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# Death Penalty in India: A Legal Analysis

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## ABSTRACT

*Each rich and developing nation is struggling with the issue of the rising crime rate in the twenty-first century. India, a growing nation, has a broad range of written laws that provide a variety of penalties to punish the offender and lower the crime rate. In India, there are various forms of punishment available, including the death penalty, life in jail, incarceration, fines, etc. Death sentences, often known as capital punishment or the death penalty, are reserved for the most serious offences. This paper provided an outline of the context and history of the death penalty in India, along with some significant rulings from the Supreme Court.*

**Keywords:** *Death, Penalty, India, Legal.*

## I. INTRODUCTION

The organization of law enforcement as a fundamental piece of the sovereign capacity of the State did not appear to have arisen in India till the Smriti period. The credit goes first to Smritis, basically Manu furthermore besides to the Artha Sastra of Kautilya, who have dispensed with the convergence of mystical nuances into the inborn states of the general public' represented by certain regulation managed by the Royal Courts. The Manu Smriti has recognised a juristic qualification between the sentences of death 'dejure' and 'accepted'. It is expressed that a capital punishment gave a Brahmin guilty party isn't to be executed 'accepted', however, just 'by right' by the shaved area of his head. The shaved area to such a Brahmin was just about as great as his death. Capital punishment of a Brahmin guilty party might be executed 'by right' by his exile too. The later Smriti scholars additionally agreed with the assessment of Manu. Kautilya's Artha Sastra, Gautama's Dharma Sutras and Yajnavalkya's Smriti endorse that as a general rule a Brahmin guilty party was not to be condemned to death or whipping for any offense meriting a capital punishment, yet at the same in such cases different disciplines ought to be subbed.

Kautilya who absolved a Brahmin from capital punishment, when in doubt recommended certain phenomenal conditions where capital punishment can be given to a Brahmin too. A Brahmin who points at the realm or who powers entrance into the lord's array of mistresses or who affects outsider adversaries or clans against the lord or who instigates alienation or

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resistance in fortifications or in the nation or in the military ought to be condemned to death.

Artha Sastra contained arrangements for capital punishment on officials of State, when suspected to be schemers or in any case at legitimate fault for break of steadfastness to the sovereign. Passing to such suspects must be achieved simply by conciliatory moving and rather in a stealthy manner.

For assault, danger to kill, kidnapping and improper restriction, passing was given by execution. Different offenses which conveyed capital punishment by torturous killing were trespass on spots of public retreat, causing deplorable hurt, taking lord's assets and chariots and so forth. For submitting pyro-crime capital punishment was executed by consuming. The individual at fault for harming an extension or deterrent of a water course would be suffocated. The concept of death penalty is as old as that of mankind. It is very old concept which talks about the lawful society since ancient periods. The Indian epics like Ramayana and Mahabharata also talks about death penalty as "Vadhadanda." In Indian society concept of morals and religion is very sacred. If any crime against moral and religion came into existence then stringent punishment should be given to them.

Mostly death penalty is given in heinous crimes which are against the society, their morals, norms and values. For the first time under the chairmanship of Lord Macaulay, Indian penal code has been made which came into force on 6 October 1862. There are many provisions under the Indian penal code which prescribes the death penalty as a punishment; some provisions are punishment for murder, waging war against government, abetment to insane and child, abetting mutiny, dacoity with murder etc. So it becomes the basic need to prevent more heinous crimes which are harming society at large. There are many kinds of punishments under Indian laws like life imprisonment, rigorous imprisonment, fine and death penalty which are most severe punishment in legal system. The aim of this kind of punishment under the Indian criminal justice system to remove crimes against human beings and to provide justice to those who suffer and to discourages other by giving death penalty. The concept of death penalty is always in argument by those who are in favour of retention and who are advocating for abolition of death penalty.

There are many international debates on it but no suggestion came forth. In international meetings like declaration on human rights, civil and political covenants etc. the topic of abolition or retention of death penalty has been raised and these meetings also suggest some other alternate punishment for death penalty but that are not accepted by all countries. There many countries which abolished the death penalty but there are also many countries who wants

to retain the death penalty in their state to reduce crime rates and provide justice to victims.

The concept of rape in India is very wide and important part in criminal justice system which needs and demands justice because rape cases are at peak in India and that is very inhumane practices which are coming from the ancient times and needs strict punishment. Society demands death penalty in rape cases. To remove these crimes many amendments has been made like the criminal law amendment act 2013 but not able to get their satisfactory result and again amendment came which is known as criminal law amendment act 2018 which stringent the rape punishments and provide death penalty to offenders. So the concept of death penalty is very wide and effective which plays a significant role in the criminal justice system. In India death penalty is immemorial practice. There are many crimes in society which can be reduced by the help of strict penal laws like death penalty.

## **II. EXECUTION OF DEATH SENTENCE**

In India the method of execution of death penalty is very old which prescribes the process of ending the life of a convict in any heinous crime. Giving death penalty is a legal process where a person is put to death by hanging. Section 368 of Criminal Procedure Code, 1973 is giving confirmation of death penalty in high court. Generally the death penalty is giving in cases of murder and in rarest of rare cases. The concept of execution of death penalty is also described in Dharamshashtra and Arthshashtra in ancient India.

### **(A) Mode of execution in India:**

In India there are the two main modes of execution of death penalty. These are: -

#### **a. Hanging**

The mode of hanging till death is as old as Indian society. From the ancient time periods criminals were punished by hanging. At that time kings gives the punishment of death by hanging to their criminals who commit crime in his state. During the British time period it is normal to hanged criminals. In 2010 two criminals has been put to death by hanging. The one was Afzal guru a terrorist who attacked on Indian parliament in 2001 and hanged in Tihar Jail Delhi in 9 February 2013. Another one is Ajmal Kasab a Mumbai attacked terrorist hanged in 2012.

#### **b. Shooting**

Another mode of execution is shooting. It is also very popular mode of execution in India. In India criminals are also put to death by shooting to them. The shooting mode is prevailing from the British time period. So these are the two modes of execution in India. There are also some

other modes which are prevailing all over world. These are –

- Lethal injection
- Beheading
- Shooting by fire squad
- Stoning
- Electrocution
- Falling from height

#### **(B) Validity of execution of death penalty**

There are various Supreme Court judgments which talks about validity of execution of death penalty. In *Bachan Singh v. State of Punjab* in this case it was held that death penalty should be given in rarest of rare cases. In *Mithu Singh v. State of Punjab* in this case it was held by Supreme Court that mandatory death penalty is unconstitutional.

#### **(C) Delay in Execution**

It is the great concern of law reformers towards the delay in execution proceedings which violates the basic rights of people. This inordinate delay is unconstitutional which is against the fundamental rights and other statutory rights which protects a man's liberty and unavoidable delay in execution of death penalty. In Nirbhaya case the convicts filed curative petition may time after the execution warrant has been issued against them. So it is totally the wastage of time and other resources of state.

### **III. PROS AND CONS OF DEATH PENALTY**

#### **Pros**

- It avoids heinous crimes in society.
- It protects the interest of people.
- It provides fair justice to victim and society.
- It discourages other people from doing same crime.

#### **Cons**

- It violates rights of people.
- It is against human rights.
- It many times clutches innocent persons.

- It is against right to life under article 21 of constitution.
- It is inhumane practice.

So these are the basic pros and cons which reflects the necessity and unnecessary of death penalty.

#### **IV. LIKELY FUTURE OF DEATH PENALTY**

Many countries globally has also abolished the mode of punishment of death penalty but many others are favouring it, because it protects the interest society and gives the fair justice. In today's changing society the pattern of looking towards crime and criminals has been changed. They look at them with other wide and broad perspectives and wants to change the old tradition of death penalty which are against the human rights and very barbaric Practice which is violate of right to life and other statutory rights which says every man has a right to live and protect them. There is a great debate between the abolitionist and retentionist. Those who're abolitionist want to abolish it inhumane practice from the justice system but those who are retentionist wants to retain this by advocating with strong points for providing justice to society at large. According to him to revoke grave crimes it is necessary to retain such type of punishment which brings fear in minds of criminals and others to discourage from doing these types of crimes which are against the society.

#### **V. DEATH PENALTY AND STATUTORY FRAME WORK IN INDIA**

##### **(A) Death Penalty under the Indian Penal Code, 1860**

**Waging War:** Sec. 121 of IPC, 1860 this part engages to incur capital punishment for the offenses of endeavouring taking up arms or abetment for taking up arms against state. The seriousness of swaying was has been planned as a lot higher by virtue of countries security and solidarity and respectability of the country, because of which this segment gives for capital punishment. Notwithstanding, the existence detainment has been another option, while Fine has likewise been given furthermore. This segment has been more regularly summoned in different psychological warfare cases wherein the fear based oppressor exercises have been considered as the waging battle against the state.

**Sedition:** Sec. 124-A affords "death penalty for sedition. The line dividing preaching disaffection towards the Government and legitimate political activity in a democratic set-up cannot be precisely drawn. Where the legitimate political criticism of the Government in power ends and disaffection begins, cannot be ascertained with precision."

**Section 132** this arrangement manages the offenses of abetment of insurrection furthermore the

outcomes of such uprising in the event that it's really dedicated. This has been set toward the start of the VII<sup>th</sup> Chapter of IPC which manages the offenses connecting with the Army, Navy and Air Force. This part forces capital punishment for the offense of abetment to submit insurrection by any official or fighter of military if any such insurrection happens because of the abetment. This arrangement likewise recommends life detainment as a substitute discipline alongside fine.

**Section 194:** “Whoever gives or fabricates false evidence, intending thereby cause, any person to be convicted of an offence which is capital by the law for the time being in force in India shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. And if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished with either death or the punishment herein before described.”

**Murder:** Sec. 302 Set under the Chapter XVI managing offenses influencing human body, this arrangement is maybe the most unmistakable and clear notice of death punishment under IPC. It incurs capital punishment for the individual whoever submits murder. Notwithstanding, life detainment has additionally been recommended as a substitute discipline. A flat out translucent risk of life for removing life of certain has been endorsed under the current arrangement.

**Section 307,** it is an arrangement under IPC which has made a legitimate quake under the law enforcement arrangement of India. The arrangement has an essential drafting which sets out capital punishment in any event, for an endeavour of the homicide. Subsequently, actually it's the most vulnerable arrangement under the IPC which recommends capital punishment even on the ground of harmed to somebody. The arrangement has been generally reprimanded on the ground that, it incurs capital punishment with simply an endeavour to make a hurt somebody. Moreover the arrangement of required capital punishment for the offense submitted by a daily existence convict under this proviso has been generally talked about and scrutinized.

**Rapes committed by gangs are punishable by death:** Under the Criminal Law (Amendment) Act, 2013, an individual who brings about hurt in a sexual maltreatment that outcomes in death or is left in a “constant vegetative state” might be condemned to death.

These progressions were carried out in the result of Nirbhaya assault and passing in New Delhi in 2012. As indicated by the 2018 Criminal Law Ordinance, an individual who is obligated for assaulting a young lady who is under 12 years old might be condemned to death or shipped off jail for a very long time alongside fine. These adjustments to law enforcement came because of the assault and murder of an eight-year-old young lady, Asifa Bano, which sparked widespread

political turmoil in Jammu and Kashmir State and around the nation.

**Section 376E:** This arrangement causes capital punishment for rehash criminals, who have been recently sentenced for an offense which has been culpable beneath Sec. 376 or Sec. 376A, or 376D & if such wrongdoer accordingly gets indicted for offenses culpable under any of the previously mentioned arrangement, has been recommended with life detainment or by capital punishment.

**Kidnapping not resulting in death:** “If any person detaining anybody and threatens to kill him or harm him during which the kidnapper's act actually resulted in the death of the victim, will be liable under Section 364A of Indian Penal Code, 1860, kidnapping not resulting in death is an offence punishable by death.”

**Dacoity with Murder:** Section 396 this arrangement has been put under the Chapter XVII of IPC managing the offenses against the property. It recommends capital punishment for the offense of sharpness with murder under this arrangement. It gives that, any of at least five men who are conjointly submitting dacoity and submits murder all of those people have been endorsed with capital punishment.

### **(B) Provisions under Criminal Procedure Code, 1973**

**Sec. 366 of Code Criminal Procedure, 1973** demands the affirmation of capital punishment by the High Court. The primary arrangement of this specific segment positions, “When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and sentence shall not be executed unless it is confirmed by the High Court.”

**Sec. 368 of Criminal Procedure Code** engages the High Court to affirm sentence or cancel conviction. It conceives “in any case submitted under Sec. 366, the High Court - (a) may confirm the sentence, or pass any other sentence warranted by law, or (b) annul the conviction, and convict the accused of any offence of which the court of session might have convicted him, or order a new trial on the same or on amended charge, or (c) may acquit the accused person; Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.”

**Sec. 369 of the Criminal Procedure Code** endorses that either affirmation of the sentence or new sentence is to be endorsed by two appointed authorities of High Court. It runs in this manner: “In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall when such Court consists of two or more Judges, be made, passed and signed by at least two of them.”

**Sec. 370 of the Criminal Procedure Code** manages the technique in instances of distinction of assessment. "Where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by Section 392 of the same Code." "When a sentence of death is referred to the High Court for confirmation and the Judges differ, the matter should be referred to a third Judge, under section 370, who should not decide it according to the opinion of the Judge for acquittal or conviction, but shall deliver his opinion."

**Sec. 371 of the Criminal Procedure Code** manages the method in cases submitted to High Court for affirmation. It provides "In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the Order, under the seal of High Court and attested with his official signature, to the Court of Session."

**Sec. 413 of the Criminal Procedure Code** deals with the execution of order passed under Sec. 388: It reads "When in a case submitted to the High Court for the confirmation of a sentence of death, if the Court of Session receives the order of confirmation or other order of the High Court thereon, it shall cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary."

**Section 414 of the Criminal Procedure Code** deals with "the execution of sentence of death passed by High Court. When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant."

**Sec. 415 of the Criminal Procedure Code** manages the delay of execution of sentence of death if there should be an occurrence of appeal to Supreme Court. "(1) Where a person is sentenced to death by the High Court and an appeal from its judgment lies to Supreme Court under sub-clauses (a) or sub-clause (b) of clause (1) of Article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until the period allowed for preferring such appeal has expired, or if an appeal is preferred within that period, until such appeal is disposed of."

**Sec. 416 of the Criminal Procedure Code** is an important provision because it deals with "the postponement of Capital Punishment on pregnant woman. It envisages: If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may if it thinks fit commute the sentence to imprisonment for life."

The jail superintendent plays an important role in carrying out the procedures in the event of a death sentence. Before execution, various medical examinations must be performed. Similarly, before carrying out the execution procedure specified in the appropriate order, the jail superintendent should ascertain whether the death sentence imposed on any of the prisoner's co-accused has been commuted. If it has been commuted, the Superintendent should notify the superior authorities, who must then take prompt action to bring the matter to the attention of the court concerned.

**Remission and Suspension of a sentence:** Sec. 432 Criminal Procedure Code deals with “remission of a sentence granted by the appropriate government. The head of the state has powers to grant remission to the prisoners on the offenders request and there is also general remission the specific category of prisoners which of given by the aid and advice of council ministers only on special occasion.”

#### **(C) The Army Act, 1950**

This Act is only a regulation to unite and join the law connecting with legislature of the standard armed force in India. Subsequently, it assumes a crucial part in keeping the peace and lawfulness under the military. The same IPC, the Army Act likewise accommodates the discipline of death for specific offenses. Section VI of Army Act has been named as Offenses' and it enrolls the different offenses for which capital punishment has been recommended.

#### **(D) The Explosive Substance Act, 1908**

This institution contains complete 7 Sections among which Sec. 3 (b) accommodates capital punishment. Here, its relevant that, non- changed text of Section 3 used to give the discipline of the transportation forever, but by Explosive Substances (Amendment) Act, 2001 the endorses the discipline of death for the unique class of touchy substances. Subsequently, India's retention's stand over capital punishment has been seen to be gone on further. This change of 2001 has really improved the discipline to capital punishment this makes this institution one of the small bunch regulations giving capital punishment.

#### **(E) The Arms Act, 1959**

Section 27 (3): Under this Act, was comprised with capital punishment; in any case, the arrangement recommended capital punishment to be the sole discipline under specific area, which provided it with a type of mandatory capital punishment'.

## **VI. PARDONING POWER UNDER CONSTITUTION AND JUDICIAL REVIEW REGARDING CAPITAL PUNISHMENT**

As the express arrangement of the Article 72 is very clear in its indication, the Leader of India has been engaged to allow the acquittals, respites, rests or abatements. In most normal speech, exonerating infers absolution or kindness which is offered to somebody who has done some genuine wrongdoing or wrong and acquitting eradicates every one of the stains of responsibility from such individual. Aside from this, exonerating additionally recommends a more grounded feeling of prevalence of a power that has the strong ability to give excuse somebody, consequently makes it a force of higher status.

Art. 21 of the Constitution of India “guarantee to its citizens the right to life and personal liberty which includes the right to live with dignity. According to this article, no person shall be deprived of his life and personal liberty except according to the procedure established by law.”

Art. 72 of The Indian Constitution: “Power of President to grant pardon etc., and suspend, remit or commute sentence in certain cases: (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence - (a) In all cases where the punishment or sentence is by a Court Martial.”

Art. 161 of the Indian Constitution: “Power of Governor to grant pardon etc., and to suspend, remit, or commute sentences in certain cases: The Governor of a State shall have the power to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the Executive power of the State extends.”

In its 262<sup>nd</sup> Report, “the Law Commission called for the abolition of the death penalty in all cases except those involving terrorism.”

## VII. JUDICIAL RESPONSE REGARDING DEATH PENALTY

In *Kehar Singh v. Union of India*, Supreme Court held that, “The power of pardon is part of a constitutional scheme and we have no doubt that it should be so treated also in the Indian Republic. It has been reposed by the people through the Constitution in the head of the state and enjoys high status. It is a constitutional responsibility of great significance, to be exercised when occasion arises in accordance with the discretion contemplated by the context.”

In *Jagmohan Singh v. State of U.P.* “which was India's first case dealing with the constitutional validity of capital punishment. In this case, the appellant's counsel advanced three arguments that invalidated section 302 of the IPC. For starters, execution violates all of the fundamental rights guaranteed by Clauses (a) to (g) of Sub-clause (1) of Article 19, and thus the law

governing capital punishment is irrational and not in the best interests of the general public. Second, the Judges' discretion to impose capital punishment is not based on any standards or policy mandated by the Legislature for imposing capital punishment over life imprisonment. Third, he contended that the uncontrolled and unguided discretion of judges to impose capital punishment or life imprisonment is violated by Article 14 of the Constitution because two people found guilty of murder on similar facts may be treated differently, with one losing his life and the other receiving only a life sentence. Finally, it was argued that the law's provisions do not provide a procedure for the trial of factors and circumstances critical in deciding between the death penalty and life imprisonment. The Criminal Procedure Code limits the scope of the trial to the issue of guilt. In the absence of any legal procedure in the matter of sentence, the protection provided by Article 21 of the Constitution was violated, and thus the death penalty is also unconstitutional. After hearing the arguments, a five-judge panel upheld the constitutionality of the death penalty, ruling that deprivation of life is constitutionally permissible and was recognised as a permissible punishment by the drafters of our Constitution.”

In *Kuljeet Singh v. Union of India*, a writ petition filed by the accused Ranga and Billa after the Supreme Court denied their special leave petitions. They were sentenced to death for the murder of a teenage girl and her younger brother after giving them a ride in their stolen car while driving through Delhi's streets. The court determined that the children's deaths were the result of savage planning with a professional stamp. It said: “The survival of an orderly society demands the extinction of the life of persons like Ranga and Billa who are a menace to social order and security.”

In *Om Prakash v. State of Haryana* “A member of the Border Security Force assassinated seven people. All seven victims, including men, women, and children, were sleeping at the time of the crime, and firing was used without provocation to exact vengeance over a land dispute. The court accepted the accused's argument that he was forced to commit the crime because the authorities ignored his complaints about the deceased's encroachment on his property. The court considered the fact that the appellant was a disciplined member of the armed forces with no criminal antecedents, was 23 years old at the time of the offence, and that there is no reason to believe that he cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence that would constitute a continuing threat to society.”

In *Samsher Singh v. State of Punjab* “a seven-judge bench of the Supreme Court held that, the satisfaction of the President or the Governor required by the Constitution is not their personal satisfaction, but the satisfaction of the Council of

Ministers on whose aid and advice the President and the Governor exercise their powers and functions.”

### **VIII. CONCLUSION**

Crimes by man is an extremely old event, it has solid roots in the general public, showed up and developed alongside the advancement of man and dynamically its inclination emerged as general illness influencing the each side of society. Numerous reformat acts can be performed to control different crimes which are rising fiercely. It became rising social danger and it is a normal insinuation to each day of quiet presence. It is pervasive in all power and there is barely any friendly region which is absolutely out of from the danger of crime or completely controlled the crime percentage, yet it emerged as earthwork in country and showed up at perilous levels particularly later getting opportunity. A short investigation of the example of managerial endeavours by researching unique adjustments made to India Penal Code may in like manner do an assistance to illustrate regardless of whether everyone's mindfulness has been expected towards decreasing the region or widening the augmentation for revile of the death penalty and disciplines to various offenses. as of late study of crime's theories, the stroll of the bunch who need to nullify the advancement over the landmasses, the tradition of nation and assessment of the makers of present day India. Safeguards in the law have drooped in giving a typically safe condition to affiliation of this unalterable request. The Courts' endeavour to unavoidably prepare the execution of capital punishment has not all around borne normal thing. The Commission suggests what solidify strategies for police changes, witness affirmation plan and horrendous misfortune pay plan ought to be taken up quickly by the overseeing body. The blessed realness of the passing punishment has been attempted commonly on the ground that it excuses the central privileges ensured in Articles, 14, 19 and 21. Further, this developed perspective has predominantly been considered concerning Sec. 302 of India Penal Code. It is limitlessly certain that the Supreme Court in passing on its purposes for living considered various parts viz. the size of the terrible conduct, the stunning thought about the offense and brutal strategy for this execution, the validity and the frail condition of the individual being alluded to, point, strict, political or station separates as the premise of homicide threatening to social nature of awful conduct and high political or social making due from the individual being alluded to. In India, where the hardware of police in much the same way as the magistracy isn't adequate to control the issues of offense conveniently, the continuation of capital discipline is unavoidable and the present judicious strides for the life and opportunity of everybody are more than agreeable.

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