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# **DEATH PENALTY IN INDIA: CONSTITUTIONAL VALIDITY VS HUMAN RIGHTS**

- Shaik Ameer<sup>1</sup>

## **INTRODUCTION**

Death penalty, also known as capital punishment, is one of the harshest punishments in criminal law where a person is sentenced to death for committing serious offences such as murder, terrorism, or offences against the State. In India, the death penalty is awarded only in the “rarest of rare” cases as established by the Supreme Court.

The issue of capital punishment has remained highly controversial for many years. Supporters of the death penalty believe that it helps in controlling serious crimes and creates fear among offenders. However, opponents argue that it violates the fundamental right to life guaranteed under Article 21 of the Constitution of India and goes against basic human rights principles. Concerns relating to wrongful convictions, unfair trials, delay in execution, and unequal application of punishment have further increased the debate on this issue.

India continues to retain the death penalty despite many countries abolishing it on humanitarian grounds. Therefore, the conflict between constitutional validity and protection of human rights remains an important legal and social issue.

This report aims to examine the constitutional validity of the death penalty in India and analyse whether its continued existence is consistent with human rights principles and constitutional morality.

## **HISTORICAL EVOLUTION OF DEATH PENALTY IN INDIA**

### **ANCIENT INDIA AND EARLY PUNISHMENT SYSTEM**

In ancient India, kings and rulers used death penalty to maintain law and order in society. It was commonly given for serious crimes such as murder, treason, and offences against the kingdom.

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<sup>1</sup> 4th Year Law Student, Dr. Ambedkar Global Law Institute

Different methods like stoning to death, burning alive, and execution by elephants were practised during that period.

## **DEATH PENALTY DURING BRITISH RULE**

During the British colonial period, a formal criminal justice system was introduced in India. The British government enacted the Indian Penal Code, 1860, and through this codified law, death penalty became a recognised punishment under criminal law in India.

## **INDIAN PENAL CODE, 1860**

The Indian Penal Code, 1860 officially recognised capital punishment for grave offences. Under Section 302 of the IPC, death penalty or life imprisonment was provided as punishment for murder.

## **POST-CONSTITUTION DEVELOPMENTS**

After the Constitution of India came into force in 1950, courts adopted a more careful approach towards the use of death penalty. Since Article 21 guarantees the right to life and personal liberty, debates regarding the constitutional validity of capital punishment increased.

## **EMERGENCE OF THE “RAREST OF RARE” DOCTRINE**

An important development took place in *Jagmohan Singh v. State of Uttar Pradesh*, where the Supreme Court upheld the constitutional validity of the death penalty. Later, the judiciary adopted a more restrictive approach and limited the use of death penalty only to the “rarest of rare” cases.

## **CONSTITUTIONAL VALIDITY & LEGAL FRAMEWORK**

### **ARTICLE 21 AND RIGHT TO LIFE**

Article 21 of the Constitution of India guarantees the fundamental right to life and personal liberty. It states that no person shall be deprived of life or personal liberty except according to the procedure established by law.

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Supreme Court held that the right to life includes the right to live with human dignity.

Although India has not abolished the death penalty completely, courts have held that it can only be imposed after strict judicial scrutiny and proper due process.

## **CRIMES PUNISHABLE BY DEATH IN INDIA**

- Murder involving extreme brutality
- Terrorism-related offences
- Waging war against the State
- Kidnapping leading to murder
- Rape and gang rape of minors
- Certain aggravated drug trafficking offences
- Espionage and offences against national security

## **METHODS OF EXECUTION**

- Hanging is the only prescribed method of execution in India.
- Provided under the Prisons Act, 1894 and prison manuals.
- Executed after following court procedure and confirmation process.

## **LEGAL PROCESS OF DEATH SENTENCE**

1. Trial Court – Imposes death sentence.
2. High Court – Mandatory confirmation.
3. Supreme Court – Appeal available.
4. Review Petition.
5. Mercy Petition under Article 72.
6. Execution after exhaustion of remedies.

## **LANDMARK CASES**

### **JAGMOHAN SINGH V. STATE OF UTTAR PRADESH**

Issue: Whether death penalty violates Articles 14, 19, and 21.

Holding: The Supreme Court upheld the constitutional validity of capital punishment.

## **RAJENDRA PRASAD V. STATE OF UTTAR PRADESH (1979)**

Holding: Death penalty should be imposed only in exceptional situations with special reasons.

## **BACHAN SINGH V. STATE OF PUNJAB (1980)**

Holding: The Supreme Court upheld constitutional validity and introduced the “rarest of rare” doctrine.

## **MACHI SINGH V. STATE OF PUNJAB (1983)**

Holding: Death penalty should be imposed only in exceptionally grave and cold-blooded crimes where life imprisonment is insufficient.

## **HUMAN RIGHTS PERSPECTIVE ON DEATH PENALTY**

### **VIOLATION OF RIGHT TO LIFE**

Opponents argue that capital punishment violates human dignity and the right to life. They believe that no State should have the authority to take away human life as punishment.

### **POSSIBILITY OF WRONGFUL CONVICTIONS**

Even with multiple levels of appeal, mistakes due to false evidence, mistaken identity, poor investigation, or inadequate legal representation may occur. Since death penalty is irreversible, such errors can have irreversible consequences.

### **DELAY IN EXECUTION AND MENTAL TRAUMA**

Many convicts spend years awaiting execution while appeals and mercy petitions are decided. This prolonged uncertainty is often described as the “death row phenomenon.”

### **INTERNATIONAL HUMAN RIGHTS PERSPECTIVE**

Many countries have abolished capital punishment and favour reformatory justice. However, India continues to retain it for exceptionally serious offences under the “rarest of rare” doctrine.

# **LAW COMMISSION REPORTS ON DEATH PENALTY**

## **35TH LAW COMMISSION REPORT (1967)**

- Supported retention of death penalty.
- Considered India not ready for abolition.
- Emphasised deterrence and public safety.

## **262ND LAW COMMISSION REPORT (2015)**

- Recommended abolition for ordinary offences.
- Suggested retention only for terrorism and national security offences.
- Highlighted wrongful convictions, arbitrary sentencing, and human rights concerns.

## **CONCLUSION**

The death penalty remains one of the most debated issues in India, balancing constitutional validity with human rights concerns. While the judiciary has restricted its use through the “rarest of rare” doctrine and procedural safeguards, concerns regarding wrongful convictions, human dignity, mental trauma, and unequal application continue to fuel the debate.

The Indian legal system therefore seeks to maintain a balance between justice, deterrence, and protection of human rights, while the discussion on abolition or retention continues to evolve.

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