



## Death penalty and its impact on crime deterrence in India

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### Abstract

To stop and handle crime, India has a variety of regulations. The punishment should be proportionate to the crime committed in order to reduce the crime rate. All punishments aim to exact retribution on the offender. The death sentence, life in prison, and other types of punishment are used often in India. The application of the death penalty in India is discussed in the paper that follows. This explains the reformative hypothesis, one of the key arguments against the death penalty. This essay offers a comprehensive explanation of both the death punishment in India and the execution procedure. The death penalty's effect on crime deterrence is the main topic under discussion. Is it reasonable to say that, while restorative justice is a fine idea in theory, it cannot be the only approach to dealing with injustice instances in practice? Because of this, it must be applied carefully while weighing the rights of the criminal and the victim.

**Keywords:** death penalty, capital punishment, rarest punishment

### Introduction

Every punishment is based on the notion that there must be a penalty for breaking the law. The punishment is imposed for one of two primary reasons. One is that punishing a wrongdoer is both lawful and just, and the other is that doing so discourages other people from acting in the same way. The death sentence and other punishments are all based on the same idea. Given the situation that today has produced the topic of the death penalty is the one that is most generally pertinent. The death penalty is a crucial part of India's criminal justice system. The existence of the death penalty in India is questioned as being unethical, bolstering the human rights movement. The execution of a person who has been granted a death sentence after being found guilty of a crime by a court of law is known as capital punishment, also referred to as the death penalty. It's crucial to distinguish between extrajudicial killings and executions carried out without a court order. Even though the imposition of the punishment (even when it is affirmed on appeal) does not always involve execution, the phrases "death penalty" and "capital punishment" are frequently used synonymously. This is because the sentence could be upgraded to life in prison. The most severe form of punishment is referred to as "Capital Punishment." It is the punishment for the most heinous crimes against human body. The outcome of capital punishment has always been the death penalty, despite the fact that the type and seriousness of these crimes vary from country to country. In law, criminology, and psychology, a "capital sentence" is a sentence that results in death. According to Article 21 of the Constitution, which states that "no one shall be deprived of his life or personal liberty except under the way prescribed by law," every citizen is given the fundamental right to life. This means that while the state may take your life if it so chooses through the established legal process, it will never be possible to violate your right to life in any other way. Most legal systems reserve the death penalty for the most egregious offences; not all crimes are punishable by death.

### Research Methodology

This research makes use of a number of different methodologies used in legal research. The most crucial component of legal research is the sources of legal materials because without them, it is impossible to find solutions to the legal problems that have been raised. As a result, legal materials are used as sources of legal research in order to address the problems that have been raised. The writers of this study used both primary and secondary legal sources.

### Understanding The "Rarest of The Rare Case" Doctrine

The highest court's initial assessment of whether to impose the death penalty on a criminal is that it would be the rarest of rare cases. The court has a duty to determine if an appropriate alternative remedy already exists for the serious offence. As a result, the sentence is determined based on the specifics of the case. Few human rights organizations and activists are categorically opposed to courts imposing the death sentence. The Indian Penal Code's Sections 53, 121, 132, 194, 302, 305, 306, and 396 include the statutory provisions pertaining to this notion. The court correctly identified what would constitute a "rarest of rare cases" in the 2008 decision in *Prajeet Kumar Singh v. State of Bihar*. The Supreme Court has ruled that in order to be executed, a murderer must have "provoked enormous and intense outrage of the community."

To meet the "rarest of rare" threshold, judges must first identify and consider aggravating and mitigating factors. Characteristics of the offender that explain their acts without defending their unlawful behavior are known as mitigating factors. This gives the judge the ability to determine whether or not the presence of these traits warrants the death penalty or a life sentence. Judges must use a "broad and wide construction" of mitigating circumstances when doing this exercise (and not aggravating factors). To qualify as one of the mitigating factors, the State must show that the accused is incapable of reformation. Following that, the sentencing procedure requires judges to inflict the death penalty in the "rarest of rare" situations, in which the

prospect of life in prison is ruled out. The Bachan Singh 4 judgment's interpretation of the "rarest of rare" doctrine differs from that of the prior judges. The offense's ferocity and other aggravating factors place the interpretation in several categories of crime. Some judges rely their interpretation of the "rarest of the rare" doctrine on classifications or descriptions of crimes without making reference to the legal standard requiring that the possibility of life imprisonment be "unquestionably foreclosed." There is some confusion over the scope of mitigating circumstances, even though the legislation provides an indicative list of aggravating and mitigating circumstances to be taken into account when calculating a punishment. *State v. Manu Sharma (NCT of Delhi) (2010)*. The Jessica Lal case, also referred to as one of the horrifying murder cases that made society realize that, while money can sometimes buy anything, it cannot always purchase justice. After declining to give one of the defendants a drink in this case, the girl was shot and killed. After frantically seeking justice for her sister in every court, she was finally able to have the suo motu case heard by the High Court thanks to a media trial. In this case, the accused persuaded the essential witnesses to turn hostile, and as a result, the court sentenced him to life in prison. After weighing the relative importance of the aggravating and mitigating variables, this decision was made.

### **Death Penalty Laws in India**

India has considerably decreased its use of the death sentence from its early years of independence, when at least 1422 persons were executed between 1953 and 1963. Due to major problems with its administration and retention, the death penalty in India is only used in very specific situations. The Indian Supreme Court upheld the legality of the death punishment in *Bachan Singh v. State of Punjab (1980)*. The death penalty may be appropriate in circumstances when the public conscience has been sufficiently aroused to urge for its implementation, according to a three-judge panel in the case of *Machhi Singh v. State of Punjab (1983)*, which took place three years later. Consequently, the Supreme Court has frequently exploited the premise of soothing the general conscience and society's demand for justice to preserve the death penalty. Except in the rarest of situations when there is no other viable option, the death sentence is an exception rather than the rule. Only the most severe and responsible crimes are subject to the death penalty. This is not further defined and there are no established rules, thus each judge must determine whether to sentence someone to death. According to legal scholars, the "rarest of rare" doctrine is not intended to suggest that the rarity of the offence should serve as the criterion for eligibility; rather, judges should first identify and then weigh aggravating and mitigating circumstances (related to the crime) to determine eligibility (related to the circumstances of the accused) (related to the circumstances of the accused). Judges are also expected to generously and extensively interpret mitigating factors, such as the fact that the accused has not undergone reformation. By employing such methods, the death sentence should only be applied when the prospect of life in prison has been completely ruled out. The rarest of rare doctrine is thought to be interpreted inconsistently, depending to changing case law, although it is likely to have contributed to the fall in the application of the death penalty.

### **Ineffectiveness of the Death Penalty in Deterring Crime**

Evidence from the USA and Canada demonstrates that the death sentence has no appreciable impact on local crime rates. It is frequently asserted that eliminating the death penalty will result in a rise in crime. The evidence from the various nations does not support this claim, though. It has been established that the death penalty has a brutalizing impact on society rather than enhancing its safety. Killing that is sanctioned by the government only serves to justify violence and keep the cycle of violence going. One of the essential tenets of criminal law is that everyone is reasonable and has the capacity to understand the consequences of their actions. Consequently, the accuser's mental condition has a significant influence on decisions taken at various important stages of a trial, especially in instances involving the death penalty. Criminals weigh the consequences of being caught and decide that a life sentence is preferable to death over the consequences of being caught.

There is little chance that the threat of punishment will stop the crime from being committed in the first place because many crimes are committed in the heat of the moment because of offenders' lack of faith in their capacity to be caught and held accountable. It might perhaps result in greater carnage. Execution is the most severe punishment a state may administer to a criminal. Once a criminal has committed a capital felony, they are no longer concerned with escaping the death penalty by committing no further murders or other crimes. The robber has nothing to gain by killing others while trying to flee, for example, if armed robbery carries the death penalty. Only the most severe crimes are subject to the death penalty. Circumstances, such as when a murder has been committed in a cold-blooded, intentional, or barbaric way. The decision to apply the death punishment is left largely up to the discretion of the courts. This discretion is limited and needs to be exercised carefully. While taking into account any aggravating or mitigating circumstances in a particular instance, applying recognized judicial standards. The evidence points in a different direction. The harshness of the penalty must coexist with the certainty and promptness of the punishment for deterrence to be effective. Terrorism, murder, or even thievery has not been deterred by the death penalty. Mitigation is the process of compiling and presenting information to a court that demonstrates how the accused is anchored in their historical, biological, psychological, and social settings. It's important to understand that mitigation does not serve as a legal defense or justification for the crime. Instead, it clarifies the prisoner's behavior and warms the judge's heart. This strategy frequently entails obtaining written proof and interviewing key witnesses, including the clients themselves as well as their spouses, employers, teachers, and family members. *Bachan Singh* recognizes the importance of a divided trial and the need for evidence to be presented at the sentencing stage, but in practice, these things are infrequently carried out. In response to these flaws, the Supreme Court suggested hiring probation officers, although not even this recommendation has been carried out.

### **Conclusion and Suggestions**

The death sentence has not proven to be a deterrent in Indian society. It is legitimate that a person be apprehended,

declared guilty, and given a sentence to serve in days in accordance with the legal framework. But it's important to comprehend the motivations underlying the aggressive behavior and criminal intent. It's possible that we won't be able to comprehend the context in which violence is committed and what may be done to deter such behavior in future offenders if we only concentrate on the person's criminal act and punish him. As a result, the goal of law should now be to take into account mitigating circumstances and aim toward imposing penalties that are primarily reformatory. The death of a criminal would not eradicate crime from society; rather, the threat of conviction would instill dread. Instead of focusing solely on increasing punishment, combating crimes against women and children requires broader societal reforms, continuous governance activities, and enhanced investigative and reporting procedures.

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