



## **CAPITAL PUNISHMENT: PROS AND CONS, WHY IS IT JUSTIFIED?**

**SHALINI KHARWAR & CHETNA GROVER\***

---

### **ABSTRACT**

The practice of capital punishment, commonly referred to as the death penalty, is a subject of significant controversy in the global criminal justice arena. This abstract delves into the implementation of the death penalty in India and evaluates its advantages and disadvantages, with the objective of elucidating its rationale. The potential benefits of capital punishment in India include its capacity to serve as a deterrent, offer a sense of justice for both victims and society and serve as a symbolic form of retribution for particularly egregious offences. Advocates contend that it functions as a potent mechanism for discouraging prospective perpetrators and ensuring the protection of the general public. Moreover, it is believed that it fulfils the requirement for retributive justice, providing a sense of resolution to the families of the victims and conveying a powerful message regarding the gravity of specific offences.

Nevertheless, the drawbacks associated with capital punishment in India pertain to issues such as the possibility of executing individuals who are innocent, the likelihood of partiality in its implementation due to social and economic inequalities, and the ethical predicament surrounding the negation of an individual's entitlement to life. Critics contend that the criminal justice system is susceptible to error, and the imposition of irreversible punishment may result in permanent mistakes, thereby rendering capital punishment intrinsically flawed. A thorough analysis of the efficacy, equity, and ethical considerations is imperative in order to ascertain the rationale behind the implementation of capital punishment in India. The objective of this article is to provide an impartial assessment of the advantages and disadvantages of capital punishment, facilitating a more profound comprehension of the intricate dynamics associated with its implementation in India's legal system.

---

\* LLM Students at Amity Institute of Advanced Legal Studies-Noida.

**Keywords:** Criminal Law, Death Punishment, Justice System, IPC, CrPC etc.

---

## INTRODUCTION

The Indian penal code does not provide a specific definition for the term in question. Section 53 of the code outlines the various forms of punishment, including the death penalty, which is reserved for only the most exceptional circumstances. Offences can be classified into two distinct categories, namely simple and rigorous punishment. Criminal activity is a pervasive issue worldwide, and in nations such as India, where crime rates are notably high, measures must be taken to combat these offences and safeguard our communities. The commission of egregious criminal acts poses a significant threat to societal well-being and cannot be condoned. In order to uphold public safety and security, it is imperative that criminals be held accountable for their actions through punitive measures. Capital punishment, reserved for the most severe and atrocious crimes against humanity, such as criminal conspiracy, murder, insurrection against the government, and murder during the commission of a robbery, is a legal penalty under the Indian Penal Code. The clemency of capital punishment can solely be granted by the head of state. As per Article 72, the President is vested with the authority to bestow a pardon or remission, among other powers. Capital punishment in India is executed through the method of hanging until the individual ceases to live.

## WHAT IS THE RAREST OF RARE CASES?

The legal principle of "rarest of rare cases" was established in the *Bacchan v. State of Punjab* case.<sup>1</sup> The highest court in the country aimed to clarify the circumstances under which the most severe penalty in the legal system should be imposed by introducing a doctrine for offences that carry the death penalty. As per the ruling of the Supreme Court, the constitutionality of the death penalty must be upheld solely in instances that are deemed to be the most exceptional and uncommon. Nevertheless, the precise boundaries of this concept have not been established. According to the Ratio Decidendi of the Bachchan Singh case, the constitutionality of the death penalty is contingent upon its prescription as a substitute for the death penalty in cases of murder, where the punishment for murder is life imprisonment. The imposition of the death penalty is restricted to exceptional circumstances where no viable alternative is available.

---

<sup>1</sup> *Bacchan v. State of Punjab* (1982) 3 SCC 24.

Subsequently, in the case of *Macchi Singh v. State of Punjab*<sup>2</sup>, the highest court of the land established a set of standards to ascertain whether a criminal offence could be classified as belonging to the category of "rarest of rare." As per the verdict of the Supreme Court in the case of *Santosh Kumar Bariyar v. State of Maharashtra*<sup>3</sup>, the principle of "rarest of rare" serves as a guiding principle for the implementation of Section 354(3), which establishes that life imprisonment is the general rule and capital punishment is the exception. According to Section 303 of the Indian Penal Code, individuals who have been sentenced to life imprisonment are also subject to the death penalty. Consequently, this particular segment was deemed to be in violation of the Constitution. The year 2008 marked the judicial ruling on the notion of a "rarest of rare cases" in the legal matter of *Prajeet Kumar Singh v. State of Bihar*. As per the ruling of the Supreme Court, capital punishment may only be imposed in cases where a homicide has been committed in a manner that is deemed ruthless, grotesque, diabolical, revolting, or dastardly, and which elicits a strong and profound sense of resentment within the community.

The concept of "rarest rare cases" pertains to exceptional circumstances that cannot be overlooked by the court in the interest of justice for the victim. It is incumbent upon the court to ensure that justice is served for the aggrieved party and to safeguard society from the malevolent perpetrator, thereby upholding the principles of justice.

## **PROS OF THE CAPITAL PUNISHMENT**

The imposition of capital punishment is deemed necessary for safeguarding society against individuals who have demonstrated a lack of compassion and regard for human life, treating individuals as mere automatons. By subjecting such individuals to punishment, the safety of society can be ensured. This will serve as a deterrent for potential offenders, as it establishes a precedent that committing such egregious offences will result in awareness of the associated repercussions.

The implementation of capital punishment is deemed crucial in curbing the perpetuation of criminal activities. Research findings indicate that crime rates tend to escalate in the absence of this form of punishment, while its execution is associated with a decrease in criminal activities. This suggests that the imposition of punishment serves as a deterrent to potential offenders, thereby promoting societal well-being and enhancing national security against criminal elements.

---

<sup>2</sup> *Macchi Singh v. State of Punjab* 1983 Air 957.

<sup>3</sup> *Santosh Kumar Bariyar v. State of Maharashtra* (2009) 6 SCC 498.

During the period of incarceration, offenders may abscond from correctional facilities, resulting in additional criminal activity and an incomplete fulfilment of their sentence. This outcome is unjust to the victim and undermines the administration of justice. When perpetrators evade capture, they have a propensity to engage in further criminal activities, thereby posing a risk to the community. The commission of a crime poses a threat to the welfare of society, and it is incumbent upon us to uphold the principles of justice by ensuring that the offender is held accountable for their actions and subjected to appropriate punitive measures.

## **CONS OF THE CAPITAL PUNISHMENT**

Capital punishment, commonly known as the death penalty, is often regarded by a significant number of individuals as a form of punishment that is inhumane. Critics argue that it is tantamount to murdering the offender, thereby perpetuating a cycle of violence that is unceasing and ultimately counterproductive. As such, it is widely believed that this approach is not a viable solution to addressing criminal behaviour.

In certain circumstances, the judiciary may render an erroneous verdict due to the presence of fabricated or insufficient evidence, resulting in the conviction of an innocent individual. Unfortunately, such a decision cannot be reversed, even if the individual is later proven innocent. This can result in the loss of an innocent life, which cannot be remedied. However, if the individual is incarcerated, their life can be preserved, and if they are subsequently exonerated, they can be released and compensated accordingly. Although he cannot regain the time lost, he can at least continue to live the remainder of his life.

In certain cases, an offender may lack the cognitive ability to comprehend the consequences of their actions. In such instances, rehabilitation and consultation sessions may be more appropriate than immediate punishment, as executing such individuals would be unjust given their lack of men's rea at the time of the offence. Consequently, individuals who merit a prospect of life are deprived of the possibility to achieve it via the implementation of capital punishment. The notion of terminating an individual's existence appears to deviate from societal norms. Apart from its violent nature, such a form of punishment is also deemed to be uncommon and inhumane. While it is important to hold offenders accountable for their actions, a viable alternative to capital punishment is life imprisonment.<sup>4</sup>

---

<sup>4</sup> Sartaj K. Singh, 'The Death Penalty and Bariyar: The Road Ahead, August 2, 2009, available at <http://currentlegalissues.blogspot.com/2009/08/death-penalty-debate.html> accessed 22 May 2023.

## **COURTS INTERPRETED THE CONCEPT OF CAPITAL PUNISHMENT AND ITS VALIDITY.**

Article 21 of the Indian Constitution guarantees all individuals a fundamental right to life and liberty. The aforementioned amendment delineates that an individual's life and liberty cannot be deprived without due process of law. As per this particular interpretation, it is within the purview of the state to deprive an individual of their life, provided that there exists a just and legitimate process for doing so. In addition to affirming the constitutional soundness of capital punishment in exceptional circumstances deemed as the "rarest of rare," the Supreme Court has validated the constitutional soundness of capital punishment in instances where the federal government asserts that it serves as a preventive measure against individuals who endanger the welfare of society. The constitutionality of the death penalty has been upheld by the Supreme Court on three occasions, namely in the cases of *Jagmohan Singh v. State of Uttar Pradesh*, *Rajendra Prasad v. State of Uttar Pradesh*, and *Bacchan Singh v. State of Punjab*. Capital punishment may be imposed upon an individual if it is authorised by the governing laws and if the procedures employed are deemed to be equitable, impartial, and rational. In the Indian legal system, capital punishment is reserved for the most exceptional circumstances, as determined by the courts. In such cases, the courts must provide compelling justifications for their decision, which do not infringe upon the individual's right to life and personal liberty as enshrined in Article 21 of the Constitution. The apex court has established that in certain exceptional cases, the death penalty may be imposed as a means of safeguarding society from heinous crimes and offences that cannot be overlooked. Based on the circumstances of the case and the presented facts, the court determines whether or not to impose the death penalty.

## **WHY CAPITAL PUNISHMENT IS JUSTIFIED?**

From our perspective, capital punishment ought to be deemed justifiable in specific instances and is imperative for the safeguarding and security of the community. Punishment serves as a deterrent to society, and failure to impose penalties would likely result in an escalation of criminal activity, allowing offenders to act with impunity and potentially leading to a rise in serious criminal behaviour. The dispensation of justice to the victim is imperative, and capital punishment is a measure that is reserved for the most exceptional of circumstances. The decision to impose the death penalty is based on a comprehensive evaluation of all available evidence, facts, and contextual factors related to the crime, and is made after consultation with experienced jurists.

The ethical question at hand pertains to the value of human life and the justification for the continued existence of individuals who engage in the act of taking another's life without due consideration. Such individuals pose a potential danger to society. Ensuring the safety and protection of individuals is imperative for creating a secure environment. The case of Macchi Singh involved the consideration of guidelines applicable to the rarest of rare cases. These guidelines encompassed factors such as the manner in which the crime was committed, the ultimate motive for the crime, the degree of antisocial or abhorrent behaviour exhibited, the proportionality of the crime, and the extent of harm inflicted upon the victims.

### **HOW IS IT IMPORTANT TO PROTECT OUR SOCIETY?**

Safeguarding our society is crucial as it poses a potential hazard to our well-being. The infringement of individual freedom by malefactors could impede the ability of individuals to lead their lives freely. It is imperative to ensure that people can go about their daily activities without fear of criminal activity. The court is entrusted with the responsibility of safeguarding society from the inhumane and violent acts perpetrated by offenders. The entitlement to receive justice is a fundamental right of the victim. Preserving the existence of humankind and issuing a cautionary message regarding the consequences of their conduct are crucial imperatives. The implementation of this measure is expected to result in a reduction in crime rates and an improvement in the overall environment. This would instil a sense of security among the populace, as they would have confidence in the efficacy of the justice system and the accountability of offenders.

In nations such as India, where instances of rape and homicide have escalated and become more prevalent, it is imperative to implement severe penalties, such as capital punishment, as a means of safeguarding the populace. Individuals may experience a reduction in fear or uncertainty regarding their personal safety within their nation. Therefore, capital punishment is deemed necessary in specific instances where it is imperative to ensure justice for both society and the victim. Individuals who have forfeited their humanity should not be permitted to continue living as criminals.

### **CONCLUSION**

Capital punishment, commonly referred to as the death penalty, is a controversial topic. From my perspective, the use of the death penalty is warranted as a means of safeguarding and protecting society. The highest court has established the principle of the "rarest of rare" cases and provided criteria for determining the appropriate punishment. Furthermore, it has been asserted that Article 21 is not being contravened. It is imperative for individuals who engage in criminal activities to be aware of the potential

repercussions. Reducing crime rates is an essential objective to consider. It is imperative that there be no undue lapse of time between the issuance of a capital punishment verdict and its subsequent implementation. Capital punishment is a severe form of penalty that is exclusively reserved for the most atrocious or exceptional cases.