keep the place clean.

5.2 SUGGESTIONS

After referring various literatures, books, journals, online Database and dissertations, the researcher has found that there are some lacking in the judiciary and would like to enlist some few suggestions before the law makers viz:

1. Proper law should be laid down:

Ownership must be established. Many laws provide for the death penalty. After all, there were many laws imposing the death penalty, but no one applied them. It has caused much confusion in the minds of jurists to justify why such penalties should be sanctioned on such rare occasions

2. Defendants should also receive the same punishment.

– Decisions should be made with great care. The imposition of the death penalty is subject to the Constitutional Court's precedents and is subject to the discretion of the Constitutional Authority. When imposing the death penalty, legal scholars use specific percentage terms to state that even if the accused commits atrocities, they do no harm to society and should not be sentenced to death on that basis. It is advisable to consider past behaviour in society before committing a crime.

3. The death penalty cannot be postponed after promulgation:

In the Triveni Bai Gujarat case, State 158 SC argued that the execution should be reasonably postponed so that the accused could receive a fair trial. However, the researchers represented here believe that jurors should not delay execution of death sentences after being sentenced to death that this practice should be abolished, and that intelligence agencies should not properly judge crime-related acts. It is recommended that you are asked to do this. There must be a fair trial, after which only judicial authorities can impose the death penalty, not postpone it.

4. **There is no age limit for execution:** We have no laws in our country. Juveniles could be sentenced to death, but the fact that juveniles committed heinous crimes such as rape and murder meant their crimes were well understood. It was a crime he committed and for that reason he deserves the death penalty.

5. **No mercy for terrorists:** Our Constitution gives the President Pardon powers. However, defendants are not eligible for amnesty if they discover terrorists who have caused pollution.

The death penalty should not be imposed hastily. Before imposing the death penalty, the Constitutional Court, with the help of a panel of lawyers, must carefully consider all aspects of the crime and ensure that the punishment is not too harsh.

7. Punishment should be carried out in accordance with the law.: Hanging is the only method of execution in our country. Death penalty is not applied in India for misdemeanours and is applied only in very rare cases. Execution must be proportionate to the crime committed by the accused. This stops criminals from harming the public through these types of crimes.

- There are several main issues that are concerned with the death penalty, which have been debated over the last few decades. These include:

Human rights: Opponents of the death penalty argue that it violates fundamental human rights such as the right to life and freedom from cruel, inhuman or degrading treatment or punishment. Proponents, on the other hand, argue that the death penalty is a just punishment for the most serious crimes.

Deterrence: There is debate over whether the death penalty serves as a deterrent to crime. Some argue that it does not; as studies have shown that crime rates are not significantly different in countries with and without the death penalty. Others argue that it does, as the fear of execution may deter some individuals from committing serious crimes.

Miscarriages of justice: There is always the risk of wrongful convictions and executions in cases where the death penalty is used. This risk is particularly high in countries with weak judicial systems and where there is a lack of access to legal representation.

Costs: The death penalty can be expensive due to the lengthy appeals process and the cost of housing death row inmates separately from the general prison population. Critics argue that this

money could be better spent on crime prevention and rehabilitation programs.

Racial and socio-economic biases: There is evidence that the death penalty is disproportionately applied to racial and socio-economic minorities. Critics argue that this undermines the fairness and impartiality of the justice system.

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