



MSB-INTERNATIONAL JOURNAL OF
INTERDISCIPLINARY RESEARCH
Associating Researchers; Nourishing Innovation
Peer Reviewed
Vol. 2, Issue 3, March 2024-July 2024
186-193, MSB-IJIR

Abolition or Retention of Death Penalty in India: A Critical Analysis

Ojasvin Katiyar, B.A. LL. B, Student
Dr. Sheeba Khalid, Assistant Professor
Amity Law School
Amity University
Uttar Pradesh Lucknow Campus

Abstract

The debate over whether to abolish or retain the death penalty in India is multifaceted, touching upon legal, ethical, social, and practical aspects. This paper provides a thorough critical analysis of this complex issue, examining it from various perspectives. It begins with a historical overview, tracing the evolution of the death penalty in India from ancient times to the present. Legal considerations are explored, including relevant laws, court decisions, and international commitments. Ethical concerns are carefully examined, discussing moral arguments both for and against capital punishment. The paper analyses concepts such as retribution, deterrence, rehabilitation, and the value of life within different ethical frameworks, highlighting the conflicting opinions that shape public discourse and policy-making. It also evaluates empirical evidence to determine the effectiveness of the death penalty as a deterrent to crime, comparing it with alternative sentencing approaches. This involves a comparative study of crime rates, legal processes, and re-offense rates in jurisdictions with varying approaches to the death penalty. Additionally, the paper reviews recent cases related to the death penalty, examining their constitutional validity. It stresses the importance of informed public debate, evidence-based policy-making, and ongoing scrutiny of the justice system to ensure fair and lawful application of capital punishment in accordance with constitutional principles and international human rights standards.

Keywords: *Death penalty, Abolition, Retention, Legal discourse, Ethical considerations, social dimensions, Practical perspectives*

Introduction

The death penalty, as a form of punishment, has remained a subject of intense debate and controversy worldwide, and India is no exception. Embedded within the intersection of law, ethics, and social justice, the discourse surrounding the abolition or retention of capital punishment in India represents a multifaceted and complex issue that demands rigorous examination. This introduction sets the stage for a comprehensive critical appraisal of the death penalty in India, exploring its historical evolution, legal framework, ethical implications, social ramifications, and practical challenges.

Since ancient times, India has grappled with the question of how to administer justice for the most egregious crimes. Historical records reveal diverse approaches to punishment, including forms of execution, exile, and restitution. The evolution of the death penalty in India reflects not only changes in legal systems but also shifts in societal attitudes towards punishment, retribution, and the sanctity of life.

Ethical considerations surrounding the death penalty are deeply rooted in philosophical debates over the nature of justice, morality, and the role of punishment in society. Proponents argue for its retributive value, asserting that it serves as a just response to heinous crimes and provides closure to victims' families. Conversely, opponents question the moral legitimacy of state-sanctioned killing, citing concerns about the irreversibility of wrongful convictions, the possibility of arbitrary application, and the inherent dignity of every human life.

The social implications of the death penalty in India extend beyond legal and ethical dimensions, encompassing broader questions of equality, justice, and human rights. Scholars have highlighted the disproportionate impact of capital punishment on marginalized communities, the socio-economic factors influencing its application, and its role in perpetuating cycles of violence and discrimination. Moreover, the media, public opinion, and political dynamics shape perceptions of the death penalty, influencing policy decisions and public discourse.

In subsequent sections, this paper will delve deeper into each dimension of the death penalty debate, offering a nuanced analysis that reflects the complexity of this enduring issue in Indian society and law.

Definition And Scope of Capital Punishment

The scope and definition would be understood by looking into the various countries and would also help in understanding the differences as we read through:

Position in the United States

The history of the death penalty in the United States is marked by intricate complexities and heated debates. Although still permitted federally and in numerous states, its application has witnessed significant transformations over time, shaped by both federal and state legislation and judicial rulings.

A pivotal juncture in this narrative unfolded with the Supreme Court's landmark decision in **Furman v. Georgia (1972)**. This influential ruling led to a temporary halt in executions nationwide. The Court determined that the arbitrary and inconsistent application of capital

punishment violated the Eighth and Fourteenth Amendments of the U.S. Constitution, which prohibit cruel and unusual punishment and ensure due process of law. In response, many states undertook revisions to their death penalty statutes to address the concerns raised by the Court.

Subsequently, in **Gregg v. Georgia**, the Supreme Court affirmed the constitutionality of the death penalty under specific conditions. It upheld Georgia's revised death penalty statute, which introduced a two-phase trial process comprising separate guilt and sentencing phases. The Court concluded that this procedural framework did not violate the Eighth and Fourteenth Amendments. Consequently, the ruling effectively reinstated capital punishment across the nation, providing a blueprint for other states to enact similar reforms and resume executions under revised legal frameworks.

Position in United Kingdom

During the 17th century, the United Kingdom witnessed a proliferation of death penalties, making it one of the most commonly imposed forms of punishment. This era, known as the "Bloody Code" in legal circles, saw an extensive list of offenses—up to 220—punishable by death.

One notable legal case from this period is **R v. Dudley and Stephens (1884)**, which, although not directly tied to capital punishment, holds significance within English criminal law. In this instance, the defendants, shipwrecked at sea, resorted to cannibalism for survival. Despite their dire circumstances, they were charged with murder. The court's ruling established a precedent by affirming that necessity does not justify homicide.

In a more recent case, **R v. Jogee (Appellant) (2016)**, the issue of joint enterprise in murder trials came under scrutiny. The Supreme Court's decision in this case overturned decades of misinterpretation of joint enterprise law, leading to wrongful convictions and unduly harsh sentencing. This legal clarification had profound implications for individuals previously convicted under joint enterprise, particularly those who faced the looming threat of capital punishment before its abolition.

During the 17th century, the United Kingdom witnessed a proliferation of death penalties, making it one of the most commonly imposed forms of punishment. This era, known as the "Bloody Code" in legal circles, saw an extensive list of offenses—up to 220—punishable by death.

One notable legal case from this period is **R v. Dudley and Stephens (1884)**, which, although not directly tied to capital punishment, holds significance within English criminal law. In this instance, the defendants, shipwrecked at sea, resorted to cannibalism for survival. Despite their dire circumstances, they were charged with murder. The court's ruling established a precedent by affirming that necessity does not justify homicide.

In a more recent case, **R v. Joge (Appellant) (2016)**, the issue of joint enterprise in murder trials came under scrutiny. The Supreme Court's decision in this case overturned decades of misinterpretation of joint enterprise law, leading to wrongful convictions and unduly harsh sentencing. This legal clarification had profound implications for individuals previously

convicted under joint enterprise, particularly those who faced the looming threat of capital punishment before its abolition.

Position in India: The Indian constitution draws from various sources, incorporating elements from the constitutions of America, Britain, and Japan. Consequently, it's not unexpected that fundamental provisions, such as those safeguarding the right to life, bear resemblance to those found in the American and Japanese counterparts. It's worth noting that what's borrowed is primarily the structure and language of expression, rather than the right itself. The right to life isn't a creation or bestowal of constitutions but rather an inherent and essential entitlement that they acknowledge and protect.

The IPC enacted in 1860 which as of 2023 has been named as Bhartiya Nyaya Sanhita, is the primary criminal code of India. It prescribes the death penalty for certain offenses, including murder (Section 302), terrorism-related offenses (such as waging war against the Government of India, Section 121), and certain aggravated forms of kidnapping (Section 364A). The CrPC, enacted in 1973, contains procedural provisions governing the administration of criminal justice in India. It outlines the procedure for trial and sentencing in capital cases, including provisions related to appeals and review petitions. The imposition of the death penalty in India has been upheld by the Supreme Court of India, which has ruled that capital punishment is constitutionally valid under certain circumstances. While the Constitution of India does not specifically address the issue of capital punishment, the Supreme Court has interpreted the constitutional provisions on the right to life and personal liberty (Article 21) in the context of the death penalty.

History

The roots of capital punishment in India can be traced back to ancient times, where various forms of execution, including beheading, hanging, and stoning, were practiced for serious crimes. Throughout its history, India has been subject to different rulers and legal systems, each contributing to the development of its approach to punishment and justice.

Under British colonial governance, the death penalty served as a tool for upholding order and authority. The British administration implemented structured legal frameworks, notably the Indian Penal Code of 1860, which outlined capital punishment for specific crimes like murder, treason, and acts of terrorism targeting the state.

Bachan Singh v. State of Punjab (1980) In this significant case, the Supreme Court of India considered the constitutional validity of the death penalty under the Indian legal system. The court held that the death penalty did not violate the fundamental rights guaranteed by the Indian Constitution, provided that it is imposed in a manner that is fair, just, and proportionate to the crime committed.

Rajendra Prasad v. State of Uttar Pradesh (1979) This particular case stands out for its scrutiny of the conditions warranting the imposition of the death penalty. The Supreme Court underscored the significance of evaluating not only the nature of the offense but also the personal circumstances of the perpetrator when assessing the suitability of capital punishment. The court ruled that the death penalty should be reserved exclusively for instances deemed as exceptionally rare, where sentencing to life imprisonment alone would prove insufficient.

Other Legislations

Terrorist and Disruptive Activities (Prevention) Act (TADA): TADA was enacted in 1985 to combat terrorism and insurgency in India. The act provided for the death penalty as a punishment for certain offenses related to terrorist activities, including acts of terrorism causing death or attempting to cause death.

Prevention of Terrorism Act (POTA) POTA was enacted in 2002 as a response to increased terrorist activities in India. Like TADA, POTA also provided for the death penalty as a punishment for offenses related to terrorism, including conspiracy to commit terrorist acts and harboring terrorists.

Unlawful Activities (Prevention) Act (UAPA) UAPA, enacted in 1967 and subsequently amended, is aimed at preventing unlawful activities that threaten the sovereignty and integrity of India. The act includes provisions for the death penalty for offenses such as terrorist acts resulting in death, terrorist acts causing disruption of public services, and terrorist acts causing mass destruction.

Protection of Children from Sexual Offences (POCSO) Act POCSO was enacted in 2012 to address sexual offenses against children. While the act does not specifically provide for the death penalty, it includes stringent punishments for certain offenses, including life imprisonment, which may be considered in cases involving extreme brutality or repeated offenses.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act This act, enacted in 1989 and subsequently amended, aims to prevent atrocities against members of Scheduled Castes and Scheduled Tribes in India. While the act primarily focuses on providing protection and remedies for victims of atrocities, it also includes provisions for enhanced penalties, including the death penalty, for certain offenses committed against members of marginalized communities.

Nature And Mode of Death Penalty in India

The primary criminal legislation in India, known as the BNS, offers death penalty and life imprisonment as alternative punishments in specific situations. Notably, there's no provision in the BNS mandating the death penalty for any offense, and Section 104 of the BNS has been abolished. Within the mentioned categories of offenses, capital punishment represents the maximum extent of punitive measures. However, the statutory regulations don't furnish guidelines dictating when judges should opt for the death penalty over life imprisonment or impose a lesser sentence of life imprisonment. Instead, the judiciary is granted the discretion to employ its judgment and rationale in the adjudication process. It is required to assess a balance of aggravating and mitigating factors based on the case's circumstances, as outlined by the Supreme Court in the Machhi Singh v. State of Punjab case.

Section under BNS or other law	Nature of crime
Section 61 of BNS	Being involved in any sort of criminal conspiracy
Section 147 of BNS	Waging, or attempting to wage, or abetting waging of war, against Government of India
Section 160 of BNS	Abetment of mutiny, if mutiny is committed in consequence thereof
Section 230 of BNS	Giving or fabricating false evidence with intent to procure conviction of capital offense
Section 103,104 of BNS	Punishment for murder and punishment for murder by life convict.
Section 107 of BNS	Abetment of suicide of child or person of unsound mind
Part II section 4 of prevention of sati act	Aiding or abetting an act of sati
Section 140 of BNS	Kidnaping or abducting in order to murder or for ransom etc.
31A of the narcotic Drugs and psychothropic substances Act	Drug trafficking in case of repeat offences
Section 66 of BNS	Punishment for causing death or resulting in persistant vegetative state of victim

In India, the method of execution for the death penalty is hanging. The execution is typically carried out early in the morning in designated facilities within prisons. While the death penalty

remains a legal sanction in India, its application is relatively rare. There are often significant delays between sentencing and execution due to the lengthy legal processes involved, including appeals and clemency petitions. As a result, the actual number of executions in India tends to be low compared to the number of death sentences imposed.

The death penalty in India has been the subject of ongoing debates and controversies. Advocates argue for its retention as a deterrent against serious crimes, while opponents raise concerns about its morality, efficacy, and potential for wrongful convictions. The method of execution for the death penalty is hanging. Executions typically take place early in the morning in designated facilities within prisons (Criminal Procedure Code, section 354).

While the death penalty remains a legal sanction in India, its application is relatively rare. There are often significant delays between sentencing and execution due to the lengthy legal processes involved, including appeals and clemency petitions. As a result, the actual number of executions

Conclusion

In conclusion, the issue of the death penalty in India remains a complex and contentious subject. Despite the constitutional provision allowing for its use in the "rarest of rare" cases, there are significant concerns regarding its application, including potential miscarriages of justice, socio-economic biases, and human rights violations. While proponents argue for its deterrent effect and retributive justice, opponents advocate for its abolition on grounds of morality, effectiveness, and the possibility of irreversible error. As India grapples with these dilemmas, there is a growing discourse surrounding the need for comprehensive reforms in the criminal justice system and a reevaluation of the role and efficacy of capital punishment in a modern and equitable society.

While the IPC provides for the death penalty in specific circumstances deemed "rarest of rare," the CrPC outlines procedural aspects of its application, ensuring due process and fair trial. However, despite legal safeguards, concerns persist regarding arbitrary application, inadequate legal representation, and socio-economic biases affecting marginalized communities. Several pivotal case laws, Cases like *Bachan Singh v. State of Punjab* and *Machhi Singh v. State of Punjab* have outlined the criteria for identifying the most exceptional cases warranting the death penalty and have offered direction to courts in their sentencing deliberations. However, despite these efforts, uncertainties persist, resulting in discrepancies in sentencing practices among various judicial jurisdictions.

Moreover, international human rights standards and evolving societal norms increasingly question the moral and ethical justifications for capital punishment. The call for abolition gains momentum, emphasizing rehabilitation, restorative justice, and the possibility of miscarriages of justice inherent in irreversible penalties.

In this context, there's a pressing need for comprehensive reforms in the criminal justice system, including improved legal aid, heightened scrutiny of evidence, and greater transparency in judicial proceedings. Moreover, there's a growing consensus on the necessity to address systemic inequalities and biases that perpetuate disparities in the administration of justice.

As India navigates these complexities, it stands at a critical juncture where a reevaluation of the death penalty is not merely a legal issue but a reflection of the country's commitment to justice, fairness, and human rights in the 21st century.

References

<https://www.amnesty.org/en/what-we-do/death-penalty/>

<https://indiankanoon.org/>

The Death Penalty: A Worldwide Perspective (4th edn) <https://academic.oup.com/>

Death penalty articles from The Hindu, Print, The Gaurdian, Manupatra etc.

Constitutional laws in India- JN Pandey

wikipidea

www.legalserviceindia.com

"Furman v. Georgia." Oyez, www.oyez.org/cases/1971/69-5003.

British Library (<https://www.bl.uk/>)

Indian Kanoon - Legal Database (<https://indiankanoon.org/> 1980 SCC(CRI)

Legislative Department, Ministry of Law and Justice, Government of India
(<http://legislative.gov.in/>)

Indian Kanoon - Legal Database (<https://indiankanoon.org/>)

Supreme court of United kingdom (<https://www.supremecourt.uk/>) **UKSC 2015/0015**

¹ National Human Rights Commission of India (<https://nhrc.nic.in/>)

¹ Law Commission of India (<http://www.lawcommissionofindia.nic.in/>)