

# Pros & Cons of capital punishment in india

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**Abstract - The government and courts use the death sentence to punish offenders, safeguard the rights of victims, and remove potentially dangerous persons from society so they won't commit another crime. This facet of civilization has existed since the Stone Age, when kings were viewed as the personification of law and order in the community. The repercussions of a death sentence are irreversible and cannot be undone. The most individuals are executed annually in China. In India, the death sentence is reserved for people who have committed the worst crimes. To contradict or support a claim, the author uses reliable and objective sources, data, and subject matter experts. As proof for the researcher's conclusions, the study gives instances and quotations. The study follows a doctrinal pattern, drawing on previously accessible data and analysing those facts to develop an evolution of this research. Primary data consists of interviews and surveys, whereas secondary data includes publications, laws, parliament bills, and reports. The goal is to understand the Indian death sentence and India's stance on the issue from a global viewpoint. The secondary purpose is to discover alternatives to the death penalty.**

**Keywords - Death penalty, Capital punishment, Criminal law, Execution.**

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## 1. INTRODUCTION

India has a serious problem with crime and criminals. In India, punishment is always designed to serve as a deterrence to future offenders. The offender should be punished, and by seeing others penalised as well, it will discourage others from engaging in the same behaviour. This article focuses on the issue of the death penalty. The death penalty is a key component of the Indian legal system. To put it simply, the death penalty is reserved for people who commit capital crimes, often known as capital offences. The English phrase "death penalty" originates from the Latin phrase "capitalis," which means "with regard to the head" in Latin. In rare cases, criminals in India can be put to death. Even the most heinous of offenders in India seldom face the death penalty. There have been 755 executions by hanging in India since the country gained its independence. Since the mid-1980s, 16 convicts have been executed. The death sentence is only applied in the most extreme of criminal crimes under India's legal system. According to Article 21 of the Indian constitution, "no individual shall be deprived of his life or personal liberty except pursuant to procedure specified by law. The death penalty is a contentious issue in legal systems all across the world, from India to the most enlightened regions of the West. [1]

### 1.1 Capital punishment in india

The seriousness of the crime committed should be used to establish the severity of the punishment. Offenders need to be met with the same level of ferocity from their victims when they are punished. The

Indian death sentence, among other reasons, justifies the savagery of the people who live under it. Following the principle has about the same amount of upside as downside. It's possible to argue for both sides of the issue. [2]

It's possible to put a death sentence into effect in a number of ways. Hanging, gunshot, fatal injection, electrocution, suffocation, and gas inhalation are all legal execution methods. Other forms of execution include beheading, electrocution, and lethal injection. This is the most humane method of execution available at the moment. Several landmark Indian rulings have upheld the legality of the death sentence. Although capital punishment is rarely practised in India. The Bachan Singh judgement lays forth many scenarios in which the death sentence might be constitutionally upheld. There is a state called Punjab in India. At the point where the sentence's execution mechanism was discussed, it became clear that the "rarest of the rare" option had been picked.

Cases decided by the Supreme Court, including the Maneka Gandhi trial In several public statements, the Union of India has stressed the need of adhering to the established legal protocol for carrying out executions. To murder someone, one must have a good reason that is grounded in logic, fairness, and reasoning. A number of references to the death penalty may be found in the Constitution, like as: [3]

- The death sentence is extremely unusual in India,

- It's a severe penalty that has to be taken seriously.
- The accused should be afforded the protections of natural justice.
- If the High Court sustains the death sentence, the convict may seek an appeal with the Supreme Court under Article 136 and Section 379 of the Criminal Procedure Code.
- Convicts facing the death penalty can ask the President or the Governor for a pardon (Article 72 and Section 433 of the Code of Criminal Procedure) (Article 161 and Section 434 of the Code of Criminal Procedure).
- Articles 21 and 22 of the constitution provide that the accused has the right to a speedy and fair trial, and that no torture is permitted under any circumstances.

## 1.2 Constitutionality of capital punishment.

The belief that transgression warrants reprisal is the foundation of every sort of consequence, including punishment. In every culture and religion on the earth, individuals are taught that transgression will always end in retribution. When choosing the proper degree of punishment for criminals, deterrence and justice are key. The motivation for the death sentence is the same as for other types of punishment. Because it is brutal and permanent, capital punishment has generated more controversy than any other kind of punishment. Those who support the death sentence feel it deters crime. The death sentence is commonly supported as a deterrence or retribution for criminal behaviour. They feel that the victim of a particularly horrific crime would benefit most from the death sentence.

The practise of using the death sentence dates back to the dawn of human existence. The arguments for and against the case haven't altered much over time. The values and social structure of the society in question are reflected in criminal behaviour and the legal response to it. It seems like a good time to reflect on past legislative and judicial responses to this sensitive topic as the debate over whether to ban the death penalty is still going strong. This heated topic has prompted many reactions. The amount to which judges can use their own discretion is another concern. [4]

## 1.3 Types of capital punishment

the wide range of criminal sanctioning practises among nations. Before we get there though, it's important to discuss the historical use of the death penalty. before that capital sentences are more akin to torture than actual execution. They used to torment the offender to the point of physical collapse, hoping that the mental anguish of being put through such agony would be fatal. In addition, the new techniques are less time-consuming and uncomfortable than the older ones. [5]

**i. Electrocutation-** A high voltage current that may quickly kill a man is sent through the body while the culprit is strapped to a chair in this manner. It also leads to organ failure (especially heart). U.S. states like Alabama, Florida, etc. are the only ones in the world that still use the electric chair as a means of execution in 2015.

**ii. Tranquilization-** With this approach, the offender dies gradually but painlessly when the poison is delivered into his body over the course of many hours.

**iii. Beheading-** This approach is widely used in Arab and Gulf states. Locations where capital punishment is meted out according on the severity of the offender's offence. Moreover, in this approach, the head is severed from the body by a simple incision.

**iv. Stoning-** The offender receives fatal blows till he or she dies. It is the cruellest kind of capital punishment as well. UAE, Iraq, Qatar, Saudi Arabia, Somalia, Sudan, etc. This method of execution is used in these countries.

**v. Shooting-** Here, the perpetrator is shot either in the head or the chest. This method is used as a form of death punishment in Myanmar. [6]

## 2. THE ARGUMENT FOR AND AGAINST THE DEATH PENALTY

### i. Pros.

#### a. Strong deterrence to criminals

Since the death penalty is only applied in the most severe cases, it sends a clear message that criminals who commit particularly heinous acts will be subject to the law's maximum consequence, which may include execution. It sends a clear message and discourages people from engaging in illicit behaviour.

#### b. Expenses incurred

Due to the high cost of maintaining prisons and ensuring the safety and well-being of inmates, as well as monitoring those on parole, the death penalty is sometimes viewed as a more cost-effective option for dealing with those responsible for particularly heinous crimes.

#### c. Stops the continuance of crimes

There is a significant possibility that crime rates will rise if a punishment as severe as the death sentence is abolished. It has been reported that the crime rate rose by seven percent when the death sentence was abolished in the 1960s, and then dropped once it was reinstated. Therefore, such a severe

punishment is necessary to prevent the continuation of similar offences.

#### **d. No threat of an escape**

Prisoners who are doing time often try to escape, but are generally unsuccessful. However, if they do escape, they can once again commit murder in the open, thus it is vital to eliminate the threat by eliminating the killer. Even if you believe that murder is wrong, you must take into account the fact that he is the same person who murdered someone else. [7]

#### **ii. Cons.**

##### **a. Continuance of the violence cycle.**

Generally, the death sentence is only handed down for the most horrific and violent of crimes, such as murder, but it is clear that this punishment just serves to perpetuate the cycle of violence. The death penalty seems like a harsh method to deal with a murder convict since it amounts to killing the person who committed the crime. This fact has led many to argue that the death sentence is, by definition, violent.

##### **b. What if the judiciary is mistaken?**

It's possible that an innocent person might be wrongfully accused and put on trial for an upcoming execution based on insufficient or false evidence. The death penalty is irreversible; even if the defendant is proven innocent years later, there is no way to bring him back to life. In contrast, if the same person had been imprisoned instead, upon learning of his innocence he could have been released, filed a claim for compensation for his unjust confinement, and gone on with his life.

##### **c. No chance of rehabilitation**

There are cases in which the perpetrator lacks the mental capacity to comprehend the gravity of his actions; in these cases, rehabilitation and a series of consultations should replace instantaneous punishment. The death penalty would be excessive in such cases because the perpetrator likely lacked mens rea (guilty mind) at the time of the crime. Therefore, people who deserve a second opportunity are denied it by the death sentence.

##### **d. Cruel in its form**

Taking someone else's life is an unusual idea in and of itself. An uncommon and brutal kind of punishment, such as this one, would be more than just violent. Offenders should be punished, but life sentences in jail are more humane than the death penalty. [8]

#### **2.1 Supreme Court on India's death penalty**

The Supreme Court's five-judge bench agreed with the state that the death sentence is legal under the

Constitution. Petitioners claimed that judges should not be left to their own devices in deciding whether or not to inflict the death penalty. Those who filed the case said that Articles 14, 19, and 21 of India's constitution, which provide equal protection under the law, freedom of the press, and the right to life, respectively, were infringed by the judges' wide discretion. As long as the death penalty is carried out in accordance with the established legal system, the Supreme Court ruled that the Right to Life is not breached. The death sentence did not go against Article 19 since it was neither arbitrary or contrary to public policy. Courts' leeway in applying capital punishment does not run counter to the equal protection clause. When considering whether to impose the death penalty, the Court weighs "aggravating" and "mitigating" factors. This means that the Court's discretion is not absolute. The Bench goes on to say that the Code of Criminal Procedure, 1973, provides exhaustive rules for whether the death penalty is appropriate. [9]

#### **3. CRITERIA FOR RAREST OF RARE**

The Supreme Court's seminal decision in "Bacchan Singh v. State of Punjab" established the ground rules for determining what constitutes "the rarest of the rare." For instance, the Supreme Court ruled that the death penalty should only be imposed after all other options, including life in prison, have been "unquestionably foreclosed." The sole authority to make the ultimate determination in this matter rested with the court. The principle of striking a balance between circumstances that are aggravating and those that are mitigating was also firmly established by the highest court. It is imperative that the aggravating and mitigating factors of each individual case be investigated in order to determine whether or not justice can be served by means other than the death penalty. [10]

He was charged with raping and killing 14-year-old Hetal Parekh in the case *Dhananjay Chatterjee v. State of West Bengal*. His day job is as a security guard. Dhananjay was protecting an apartment complex where the victim also lived. The official verdict states that he was found guilty of murder by rape and the girl's death was the result of being strangled by him. Since the guard was tasked with safeguarding the community, the court system deemed the offence to be "rarest of rare." The accused's family made a mercy request, but it was denied by then-President of India A.P.J. Abdul Kalam on June 25, 2004. On his 39th birthday, he was eventually executed in Kolkata's Alipore Central Jail.

#### **4. THE EXECUTION AND REPRIEVE OF DEATH SENTENCES IN INDIA**

Although there has been a death penalty in theory in India since 1998, there have only been seven actual executions. Between 2004 and 2013, 1303 people

were sentenced to death but just three were put to death. Between the years of 2004 and 2012, there was not a single assassination. Over the previous two decades, 3,751 people sentenced to death have instead been given life in prison without the possibility of release. Yakub and eight others were given death sentences in July 2007. The conspirators and perpetrators of the 1993 Mumbai bombing, which killed over 260 people and wounded thousands more, were brought before a special court and given due process. In March 2013, the Supreme Court affirmed Memon's death sentence, while ten others received lengthy prison terms; one died while incarcerated.

The Governor of any State or chief minister is authorised under Article 161 and Article 72 of the Indian Constitution to grant or postpone, pass or suspend the sentence of any individual accused of any crime or to award pardons, reproaches, or adverse occurrences. A Court Martial has jurisdiction (a) if a penalty or punishment is imposed, and (b) whenever the offence is one that is covered by a law that is exclusive to the Union's or a state's executive branch. c) In cases when capital punishment is an available option. [11]

## 5. EMERGENCE OF ALTERNATIVE PUNISHMENT TO CAPITAL PUNISHMENT

In recent years, the Supreme Court has introduced the punishment for "actual life," or life sentences of a set number of months, as a reaction to the challenges presented by death penalty cases. The Supreme Court reached this conclusion with a unanimous verdict in the Swamy Shraddhanand case. This new kind of punishment was justified as follows: If one were to adopt even a slightly alternative perspective on the issue, new insights would emerge. When discussing sentence, it's important to consider both sides of the debate. It's also possible for a punishment to be too severe or unusually harsh. If an appellant already has a death sentence imposed by the court and supported by the High Court, as in the current instance, this Court may deem the situation to be less than the unusual of the unusual category and may be even more reluctant to sanction the death penalty. On the other hand, the Court may conclude that a life sentence without the possibility of parole would be excessive and grossly unjust in light of the circumstances of the crime committed, and may instead impose a term of, say, 14 years. Now the question is, what should the Court do? If the Court's options are limited to the death sentence and imprisonment for a period of no more than 14 years, the Court may feel hemmed in and pressured to approve the death penalty. That's the truth; that road leads to disaster. The Court's expanded authority, including the huge disparity between a sentence of fourteen years in jail and the death penalty, would be considerably more just, reasonable, and proper. The Court must exercise the increased option since the circumstances show that a sentence of 14 months in jail carries no punishment.

## 6. LAW COMMISSION OF INDIA'S REPORT ON DEATH PENALTY

For all crimes save murder and treason, the 262nd report from India's Law Commission advocated abolishing the death penalty (August 2015). The full set of the report's suggestions are as follows: [12]

- The Commission suggested whether or not the government could swiftly implement measures such as police reforms, methods to safeguard witnesses, and offender mitigation plans.
- From the Supreme Court's removal of the requirement that the death penalty be exclusively restricted to rare situations in 1973 to the provision of additional justifications again for death punishment, our own jurisprudence demonstrates the direction in which we must proceed. In addition, the Commission believed that the time had come for India to take a step toward emancipation, as evidenced by the broadened and deepened scope and horizons of the Right to Life, and it strengthened the criteria for effective processes in the encounters between the State and the individual.
- While abolishing the death penalty for criminal activities and conflict has frequently been feared to endanger national security, there is now no clear legal reason for prosecuting terrorism apart from other offences. However, the Commission did not think there was any need to delay the first step toward the elimination of the death sentence for all crimes excluding acts of terrorism, despite the worries of the MPs.
- So, the Commission proposes ending slavery as punishment for all wrongdoings other than acts of terrorism and open warfare.
- The Commission, however, is serious about wanting to see a swift and irreversible move more toward the complete eradication.

## 7. CONCLUSION

It is necessary to ensure that any such ruling is issued in conformity with the law and after thorough analysis of all the relevant facts and argument. Such a judgement should not be made in a vacuum and should only be reached after conferring with the most senior judges. In view of the above, I feel it is apparent that the death penalty is acceptable and should not be abolished in India. However, any such determination must be made in line with the law and after thorough examination of all the facts. The day a death sentence is handed out should be the day it's carried out. In addition, the crime must be so severe that the death sentence is the only feasible option; if life imprisonment is a possibility, the judges must



assess the evidence and circumstances before making a judgement. In addition to educating individuals guilty for the wrongdoing, this order serves as a deterrent to anyone who may otherwise commit a crime, reducing the likelihood that such horrible acts would be performed again. Having such restrictions in place helps maintain peace and reduce crime.

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