

# The Doctrine of Death Sentence: A Review

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## ABSTRACT

The highly contested doctrine of death sentence distinguishes a procedure where such a heinous crime has been committed that an alternative award of life imprisonment can never be recommended, and the precious action can be classified as the thesis of the rarest of rare theories in the age of punitive multiculturalism. The horrendous philosophical perspectives of the death penalty that were appropriated during the Moghul reign were later adopted by the colonial empire, who carried out the punishment of death penalty by following strict disciplinary judicial formalities, and this particular principle of death penalty was later adopted by the Indian Penal Code. As current criminal law collides with the heavenly views of the world's most renowned human rights philosophies, calls to limit or abolish the idea of death punishment are growing. In support of the above-mentioned idea, the second optional Protocol to the Covenant on Civil and Political Rights calls for the abolition of capital punishment and supports the expression of a human being's nobler and majestic characteristics. The ECOSOC resolution and subsequent statements guarantee delinquents facing the death penalty their fundamental rights. The paper emphasizes the essential features of death penalty principles, focuses on the perspectives of the death penalty's constitution ability and the rarest of rare doctrines, and concludes with a conclusive suggestion that the prospective doctrine of rehabilitative theory is more suitable than the Deterrent philosophy, harmoniously emancipating the possible transformation of a detainee.

## Keyword

Crime, Death, Death Sentences, Judicial, Rights.

## 1. INTRODUCTION

Death sentences are discouraged and disapproved by the noble concept of the right to life. Different jurisprudential academics and legal professionals have studied the extremely distinctive and varied views of the Indian criminal and penal laws in order to offer allegiance to the mandated standardized and empirical forms of behavior patterns of a civilized society. Although the death penalty remains the most contested and contentious paradigm of punishment theories, it must never be forgotten that the ultimate goal of amercement, strict disciplinary action, life imprisonment, forfeiture, or penance is to lessen the culpable deplorable disposition of committing a crime, rather than to eliminate the human being who committed it[1].

Among the three theories of punishment, Salmond considers the Deterrent theory to be the most important because "the primary aim of the law of crime is to make the evil doer an example and warning to others who are like minded with him." He goes on to add, "We hang murderers not just to instill terror of a similar destiny in the minds of those like them, but also for the same reason we kill snakes: it is better for us for them to be out of the world than in it[2]."

The idea of the death penalty refers to the imposition of a punishment with the legal authority to end the life of a human being who has complied with the law's stipulations. The second paradigm pertaining to the notion of the death penalty asserts that it can only be given for the most heinous and heinous acts, in other words, only in the rarest of rare situations. In *Omprakash & Anr Vs State of Tamil Nadu*, this viewpoint vision was validated and recapitulated[3].

## 2. DISCUSSION

### 2.1 Different Criminal Laws and Other Laws Concerning Death Sentences

Although Article 21 of the Indian constitution stipulates that no one should be deprived of his or her life or liberty unless in accordance with legal procedures, there are several statutory and penal provisions in Indian criminal law that allow for the imposition of capital punishment. Section 121, section 132, section 194, section 195A, section 302, section 305, section 307(2), section 364A, section 396, section 376E, and section 376A are the different provisions of the Indian Penal Code that provide death punishment.

The Air Force Act 1950, The Border Security Force Act 1968, The Narcotics and Psychotropic Substances (Prevention) Act, 1985 (amended in 1988), The Army Act, 1950, The Unlawful Activities Prevention Act, 1967 (amended in 2004), The Explosive Substances Act (amended in 2001), and many other laws have been adopted that adhere to the philosophy of capital punishment. Section 354(5) of the Criminal Procedure Code of 1973 specifies the method of carrying out the death sentence, stating that any prisoner convicted to capital punishment should be hung to death[4].

Although this often discussed technique has been labeled as inhumane, the idea of hanging to death was not deemed to be in violation of Article 21 in *Deena Vs Union of India*, and this position was upheld in *Shashi Nayar Vs Union of India*. Section 366 of the CrPc further stipulates that a death sentence imposed by the courts of sessions can only be carried out when the high court confirms or approves it under Section 368 of the CrPc. In its 35th report, the Laws Commission explored alternatives to the harsher penalties imposed by Section 302 or "303" of the IPC, with Section 303 eventually being thrown down as violating Article 14 and 21 of the Indian Constitution.

### 2.2 The Death Penalty's Constitutionality

Our Indian Constitution adheres to the philosophies enshrined in Articles 21 and 14, which guarantee the right to life and liberty as well as equality before the law and equal protection under the law. As a result, it appears to be self-evident that the philosophy of the constitution's jurisprudence was anti-death penalty, despite the fact that certain Articles still uphold the death penalty. It's also a well-known truth that only a subset of the most heinous, heinous offenses, such as murdering another person or committing any other very dangerous or perilous

criminal or violation, can result in death sentences[5]. Although the particular form of penance is frequently cited as being incompatible with the deeply rooted concepts of right to life and liberty on a national and international level, it has also been argued that the right to life is neither conclusive or unequivocal. To determine whether the death penalty falls within the scope of constitutional provisions, the first factor to consider is whether death penalty can be considered for specific crimes that meet all procedural requirements, and second, whether the sections of the IPC that deal with death penalty comply with constitutional specifications and stipulations[6]. In the well-known case of *Jagmohan Singh vs. State of Punjab*, the Supreme Court confirmed that the imposition of capital punishment was done in accordance with all the provisions relating to the legal procedure, and that the decision was not in conflict with the procurement as provided under Articles 14, 19, and 21.

In the case of *Rajendra Prasad vs. State of Uttar Pradesh*, it was held that a death sentence can only be justified if the offender or delinquent poses a threat to civilization, and that the judicial discretion granted under Section 354(3) of the CrPc, which allows a judge to change his decision in exceptional circumstances, is antagonistic. In *Bachan Singh vs. State of Punjab*, the Supreme Court reiterated its position that capital penalty is never incompatible with the paradigms of Article 21, which acknowledges the possibilities of expropriation or privation of human life in accordance with legal procedures.

In *Triniben vs State of Gujarat*, it was held that the "modus operandi" by which a person's life can be deprived must meet the requirements of justice, fairness, and reasonableness, and that the President's unjustified detention of the petitioner for forbearance could result in psychological agony for the delinquent facing punishment. In the case of *Madhu Mehta against Union of India*, the death penalty judgment was eventually modified to life imprisonment due to the President's protracted delay in considering a mercy appeal. To stay within the boundaries provided by Article 19, the core of the limitations that can be imposed in order to curb the freedoms contained in the Article must be reasonable and issued in the public interest, even though the state is never allowed to devalue all civil liberties[7].

Perceptions about permitting or acknowledging certain basic freedoms are not intended to encourage individuals to use them to limit the independence or liberty of others. Certain opponents argue that some of the sections of the IPC that involve and authorize death penalties are discriminatory in character, with death sentences being imposed on some citizens while others are imprisoned for life. The critics have long argued that the theory of capital punishment is not only in violation of Article 245 due to the judiciary's excessive and imprudent delegation of the legislative faculty, but that the rational codification provided by the legislature is insufficient, and that the legislative propositions are not equitable enough on which the judicial system is based[8]. Because the legislature lacks the capacity to anticipate the reality of diverse scenarios, the courts must be given broad discretionary powers to evaluate the facts of various situations. Not only is the judiciary well-trained to decide and hear trials impartially, but Section 235 (2) of the Indian Penal Code mandates a scope of discrete hearing for crimes and convictions, and Section 354 (3) of the IPC mandates the provision of exceptional grounds for prescribing capital punishment; thus, the Indian criminal legal procedure's capricious adaptability is absolute[9].

### 2.3 Understanding the Term "Rarest of Rare" from a Conceptual Perspective

The Supreme Court of India emphasized the factual aspects of a death sentence that must be delivered in the rarest of rare

instances under section 354(3) of the CrPc. In the case of *Machchi Singh vs. State of Punjab*, where three of the four delinquents were sentenced to death for the crime of murdering seventeen persons, Justice Thakkar sought to offer a vivid explanation of the term rarest of rare by presenting the following descriptions:

- When the means of committing the act are so brutal or barbarous that they elicit great hatred in society.
- When the motive for the offense is sufficient to qualify for privation, confiscation, or acquisitiveness.
- When the nature of the crime is socially unacceptable or despicable, such as when a bride is burned or a person belonging to a minority section of the civilization is murdered
- When the offence is committed in large numbers, such as when a large number of people belonging to a specific section of a society are murdered
- When the person who has been murdered is a juvenilia

Although, in the case of *Shashi Nayar vs Union of India*, the court rejected critics' arguments in favor of eliminating the death penalty, it was determined that capital punishment has a particular result and has a significant communal impact. The idea of stratification and uniformity of expected standards before the crime occurred was entirely overshadowed in *Mohammed Chaman vs State*. In the case of *Kanta Tiwari Vs State of M.P.*, the Supreme Court maintained the death penalty after a seven-year-old kid was raped and tortured to death, but in the case of *Ujagar Singh Vs Union of India*, the death penalty was overturned due to the offender's age. Due to a slew of evidentiary proof in the case of *Sk Ishaque Vs State of Bihar*, and in the case of *Dharampal Singh Vs State of Rajasthan*, the top court determined that it didn't fit within the realm of the rarest of rare situations. In the case of *Ediga Anamma*, the Supreme Court repeated its belief that the accused's young age, numerous sociocultural and economic crises, and the judges' unreasonable delay in considering mercy pleas may influence the judges' decision to impose a life sentence rather than the death penalty. In the instance of *Ranga Billa*, the severe and horrific criminal conduct was premeditated and violently carried out, and he was sentenced to death[10].

### 2.4 Arguments for and against the death penalty

With the expansive expansion of human rights concepts, there has been a global push to eliminate the notion of death sentences completely. While the Supreme Court of our country frequently reiterates that the concept of capital punishment does not violate the constitution's philosophical jurisprudence, it has also left the exact definition of the qualities that classify themselves under the theories of the rarest of rare doctrines to the judges' discretion. As a result, there are numerous reasons, debates, and conversations both for and against the death penalty. One of the primary reasons for the death penalty being abolished, according to critics, is its dubiousness and inconclusiveness, as well as irregularity in classification of the traits that fulfill the rarest of rare beliefs. While *Dhananjay Chatterjee* received the death penalty for the horrific rape and murder of a young girl, *Mohammad Chama* received a life sentence for the rape and murder of an infant[11].

While the Supreme Court has ruled that mass killings caused by intercommunal disputes come under the rarest of rare doctrine in a few cases, the highest court has ruled that mass killings caused by intercommunal conflicts fell under the rarest of rare doctrine in others. Critics have argued that the death penalty's atrocious, excruciating, degenerating, and inordinate nature, among other reasons, should be severely curtailed, and

jurisprudential scholars around the world have frequently confirmed that there is no conclusive evidence that the rate of crime decreases when death sentences are imposed. Another important reason why the death penalty concept should be abolished is because there are flaws, inconsistencies, or deficiencies in making choices about capital punishment that might jeopardize the notions of justice. While some jurists believe that capital punishments are primarily directed at the poor and disadvantaged, cases of lengthy and unreasonable detention in order to examine mercy petitions are additional significant grounds that totally support the opinion that the death penalty should be abolished.

The arguments in favor of capital punishment strongly believe that an excessive wait between the imposition and execution of the death sentence is unavoidable, and hence this can never be regarded a sufficient reason for totally opposing capital punishment. The Supreme Court further stated that while passing a death sentence, the unpleasant and revolting sentiments of a whole generation must be recognized, as well as the human rights of not just the accused but also the victims. According to the principles of the Stockholm Declaration, death sentences are only given in situations of horrific and repulsive acts, thus the Supreme Court has eliminated the possibility of erroneous death sentences by the judiciary.

### 3. CONCLUSION

We can never abandon the deeply rooted cherished notion that the individual human conscience is a valuable masterpiece capable of redevelopment or renovation to a loftier spirited being through appropriate therapy, as India witnessed the execution of the death sentences of Ajmal Kasab, Afzal Guru, and Yakub Memon in the recent past. Once their essence has been rescued from the philosophic debris of covetousness, rapacity, lecherous anxiety, or other precarious malfeasance, the most despicable villains can be reintroduced back into civilization as a cooperative human being mutually assisting everyone in the pursuit of a common goal. Aside from the deterrent theory, retributive philosophy promotes the notion of retaliation for injustice, but it cannot be overlooked that criminal jurisprudence reflects the ethical expressions of generations that are always expected to change. The concept of "human rights," in combination with the ideologies enshrined in the Universal Declaration of Human Rights, as well as the jurisprudence of modern criminal law, focuses not only on the legislative principles of one particular nation, but on universal judicial arrangements, and the newly organized international judicial sequence addresses the larger routes of criminal jurisprudence, even if it does not address the larger routes of criminal jurisprudence. The subconscious impact of controlled modulations in criminal legislations maintains the essence of human existence in high regard, and contemplation of highly recognized and respected philosophies of empathy and reclamation is best portrayed in diverse legal and judicial outlooks. The brutal theories of prescribing capital punishment without complying with the regularized formalities of trials, and even without following the principles of natural justice, the trappings of judicial savagery appear to be completely nullified by world scholars and experts, who admire Jesus Christ's sympathetic perspectives.

Rather than resorting to extremely harsh punitive methodology and heinous criminal anarchism, proper humanitarian remedies, including the magnanimous qualities of spiritual meditation, should be adopted in order to enhance a human being's finer sensibilities and ultimately result in the emancipation of compassionate feelings and the conquering of objectionable and offensive urges and compulsions. As a result,

it is clear that a curative, remedial, and disciplinary plan of action, restorative conduct toward delinquents in prison, active empowerment of prisoners' human rights perspectives, and other amending and rectifying patterns of social behavioral process, which ultimately aids in the ultimate metamorphosis of the prisoner, is the desired prison policy at a national level. The rehabilitative idea is actively promoted, which promotes the magnanimous existence of spiritually divine characteristics in a person, taking into account the futuristic potential of each individual prisoner, who has the power to evolve into a finer and dignified human being. Gandhiji had stated these perennially philosophical words while propagating the philosophy of rehabilitation and restitution: God Alone Can Take Life Because He Alone Gives It.

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