SUPREMO AMICUS

INDIA'S FIRST AI INTEGRATED LAW JOURNAL

Peer Reviewed, Refereed and Open access Journal

- Available in 331+ International Libraries
- Indexed at 32 Databases

ISSN NO. 2456-9704
Volume 10 Issue 1
www.supremoamicus.org

DISCLAIMER

The information presented in this article is intended for general informational and educational purposes only. While every effort has been made to ensure that the content is accurate, up-to-date, and reliable at the time of publication, the editorial board and publisher make no representations or warranties of any kind, express or implied, regarding the completeness, accuracy, reliability, suitability, or availability of the information contained herein.

The views and opinions expressed in this article are those of the author and are based on personal research, experience, and interpretation. They do not necessarily reflect the official policy, position, or opinions of any affiliated organization, institution, or entity.

This article is not intended to serve as professional advice of any kind. The editorial board and publisher shall not be held liable for any errors or omissions in the content, nor for any losses, injuries, or damages arising from the use of or reliance on this information.

ABOUT THE JOURNAL

Supremo Amicus is an online, peer-reviewed international journal devoted to the interdisciplinary fields of law and science. In an era marked by rapid technological progress and evolving legal frameworks, the journal seeks to bridge the gap between these two dynamic domains by offering comprehensive and critical insights into their various aspects. The journal places a strong emphasis on contemporary advancements, emerging trends, and the complex challenges faced by both the legal community.

The primary objective of the journal is to encourage and promote original, high-quality research. It is committed to publishing well-researched, analytically sound, and thought-provoking articles that adhere to rigorous academic standards. Each submission undergoes a thorough peer-review process to ensure authenticity, relevance, and scholarly integrity. In doing so, the journal maintains its commitment to excellence and credibility.

In addition to fostering research, the journal aims to make complex ideas accessible and engaging for a diverse readership. It strives to present content that is not only intellectually enriching but also clearly written and reader friendly.

Furthermore, the journal is committed to promoting interdisciplinary collaboration and global engagement. It welcomes diverse perspectives from contributors across different regions and backgrounds, thereby enriching the quality and scope of discussions presented within its pages.

With this vision we proudly present Supremo Amicus to our readers.

-Editorial Team
Supremo Amicus

CAPITAL PUNISHMENT AND THE OBLITERATION OF INDIVIDUAL LIBERTY & IMPRECISENESS OF JUSTICE: UNDERSTANDING THE IMPRESSION OF FEW INDIAN JUDICIAL JUDGEMENTS

By *Menangmankhraw Kharkongor*
From *CHRIST (Deemed to be University), Bengaluru, Karnataka, India*

Abstract: The paper is a critical analysis of the correlation between capital punishment and the basic rights of people in the Indian constitutional and legal framework. The paper builds on the political philosophy and penological theory, especially those of Beccaria, Bentham, and Montesquieu, to question the purpose of the death penalty as a measure of deterring crime or a crime of denying humanity. Using a qualitative analysis of three landmark Indian judicial cases of *Jagmohan Singh vs. State of U.P. (1972), Yakub Abdul Razak Memon vs. State of Maharashtra (2015)*, and *Mukesh & Anr. vs. State (NCT of Delhi) & Ors. (2017)*, the paper provides evidence of inconsistencies in the use of the capital penalty as a system. The latest crime rates in the country according to the National Crime Records Bureau (NCRB) show that the death penalty has not proved to be effective in curbing high-profile crimes like terror attacks and rape. The article supports a life imprisonment being a more humane, constitutionally valid, and rehabilitative approach to capital punishment in India.

Keywords: *Capital Punishment, Death Penalty, Individual Liberty, Judicial Inconsistency, Indian Judiciary, Fundamental Rights.*

INTRODUCTION

When man found the passage out of the state of nature into a benevolent atmosphere of dominance and control, he became bound to the mutual laws governing that blissful yet conflicting surrounding. It took centuries for humanity to become cognizant of the dignity of life and the value of rights as an indispensable component of civil society. After the constant struggle for survival in the medieval age, the landmark 1789 French Revolution engendered the birth of fundamental human rights of liberty, equality, and justice. Ensuring that everyone receives their fair share in an equitable manner allows each individual the *"opportunity to be their best selves"* (Laski, 1925).

Cesare Beccaria (1764) argues that mankind transferred their liberty to the state in order to be defended by the sovereign, and punishment was the eloquent form of such defence. The social standard of dignity of life is often contradicted by the legal consequences of wrongdoing, and thus the ambivalent question arises: whether an infliction of the death penalty upon an offender serves the greater good, and whether it contravenes the intrinsic rights of the lawbreaker. The tension between the punitive imperatives of the state and the inalienable rights of the individual forms the central inquiry of this paper.

BACKGROUND

Capital punishment or the way it appears in ancient Greece in the laws of Draco has been instrumental in all civilisations throughout the history of humanity and this is often referred to as the death penalty. This supreme crime offense is usually granted in the most heinous, grievous, and detestable offenses against humanity (LARRDIS, 2015). The levels of philosophy of punishment can be traced back to various schools of thought. The theory of retribution, developed by Kant, assumes that punishment should be equal to the extent of the offense and that the criminal should receive the appropriate proportional punishment. The deterrent theory, which is developed by Bentham argues that punishment prevents future wrongdoings by rendering the course of criminal behaviour uneconomic. Rehabilitative theory on the other hand refers to the existence of a moral reform of the offender though not retribution alone.

The death sentence as understood by the British version of the Indian Penal Code (IPC) 1860 and the Code of Criminal Procedure (CrPC) 1973 could be awarded in the following cases in the Indian scenario. The provisions that were to be made in the future are

now in the Bharatiya Nyaya Sanhita, 2023. Sentencing death penalty may be done due to murder (Section 103) rape (Section 65(2)) or Treason or war against Government of India (Section 147) and so on. The Indian constitution document particularly in Article 21 exerts pressure on the right to live and individual freedom; however, it is subjected to the procedure effected by the law. In *Smt. Shashi Nayar vs. Union of India (1992)* the Supreme court of India stated that these rights were restricted by the legal and reasonable procedure formulated by law and as such, the death penalty was not illegitimate under the boundaries of the constitution.

Imposition of death penalty in India is on the doctrine of the rarest exception which is originally mentioned in *Bachan Singh vs. State of Punjab (1980)* in which the Supreme Court stated that the death penalty is to be applied in very rare situations where the alternative penalty of life imprisonment is definitely barred. The criticism of this doctrine has been that it has no objective criteria, and thus it has not been consistent in the sentencing of similar cases (Blackshield, 1979). The Annual Statistics Report issued by Project 39A indicates that, as of the end of 2023, there were about 561 inmates with a death sentence, the largest number of death row inmates in a single calendar year is almost twenty years high (Project 39A, 2023). Nevertheless, even these kinds of numbers cannot support the causal relationship between presence of capital punishment and the decline in serious crime in India, which is always supported by the empirical evidence.

METHODOLOGY

Research Design

The research methodology adopted in this research is qualitative and doctrinal. This is mainly an analytical and normative study that has attempted to interact with the provisions of the Constitution, landmark cases of the judiciary, the theory of penology, and secondary statistical reports in order to critically and empirically determine the utility and fairness of capital punishment in India.

Data Sources and Sample

The research is limited to secondary data, obtained in reputable and peer-reviewed databases. The primary legal sources are judgements of the Supreme Court of India which are also found on Indian Kanoon and in the official website of the Supreme Court. The statistical data on the crime rates, as well as the death row population, is obtained according to the National Crime Records Bureau (NCRB), Crime in India Reports (2012-2023) and Project 39A Annual Statistics Report (2023) by the National Law University, Delhi. The data regarding terror attack is sourced at South Asia Terrorism Portal (SATP, 2024). Peer-reviewed journals such as the History of Political Thought, Journal of the Indian Law Institute, and the International Journal of Ethics are used as sources where concepts can be traced to foundational work in political philosophy.

Analytical Framework

The analysis will be carried out in three phases. The paper analyses capital punishment using the classical penological theories retributivism, deterrence, and rehabilitationism to determine the theoretical validity of capital punishment. Secondly, three judicial cases have been analysed as qualitative case studies with an objective of unearthing discrepancies on the use of death penalty in an Indian court. Third, the article cross-tabulates the statistics of crime reports made by NCRB in order to test the fact empirically by the application of death penalty on high profile offenses in order to determine whether deterrent effects have been measured. Such a triangulated strategy can be used to conduct normative criticism as well as empirically-based evaluation of the capital punishment policy within India.

CASE ANALYSIS

Did the Lady of Justice Wore a Blindfold in the Yakub Abdul Razak Memon vs. State of Maharashtra (2015) case?

The magnitude of punishment depends on the level of an act that presented the biggest threat to the security of individuals (Montesquieu, 1748). The laws of crimes related to various states define the line of each law and the most appropriate type of punishment. Yakub Memon was found guilty of conspiracy following the Terror and Disruptive Activities (Prevention) Act, 1987 on his monetary connections to the conspiracy after the shocking Mumbai Serial Bombings of 1993, in which 257 people died and more than 700 were injured. In a sense, his actions was an effective reciprocation of law towards the security of liberty, rights and communal stability.

The ways in which Memon is executed, however, give serious procedural issues. Hours after the President of India turned down his mercy request on 30th July, 2015, the Supreme Court, meeting at the unusual time of 3.30 A.M. sentenced him to death at 7.00 A.M., just three and a half hours after the announcement of the judgment. This can be considered by the society as a victorious application of the justice but when the situation is examined in greater detail, one can notice a procedural denial of his inherent right. Sometimes even the Supreme Court, in *Shatrughan Chauhan vs. Union of India (2014)*, had seen it appropriate that a prisoner who has already been condemned should have a minimum of 14 days between the time his mercy petition has been rejected and the actual day of execution. This right was refused on the fact that this was a second petition of Memon but this argument simply contravenes its own prior stance in *G. Krista Goud and J. Bhoomaiah vs. State of A.P. (1976)* that had permitted such procedural rights despite making a subsequent petition (The Caravan, 2015). More so, the rejection order was not given to Memon in writing which is a fundamental procedural protection before his execution was executed.

More importantly, the deterrent argument used to justify the death penalty is invalidated by the empirical history. In case the execution of Yakub Memon was to avert future terror attacks, the information does not justify this argument. As the statistics covered by the South Asia Terrorism Portal (SATP, 2024) indicate, the decisions of terror incidence in India increased over the time span between 467 and 483 in the year 2023 and 2024, respectively. This shows that prevention was not the projected purpose of the execution. The case of Memon in this context may seem more of punishment than prevention, a case where according to Rosen (1999), there is no more freedom of agency, which is not even in the shadow.

Equality Before the Law in the Jagmohan Singh vs. State of U.P. (1972).

The death sentence imposed on Jagmohan Singh under Section 302 of the then-in force Indian Penal Code, 1860 of the murder of Chhotey Singh by the Supreme Court of India was affirmed in 1972. However, having a comprehensive look at the history, there is a vexing imbalance of justice. The murder of the accused cousin, Shivraj Singh on 10th September, 1969, had been previously convicted on Chhotey Singh but he was later acquitted by the Allahabad High Court and set free as an innocent man. These open injustices had a long-term emotional and psychological effect on the family of Shivraj Singh and resulted in the fatal fight over irrigation rights whereby Jagmohan Singh and his nephew, Jagbir Singh, murdered their long-time opponent.

The key principle of the democratic government is that all citizens are equal in the eyes of the law. The disparity in this instance is, however, glaring, wherein we find Chhotey Singh, as himself an offender of murder, acquitted, and brought back to freedom, and Jagmohan Singh, solemn punished by the courts, a rewarded avenger. In case the judiciary perceives the process of murder so hideous to the degree that it might be subject to capital punishment, then that principle should have been applied in equal measure, to the case of Chhotey Singh. This inability to do so

revealed the nature of retributive justice as being selective and inconsistent.

All laws are rational in as much as they are expected to reason with the expectation of the people who falls under its governance. Cases like the case in Jagmohan Singh can be understood as an instance, in which judicial discretion would have been barred by capital sentencing rigidity to the consideration of prior victimisation, systemic failure and cumulative injustice. Capital punishment delivered without taking the care in such contextual circumstances is therefore, as Bentham would put it, a disproportionate means of producing utility.

Does Death Penalty Prevent Sexual Violence? The Aftermath of Nirbhaya and RG Kar Cases.

The call to execute the death penalty as the only fit penalty imposed on rape has acquired long-standing propagandistic appeal after the 2024 rape and subsequent murder of a medical college student at RG Kar College in Kolkata, with cries of injustice in the streets, and a decade-long national reckoning since the infamous Nirbhaya case of 2012 (*Mukesh & Anr. vs. State (NCT of Delhi) & Ors.,2017)*. The Nirbhaya case led to the execution of the four convicts on 20th March, 2020, after all legal avenues had been exhausted, and the Criminal Law (Amendment) Act, 2013 had greatly compounded the legal system in the sexual offences.

However, statistics does not substantiate the argument of deterrence. National Crime Records Bureau, Government of India provided data on number of rape cases in India for the year 2012 and it was about 24,923 cases but the Amendment Act had not taken place then. By 2022 this number grew up to about 31,516 (NCRB, 2022), an increase of about 26.5% in ten years. There is a steady increase in rape cases in India despite of hard and harsh laws and severe punishments. The National Crime Records Bureau Crime in India Report 2023 reveals that number of reports of rape cases increased by 1.6% in 2023 to 32,032, the highest number of rape cases since 2012 which is 28.5%. This depicts a steady increasing pattern of rape incidences despite tightening of the laws and punitive actions. Although the reported cases may also have been improved through the better awareness and reporting mechanisms, it remains challenging to rule out the fact that the number of cases being reported of these crimes has actually increased.

According to Benthamite approach, justice is achieved when the value of punishment and the profit of the offence, which are the force used to deter crime and the force used to encourage the crime respectively, are equal (Rosen, 1999). Whenever the death penalty is given to a criminal, then this reward is the least path of compliance to one, since any death penalty can never be seen as being a method practiced by man in his moral values and ideals. The evidence supports a strong argument that the deterrence concept behind capital punishment in sexual violence cases is empirically unsustainable, and more enduring investments on social prevention, expedient trials, and victim supportive infrastructures must be made.

DISCUSSION

The above discussion demonstrates that capital punishment as applied in India is characterised by two unique yet intersecting flaws; namely, procedural inconsistency and empirical ineffectiveness. In practice, as is shown in the Memon and Jagmohan Singh cases, the rarest of rare doctrine has not served as a sound or consistent discipline of the death penalty. Lack of effective and open standards has made capital sentencing vulnerable to judicial discretion against which, in some instances, the Constitution places due process requirements.

The empirical evidence provided by crime statistics supplied by the NCRB over several years demonstrates that there is no recognizable deterrence effect to capital punishment. The incidence of terror crimes and rape crimes have not diminished significantly after the execution of terror convicts and rape convicts respectively. This observation does not lack an international criminological consensus: as Beccaria (1764) observes, it is not the punishment

itself that prevents criminal behaviour; but, as he argues, the certainty thereof. A criminal justice system that has not been reformed, sluggish trial procedures and low conviction rates work together towards derailing any deterrent effect the death penalty would theoretically have.

Also, the death penalty is an irreparable consequence to a system that is not free of mistake. The history of bad convictions that has been documented and the gap between the death row composition and the socioeconomic profile of the executed for which the arbitrage function has been documented is a serious matter concerning the equal functionality of justice. Project 39A (2023) has continued to observe that a percentage disproportion of sentenced detainees has always been of marginalised religious minorities, Scheduled Castes, Scheduled Tribes and economically disadvantaged groups and individual case analysis often fail to reveal the structural equity issues involved.

CONCLUSION

Capital punishment is fundamentally flawed as a punitive tool in that it does not allow a criminal the possibility of second chance to emerge as a better being. Since one cannot predict the future, one cannot gauge on the ability of people to rehabilitate and change. In fact, the actual deterrent factor is not the harshness of the punishment but the assurance of it (Rosen, 1999). Justice is only possible in a system where none of them gets arbitrarily or inconsistently deprived of life.

The sentence of life imprisonment under strict terms in the Indian case, is a more humane, constitutionally and rehabilitative charge; a sentence that will guarantee responsibility and the chance of the redemption. The national will, with old incompatibility between the desires of the state in the name of social order and the demands of the society in the name of unrestricted personal worth, must be re-examined to the practical justifiability and fairness of the execution of the law. The capital punishment practised today does not meet the requirements of deterrence as it fails to fulfil the conditions of equal justice. A thorough analysis of India and jurisprudence of death penalties will not only be welcome, but it is long overdue.

*****

REFERENCES

Journals

[1] Rosen, F. (1999). Crime, Punishment and Liberty. *History of Political Thought*, 20(1), 173–185. http://www.jstor.org/stable/26217556

[2] Roberts, W. J. (1905). The Abolition of Capital Punishment. *International Journal of Ethics*, 15(2), 263–286. http://www.jstor.org/stable/2376412

[3] Huang, J. (2007). Justice as a Virtue: An Analysis of Aristotle's Virtue of Justice. *Frontiers of Philosophy in China*, 2(2), 265–279. http://www.jstor.org/stable/27823292

[4] Blackshield, A. R. (1979). Capital Punishment in India. *Journal of the Indian Law Institute*, 21(2), 137–226. http://www.jstor.org/stable/43950631

Books

[5] Laski, H. J. (1925). *A Grammar of Politics*. London: George Allen & Unwin.

[6] Beccaria, C. (1764). *On Crimes and Punishments*. Milan: Società Tipografica.

[7] Montesquieu, C. de S. (1748). *The Spirit of Laws*. J. Nourse and P. Vailant.

Reports and Government Sources

[8] National Crime Records Bureau. (2023). *Crime in India 2023*. Ministry of Home Affairs, Government of India. https://www.ncrb.gov.in/ (Last accessed: 02nd March 2026).

[9] National Crime Records Bureau. (2022). *Crime in India 2022*. Ministry of Home Affairs,

Government of India. https://www.ncrb.gov.in/ (Last accessed: 02nd March 2026).

[10] Project 39A. (2023). *Annual Statistics Report 2023: Equal Justice Equal Opportunity*. National Law University Delhi. https://www.project39a.com/annual-statistics-report-2023 (Last accessed: 02nd March 2026).

[11] LARRDIS. (2015). *Capital Punishment in India*. Parliament Library and Reference, Research, Documentation and Information Service, Lok Sabha Secretariat. https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/CAPITAL_PUNISHMENT_IN_INDIA.pdf (Last accessed: 03rd January 2026).

Judicial Cases

[12] Supreme Court of India. *Jagmohan Singh vs. State of U.P.* (1972). Indian Kanoon: https://indiankanoon.org/doc/1837051/

[13] Supreme Court of India. *Yakub Abdul Razak Memon vs. State of Maharashtra* (2015). Indian Kanoon: https://indiankanoon.org/doc/60103551/

[14] Supreme Court of India. *Smt. Shashi Nayar vs. Union of India* (1992). Indian Kanoon: https://indiankanoon.org/doc/626102/

[15] Supreme Court of India. *Shatrughan Chauhan vs. Union of India* (2014). Indian Kanoon: https://indiankanoon.org/doc/59968841/

[16] Supreme Court of India. *Bachan Singh vs. State of Punjab* (1980). Indian Kanoon: https://indiankanoon.org/doc/1090328/

[17] Supreme Court of India. *Mukesh & Anr. vs. State (NCT of Delhi) & Ors.* (2017). Indian Kanoon: https://indiankanoon.org/doc/68696327/

Websites

[18] South Asia Terrorism Portal (SATP). (2024). Terrorist Attack Fatalities: India. https://www.satp.org/datasheet-terrorist-attack/fatalities/india (Last accessed: 02nd March 2026).

[19] Arora, D. (2015, July 30). Yakub Memon's late-night hearing at the Supreme Court left several questions unanswered. *The Caravan*. https://caravanmagazine.in/vantage/yakub-memon-ate-night-hearing-supreme-court-left-several-questions-unanswered (Last accessed: 03rd January 2026