



## EMERGING DIMENSIONS OF CAPITAL PUNISHMENT

By *Arsheya Chaudhry*  
From *Vivekananda Institute of Professional Studies, New Delhi.*

Capital punishment has been a mode of punishment from time immemorial which is practiced for the elimination of criminals who have committed extremely brutal crimes.

Capital Punishment, also called as death penalty, is execution of an offender sentenced to death after conviction by a court of law. It is the most severe form of punishment and is awarded for the most heinous, grievous and detestable crimes against humanity.

### History of Capital Punishment

Capital punishment is an ancient sanction. There is practically no country in the world where death penalty did not exist. Every country has practiced this punishment at some point.

India retained the 1861 penal code at the time of independence which provided for death penalty for murder. The idea of abolishing death penalty was put forward by several members during debates in the Constituent Assembly including, Dr. B.R Ambedkar who was also personally in favor of abolition of death penalty. However, no such provision was incorporated in the Constitution.

The Code of Criminal Procedure was enacted in 1973 and several notable changes were made including one to Section 354(3) that now required reasons to be stated whenever

death penalty is imposed in cases where life imprisonment could have been imposed.

The Supreme Court also looked into the issue of death penalty in several cases. It adopted the doctrine of the Rarest of rare case guidelines in the Bachan Singh case.

### Current Laws

In India, as per the current laws, Capital Punishment is awarded only in “Rarest of the rare” case and the primary mode of execution is hanging by the neck as per Section 354(5) of the Criminal Procedure Code. A case fits into the category of rarest of the rare theory if it violates the collective conscience of the society. Pre-planned, cold blooded and sordid nature of crime, without giving any chance to the victim falls within the parameters of rarest of the rare case.

According to the Indian Constitution, Article 21 ensures the fundamental right to life and liberty for all persons. It says that no person shall be deprived of his life or personal liberty except according to the procedure established by law. This means that if there is a procedure which is fair, just and reasonable then the state by framing laws can deprive a person of his life. The central government has consistently maintained and kept death penalty as the deterrent. The Supreme Court too has upheld the constitutional validity of capital punishment. In the case of *Jagmohan Singh v. State of Uttar Pradesh*, *Rajendra Prasad v. State of Uttar Pradesh*, *Bachan Singh v. State of Punjab*, the principles as to what would constitute a rarest of the rare case has also been laid down.

In the case of *Jagmohan Singh v. State of Uttar Pradesh*<sup>1</sup>, it was held by the court in five judge bench that the constitutional

<sup>1</sup> 1973 AIR 947, 1973 SCR (2) 541.



validity of capital punishment was not violative of article 14, 19 and 21.

In another case of *Rajendra Prasad v. state of Uttar Pradesh*<sup>2</sup>, Justice Krishna Iyer stressed upon the fact that death penalty is violative of Article 14, 19 and 21. He further stated that death penalty should be imposed by keeping two things in consideration. First, that special reasons must be given while imposing it and Second, punishment of death penalty must be given only in extraordinary circumstances.

Again, in the case of *Bachan Singh v. state of Punjab*<sup>3</sup>, the decision taken in Rajendra Prasad case was overruled by a five judge bench of the Supreme Court where it was expressed that death penalty as an alternative means of punishment for murder is not unreasonable and thus not violating Article 14, 19 and 21. In this case, it was decided that death penalty will only be awarded in rarest of the rare category cases.

Further, in the Supreme Court case of *Machi Singh v. State of Punjab*<sup>4</sup>, the court laid down broad guidelines as to when death penalty should be imposed. Justice Thakkar stated five categories of cases that may be regarded as rarest of the rare cases for imposing death penalty. These are –

1. Manner in which the murder has been committed. If the murder has been committed in a heinous, brutal manner such as cutting pieces of the body etc., then it comes under rarest of the rare category.
2. If a murder has been committed for a motive which clearly reveals depravity and meanness such as hired assassin or cold-blooded murder.

3. Where a scheduled caste or minority community person is murdered which arouse social wrath.
4. Where crimes are committed in enormous population like murder of entire family.
5. Personality of the victim of murder

The Supreme Court formulated and held that it should be given only in cases where the option of awarding the life sentence is “questionably foreclosed”. It was left completely upon the court’s discretion to reach to this conclusion. The two prime questions that may be asked or answered before rendering death penalty are- First, is there something uncommon about the crime which renders the punishment of life imprisonment inadequate? Second, are the circumstances of the crime such that no other punishment is fair and just other than death penalty?

If the Supreme Court turns down an appeal against the capital punishment, then the aggrieved offender or the convict can file a mercy petition to the President or the Governor

Under Article 72 and 141 of the Indian Constitution, the President and the Governor are given Clemency Powers respectively. It means that both the President and the Governor have the power to grant pardons, reprieves, respites or remissions of the punishment or to suspend, remit or commute the sentence of any person convicted of any offence. These powers can be exercised on the aid and advice of the council of ministers only. The clemency powers function as the

<sup>2</sup> 1979 AIR 916, 1979 SCR (3) 78.

<sup>3</sup> AIR 1980 SC 898.

<sup>4</sup> 1983 AIR 957, 1983 SCR (3) 413.



final safeguard against possibility of a judicial error or miscarriage of justice.

### International Scenario

According to Amnesty International Reports, at the end of 2018, 106 countries have abolished capital punishment in law for all crimes and 142 countries had abolished capital punishment in law or practice. 7 countries have retained it for serious crimes or exceptional circumstances which includes India.

The USA has not abolished the capital punishment for serious crimes. States like Alabama, Florida, South Carolina, Virginia, Arizona, California and Washington still send hard core criminals to die by gas inhalation, lethal injection or hanging.

China also has a no-nonsense approach to those who commit serious crimes. Crimes like robbery, corruption, murder and rape, among others, are punishable by death. These crimes are considered a “senseless social disease” that will pose a threat to public order. The death penalty is mandatory for murder, drug trafficking, Firearm offences, kidnapping, hijacking and even corruption in China. China remained the world’s leading executioner as per the Amnesty International Report 2018.

Capital punishment is a legal penalty even in Japan. It is applied for murder and execution is carried out by hanging.

Russia has capital punishment in its law but has not executed anyone since 1996. Turkey has also amended its laws and is on the verge of abolishing it. Poland has also banned death penalty in 2013. Among the European

Countries, Portugal and Netherlands were the first to abolish death penalty.

Several organizations continue to fight against this inhumane practice and demands to abolish it completely. The abolition movements were also supported by the United Nations during the drafting of Universal Declaration of Human Rights. The Human Rights council is against the Indian view stating that it goes against the statutory law where execution is done on basis of “rarest of the rare case” theory.

### Suggestions

Some recommendations which were found lacking in the judicial system concerning death penalty.

1. Death penalty should not be delayed after its pronouncement.

In *Triveni Bai v. State of Gujarat*, the Apex Court held that death penalty should be delayed on reasonable grounds so that the accused may get a fair trial. But the researcher recommends that the execution should not be delayed after the pronouncement of death penalty by the court. Here the researcher does not mean that the accused should not get a right to appeal but that right should only be given for a specified period.

2. No age limit must be prescribed for awarding death penalty.

In our country, no law permits to award death penalty to a juvenile even if the juvenile commits a heinous crime. If any juvenile commits a serious offence which falls under the category of rarest of the rare case, then that means that



while committing the offence, the juvenile had sufficient amount of understanding of the act he was committing and, on this ground, he should be awarded the punishment of death penalty.

3. No pardon power for a terrorist.  
Our Constitution provides the President and Governor with the power of pardoning. But if an accused is a terrorist whose acts have affected the public at large, then he should not be given the right to appeal.

### Conclusion

Capital punishment is the most severe form of punishment in the society. Several International Organisations have called for its abolition and many countries have abolished capital punishment which is seen as cruel and inhuman. Though, India is an active member of the international organisations and has signed and ratified most of the international instruments on human rights, capital punishment still remains in our statute book. According to our Judiciary, it must be imposed in exceptional cases only I.e., in the rarest of the rare cases with special reasons. Death penalty in the rarest of the rare case does not affect Human Rights principle.

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