



## A Critical Review Of The Death Penalty In India

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**Abstract:** There is several law and regulation in India which control crimes, even though crime rates increasing because the punishment is not sufficient for the crimes. There must be a severe punishment to reduce the crime rate. In all type of crimes, capital punishment is the most severe punishment in India. This paper defines capital punishment and critically study on it. This research is based on information already available and analyzed these facts to evolve this research. There are secondary data in that research. This research consisted mainly of books, articles and journals etc. Capital punishment is not the ultimate solution to crimes but education, awareness etc. will be controlled on these types of crimes.

[Ram, S. **A Critical Review Of The Death Penalty In India.** *Researcher* 2021;13(2):25-27]. ISSN 1553-9865 (print); ISSN 2163-8950 (online). <http://www.sciencepub.net/researcher>. 3. doi: [10.7537/marsrsj130221.03](https://doi.org/10.7537/marsrsj130221.03).

**Keywords:** capital punishment, crimes, sentence, prisoner, execution and clemency.

### Introduction

The death penalty, also known as capital punishment, is a state-sanctioned practice of killing someone as a punishment for a crime. The sentence order that someone is punished with the death penalty is called a death sentence and the act of carrying out such a sentence is known as an execution. A prisoner who has been sentenced to death and is awaiting execution is referred to as condemned and is on death row. Crimes that are punishable by death are known as capital crimes, capital offences or capital felonies and vary depending on the jurisdiction but commonly include serious offences against individuals such as murder, rape with injuries that may result in the death of the victim and a repeat offender are punishable under capital punishment. Waging war against the state and terrorism related offences causing death are some major crime punishable with death under the Indian penal code. There are some provisions under the Army Act, The Narcotic Drugs and Psychotropic Sustenance Act, The Schedule Caste and Schedule Tribes Act, The Commission of Sati Prevention Act, The Air Force Act and The Navy Act wherein capital punishment prescribed as one of the punishments for serious offences. Now repealed act such as the Prevention of Terrorism Act (POTA) and Terrorist Disruptive Activates Act (TADA) also contained a death sentence.

### Research Methodology

This research is based on information already available and analyzed these facts to evolve this research. There are secondary data in that research. This research consisted mainly of books, articles and journals etc.

### What Has The Supreme Court Ruled On The Constitutional Validity Of The Death Sentence?

- Jagmohan Singh v/s state of Uttar Pradesh (1973) and Rajendra Prasad v/s state of Uttar Pradesh (1979): - People file the petition in court and said that capital punishment violates the article 21 (prevent state to snatch life with an exception, only through the procedure of law). However, the court said that it did not violate article 21 because the court gives enough time to the accused to show himself not guilty. Therefore, capital punishment is constitutional in nature.

- Bachan Singh v/s state of Punjab (1980): - the Supreme Court said that capital punishment gives on the rarest of a rare case and the court must give a special reason for it.

- Machhi Singh v/s state of Punjab case where High Court was defines the “rarest of rare case”. They define it that these are those cases, which are uncommon in nature.

- Justice Radhakrishnan said in 2013 that societies decide that what is the rarest to rare case but not any judge.

### What Is The Process Available To A Death Row Convict?

In India, until the Supreme Court declares the death penalty, the accused not hang. If the Supreme Court also declares the death penalty then the accused can file a Review Petition. If the Supreme Court gives again the death penalty after reviewing the petition, then he can file the curative petition. If the curative

application also rejected then he apply mercy plea to the President of India and if he rejects the mercy plea after that accused hanged.

#### **Does The Executive Have Role In Clemency?**

Mercy petition of accused given to President then he can take the advice of Home Minister of India. The President of India can accept or reject the advice of the Home Minister.

Shatrughan Chauhan v/s Union of India (2014) and Allahabad High Court in peoples union for Democratic Right v/s Union of India (2015), in both case, it was said that if mercy petition rejected by President then accused hanged after 14 days because accused can settled matters with the world, meet their family etc.

If the accused suffering from Terminal disease then capital punishment converts into life imprisonment.

When the President cannot accept or reject the mercy petitions and delay in result then:-

1. Vatheeswaran v/s state of Tamil Nadu: - in this case, it cleared that if president results delay 2 years then the death penalty changed into life imprisonment.

2. Sher Singh v/s State of Punjab: - reject the verdict of Vatheeswaran v/s state of Tamil Nadu case.

3. Trivenben v/s state of Gujarat: - according to this verdict that delay may be the main factor to change capital punishment into life imprisonment.

4. Shatrughan Chauhan v/s Union of India (2014): - the delay in the result of mercy petition then capital punishment changed into life imprisonment.

#### **The Argument Against Capital Punishment**

❖ **Baccaria's Treatise:** - in 1964, he was written in his book that

- Capital punishment was publically murder.
- It was against the reform of the accused.
- The state cannot have the power to snatch the life and liberty of citizen because it violates the social contract.

❖ **Lord Macaulay's argument:** -

- Several arguments come against capital punishment but neither of the argument in favour of deleting capital punishment from the constitution.

- Several petitions also came in robbery and gang rape case related to capital punishment but he said that these two crimes were not equal to murder case because if you take the life of anyone then accused hanged but in these two crimes, there was no death of victims.

❖ **Confusion in deciding the rarest of the rare case:** -

- Mahinder Singh raped his daughter and sentenced to 12 years of jail and when he comes out of jail on parole, he killed his wife and his daughter. In

that case rarest of the rare case not confirmed by the Supreme Court and explained that he is no threat to the people of India.

- A few days later, the bench focuses on a similar case where a man kidnapped a 7 year boy and killed him. The Supreme Court said it the rarest of rare case, Supreme Court bench imagine the sad face of boy's family whose only male child die.

Both cases are similar but different perception of the court.

❖ **Irrevocability:** -

If anyone sent to jail but after, few years he found innocent then he released from jail, but if he hanged before founding innocent then what to do.

Santosh Kumar Bariar v/s state of Maharashtra: - The Supreme Court accepts that the previous bench who render capital punishment to 13 men are ignoring the law of the constitution but before its acceptance, they had hanged. They found innocent after their death.

#### **The Argument In Favour Of Capital Punishment: -**

❖ **Retribution:** - all guilty people deserve to punish in proportion to the severity of their crimes. If anyone has to do any heinous crime then there should give capital punishment for those accused.

❖ **Deterrence:** - there is no evidence, which suggests that capital punishment as deterrence but no evidence show that it is non-deterrence.

❖ **Rehabilitation:** - it is controlled on the rehabilitation of accused again in social life, but if accused do repeatedly crimes then what to do.

❖ **Closure and vindication:** - if the accused hanged, it gives closure and vindication to his family that the rest of their life can spend in peace.

❖ **A Japanese argument:** - the physiologist of japan said that capital punishment gives the message that bad thing could happen with bad people and the good thing with good people. There is 81 percent of Japanese in favour of capital punishment.

#### **Conclusion**

India is a democratic country where people live with dignity. There is a law made for a citizen of India so that they live with self-esteem without affecting others self-esteem. If any crime committed by the accused he must be penalised by the state through law as it affects the public or the innocent victims. Capital Punishment is the most severe punishment in society. As being a member of the Universal Declaration of Human Right, our country did not abolish capital punishment but they limit its scope by awarding capital punishment on the rarest of rare cases. Capital punishment is not the ultimate solution to crimes but education, awareness etc. will be controlled on these types of crimes.

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2/20/2021