

# Capital Punishment in India (Constitutional Validity of Capital Punishment)

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**Abstract:** *Capital Punishment In India, which is the harshest punishment provided in the INDIAN PENAL CODE, 1860. And the question of what is the constitutional validity of capital punishment in this context. There are 5 types of punishments to punish the offender to control the criminal activity, such as death or capital punishment, imprisonment for life, simple and rigorous imprisonment, forfeiture of property, fine. Capital Punishment considered as the punishment of rarest and rare cases.*

**Keywords:** Capital Punishment in India, Constitutional Validity, Indian Penal Code, Rarest of the Rare Case.

## 1. Introduction

In the ancient period, if anyone was commit any offence that is against the established law of the king, then they punish the offender with various punishments according to his established law and nature of Act of the wrongdoer.

There was many principal followed to punish the offender or criminal or wrongdoer ,such as an eye for an eye, a tooth for a tooth , etc. Death sentence is the harshest of punishments provided in the IPC , which involves the judicial killing or taking the life of the accused as a form of punishment. The question of whether the state has the right to take the life of a person, however gruesome the offence he or she may have committed, has always been a contested issue between moralists who feel that the death sentence is required as a deterrent measures and the progressive who help to argue that judicial taking of life is nothing else but court mandated murder. The capital punishment only sets the upper limit of punishment. There is not a single offence in the IPC that is made punishable with mandatory sentence of death.

### Procedure to Imposing Capital Punishment

It is clear that capital Punishment is awarded in two categories of offences, namely, in treason and murder. The judiciary, in the offences punishable with sentence of death and alternatively with life imprisonment have to make critical choice between the two permissible punitive alternative, death sentence and imprisonment for life . The court decides that death penalty is the appropriate sentence to be imposed in the light of the circumstances of the case, the nature of the committed and the absence of mitigating factors, then the court under the provisions of section 354(3) of Code of Criminal Procedure ,1973 (CrPC) has to give “special reason” as to why it came to this conclusion.

Section 354(3) –When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death , the special reasons for such sentence.

There is another procedure safeguard provided in the context of award of death sentence. Section 366, CrPC, provides that once the Sessions Court awards death sentence , then the

court has to submit it to the High Court for confirmation. No death sentence can be executed unless it is confirmed by the High Court. This is meant to provide a second level of review of the evidence, so that the extreme penalty may be considered afresh by a higher judicial forum.

### Mode of Execution

According to section 345(5) of the Code of Criminal Procedure, 1973 , the execution of capital punishment is carried out in two ways namely hanging and shooting to death. When death is finalized and all available remedies exhausted, the execution of culprit is carried out. And in the Army Act, 1950 , Navy Act, 1957 and the Air Force Act, 1950 , the execution must be carried out by hanging by neck or shot to death.

### Constitutional Validity of Capital Punishment

Article 21 of the Constitution, as we all know, guarantees the fundamental right to life and personal liberty. While this article guarantees the right to life and personal liberty to every person, is it absolute? The answer is no because, despite the fact that everyone has the right to live with dignity, the state has the authority to take away or limit even this right for maintaining law and order.

But as determined in the case Maneka Gandhi v. Union of India (1978), the procedure must be a due procedure as it takes away a person’s sacred life and must be fair, reasonable, and devoid of any bias. It implies that the state may restrict or revoke a person’s right to life by enacting laws, provided that there is a fair and valid procedure. However, the death penalty is not a punishment for all crimes; rather, it is only applied to the most heinous offences.

The issue of capital punishment has long been debated and discussed by our legislators. Nonetheless, despite years of debate and disagreement, Indian legislators have yet to reach a firm decision on whether the death penalty should be retained or abolished. The majority of nations have different perspectives on crime and different methods for punishing offenders. However, India, like many other nations, takes a reformative approach to punishment, meaning they think that changing the criminal’s behaviour and attitude toward society is a better way to deal with crime. India is one of the 78 nations that have retained the death penalty. Moreover,

'rarest of the rare' and 'special reasons' are two grounds for imposing the death penalty in India.

The constitutionality of the death penalty has occasionally been challenged. In the case of *Jagmohan Singh v. State of Uttar Pradesh* (1973), the death penalty was first challenged on the grounds that it violated a person's right to life under Article 21 of the Indian Constitution, an important fundamental freedom. The five-judge bench of the Apex Court issued its ruling, stating that the death penalty is constitutionally valid and does not violate any of the Articles of the Constitution. It also found that the choice between the death penalty and life imprisonment was made after taking into account all the pertinent facts and the nature of the crime as they were presented during the trial.

In *Rajendra Prasad v. State of Uttar Pradesh* (1979), Justice Krishna Iyer asserted that the death penalty was a clear violation of Articles 14, 19 and 21 provided by our Constitution. Two requirements for imposing the death penalty on any offender were highlighted in this case. First, the specific reason or circumstance for which the offender was given this punishment must be recorded. Second, it can only be applied in extraordinary circumstances.

The "rarest of rare doctrine" was established by the landmark *Bachan Singh v. State of Punjab* (1980), decision, which also mandated the death penalty in certain circumstances. By a majority of 4:1, the Supreme Court upheld the constitutionality of the death penalty in this particular case, but it also established a rule requiring that it only be applied in the most extreme instances. Even though it was determined that the death penalty is an exception and life imprisonment is the rule, the Supreme Court's decision did not define or restrict the use of the phrase 'rarest of rare.'

The constitutionality of the death penalty was once again challenged in *Deena Dayal v. Union of India* (1983), on the grounds that hanging by a rope violates Article 21 because it is barbaric, inhumane, and cruel. The Supreme Court determined that hanging is an appropriate and fair method of execution within the constraints of Article 21 and is therefore constitutional.

In the case of *Mithu v. State of Punjab* (1983), it was determined that the death penalty under Section 303 IPC is unconstitutional because it infringes on the safeguards enumerated in Articles 14 and 21 of the Constitution. As a result, it was omitted from the Indian Penal Code. In the later decisions of *T. V. Vatheeswaran v. Tamil Nadu* (1983), the Supreme Court was faced with a conundrum regarding the execution of the death sentence and whether a significant delay was a justifiable reason to commute the death sentence to life imprisonment.

Further, the three-Judge Bench in the case of *Macchi Singh & Others v. State of Punjab* (1983), upheld *Bachan Singh's* ruling and stated that the death penalty can only be awarded in the rarest of rare cases when the community's collective conscience is such that it will expect those who hold the judicial authority to impose it. Under these circumstances, the following prerequisites must be satisfied:

- When the murder is committed in a manner that is particularly gruesome, revolting, or morally dubious in order to elicit a strong and extreme sense of outrage from the community.
- In the incident of bride burning or dowry death.
- When the crime is massively proportionate.
- When a Scheduled Caste member is murdered, which sparks outrage in society.
- When the murder victim is an innocent child, a vulnerable woman, or a person rendered helpless due to advanced age or illness.

## 2. Conclusion

It has been argued that capital punishment is barbaric and inhumane in the nature and violates the right to life of a person. The court passes various judgment have made it clear that capital punishment can be awarded in rarest of rare or special cases. According to previous data, we can see that capital punishments are awarded in fewcases of heinous crime. It acts as a deterrent to discourage grievous and heinous crimes.