**“CAPITAL PUNISHMENT - NEED OR NECESSITY”**

By:

**Vedant Ratha** 2nd Year, B.B.A L.L.B. (Hons)

KIIT School of Law, Bhubaenshwar, Odisha

 E-mail–vedantratha@gmail.com

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 *www.probono-india.in*

**ABSTRACT**

As a way of delivering justice, capital punishment or the death penalty has become the most contentious topic in our society's legal system. The death penalty is a legal process in which a person is sentenced to death by the state as a punishment for committing a crime. With the growth in demand for human rights, taking a criminal's life has become the most contentious and discussed topic not only on a national but also on a worldwide level. Surprisingly, this method of execution has been used from the beginning of recorded history. The death penalty appears to have been a feature of the judicial system in most historical records of diverse civilizations and basic tribal traditions.

**Keywords:**Definition of Death Penalty, Constitution of India, Rarest of Rare Cases, Supreme Court Judgements, Clemency Powers

**INTRODUCTION**

The death penalty (sometimes known as capital punishment) is a kind of punishment in which a criminal is condemned to death and subsequently executed by a court of law. It is the most severe penalty that the law may inflict anywhere on the globe. It is the legal process by which courts punish individuals who commit the most heinous and heinous crimes against society.

"No other penalty deters a man from committing crimes as effectively as the sentence of death," said an English judge, James Fitzjames Stephen. This is one of those statements that are difficult to test simply because it is clearer than any proof could ever make it. Any secondary penalty, no matter how horrific, offers hope, but death is death, and the terrors it brings cannot be sufficiently conveyed.

 For the worst offenses, the death sentence is viewed as the most appropriate punishment and effective deterrence. Opponents, on the other hand, consider it cruel. As a result, the death penalty's morality is disputed, and many criminologists and socialists across the world have long advocated for its repeal.

### **ARGUMENTS: IN FAVOUR OF CAPITAL PUNISHMENT**

### People should get what they deserve in proportion to the gravity of their crime, according to one of the basic concepts of retribution.

### This argument claims that true justice necessitates individuals suffering for their transgression and suffering in a manner commensurate with the offense.

Each criminal should receive the punishment that their crime deserves, and in the instance of a murder, the offender should be executed.

Deterrence: The notion that executing convicted murderers will discourage would-be killers is frequently used to justify capital punishment.

The death sentence is frequently suggested to give closure to victims' families.

There are several stories of people who have been sentenced to death using the time before their execution to repent, express regret, and, in many cases, undergo great spiritual rehabilitation.

According to Thomas Aquinas, embracing death as a punishment allowed the offender to atone for his wicked actions and so avoid punishment in the future life. It shows that the death sentence can result in some types of rehabilitation.

**ARGUMENTS: AGAINST OF CAPITAL PUNISHMENT**

The statistical evidence does not support the idea that deterrence is effective.

Because of mental illness or a disability, some of them executed may not have been able to be prevented.

Some capital crimes are committed in such an emotional condition that the offender is unaware of the potential ramifications.

Even though death has been recommended in rape cases since 2013 (Section 376A of the IPC), rapes continue to occur, and the savagery of rapes has grown dramatically. This leads one to believe that the death penalty is an effective crime deterrent.

Innocent Individuals Being Executed: The most prevalent argument against death punishment is that, sooner or later, innocent people will be executed because of human error.

According to Amnesty International, the possibility of killing the innocent will never be removed if human justice is flawed.

Opponents of capital punishment believe that revenge is evil and only a sanitized form of vengeance.

In most industrialized nations, death as a form of punishment has been abolished.

"Some 170 States have abolished or established a moratorium on the capital penalty, either in law or in practice, or have delayed executions for more than 10 years," according to the UN Secretary General's report on the death penalty given to the Human Rights Council. The prisoner is neither rehabilitated nor returned to society when they are sentenced to death.

**CAPITAL PUNISHMENT IN INDIA**

A careful examination of the debates in British India's Legislative Assembly reveals that no issue of capital punishment was raised in the Assembly until 1931, when Shri Gaya Prasad Singh, a member from Bihar, attempted to introduce a bill to abolish the death penalty for offenses under the Indian Penal Code. The proposal, however, was defeated after the then-Home Minister responded to it.

Before Independence, the then-Home Minister, Sir John Thorne, expressed the government's position on death punishment in British India twice in debates in the Legislative Assembly.

"The government does not believe it is wise to eliminate the death punishment for any crime for which it is being used."

The Code of Criminal Procedure, 1898 (‘Cr.P.C. 1898') and the Indian Penal Code, 1860 (‘IPC') were among the laws in force when India gained independence from the British colonial authority. The IPC stipulated six penalties, including death, that may be inflicted under the statute.

If the accused is convicted of an offense punishable by death and the court sentences him to any punishment other than death, Section 367(5) of the CrPC 1898 required courts to record reasons why the death penalty was not imposed: If the accused is convicted of an offense punishable by death and the court sentences him to any punishment other than death, the court shall state in its judgment the reason why the death penalty was not imposed.

Section 367(5), CrPC 1898, was abolished by Parliament in 1955, dramatically changing the position of the death penalty. The death penalty was no longer the norm, and judges didn't require exceptional justifications for not enforcing it in situations when it was a mandatory punishment.

When the Code of Criminal Procedure (‘CrPC') was re-enacted in 1973, several changes were made, including to Section 354(3): When the conviction is for an offense punishable by death or, in the alternative, by life imprisonment or a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of a death sentence, the special reasons for such sentence.

This was a substantial change from the status after the 1955 amendment (when the death penalty and prison sentences were both options in a capital case), and a reversal of the position under the 1898 legislation (where the death sentence was the norm and reasons had to be recorded if any other punishment was imposed). Judges were now required to demonstrate extraordinary reasons for imposing the death penalty.

In Section 235(2), these revisions also included the option of a post-conviction hearing on punishment, including the death penalty:

If the accused is found guilty, the Judge must hear the accused on the issue of punishment, and then pass a sentence on him according to law, unless he proceeds in line with the requirements of section 360.

**CAPITAL PUNISHMENT: CURRENT SCENARIO**

1. **Supreme Court on Capital Punishment and Its Stand in India**

Article 21 of the Indian Constitution guarantees everyone's fundamental right to life and liberty. It goes on to say that no one's life or personal liberty may be taken away from them unless they follow a legal procedure. This has been interpreted legally to indicate that if a method is fair and lawful, the state can deprive a person of his life by enacting a law.

While the federal government has said that the death penalty would remain in place as a deterrent and for individuals who pose a threat to society, the Supreme Court has also supported the constitutional legitimacy of capital punishment in the "rarest of rare" situations. The Supreme Court upheld the constitutional legality of the death sentence in three cases: Jagmohan Singh vs State of Uttar Pradesh (1973), Rajendra Prasad vs State of Uttar Pradesh (1979), and Bacchan Singh vs State of Punjab (1980).

It said that a criminal can be sentenced to death if the capital penalty is authorized in the law and the method is fair, just, and reasonable. This will only be done in the "rarest of rare" circumstances, and the courts should give "exceptional grounds" before sentencing someone to death.

1. **Rarest Of Rare Requirements**

The criteria of what constitutes the "rarest of rare" were spelled forth by the Supreme Court in Bacchan Singh versus State of Punjab, a landmark decision (1980).

The Supreme Court established some broad illustrative parameters, stating that it should be awarded only when the alternative of a life sentence is "unquestionably precluded". To reach this determination, the court was given wide discretion.

The Supreme Court, on the other hand, established the idea of balancing, aggravating, and mitigating factors. A balance sheet of aggravating and mitigating factors in a specific case must be created to determine whether justice would be served if a sentence other than death is imposed.

The Supreme Court ruled that two key questions may be asked and answered. First, is there something unusual about the crime that makes a life sentence insufficient and necessitates the death penalty? Second, are there circumstances of the crime such that there is no other option but to impose the death penalty, even after giving the most weight to the mitigating factors in the offenders' favour?

**IS THERE ANY ALTERNATIVE TO CAPITAL PUNISHMENT?**

As a reaction to objections raised in death cases, the Supreme Court has enshrined the punishment of "whole life" or a life sentence of a set number of years. In the Swami Shraddhanand case, the Supreme Court, in a three-judge bench judgment, established the groundwork for this new punitive alternative as follows:

“It's possible to look at the situation from a different perspective. There are two elements to the problem of sentences. A sentence might be excessive and unnecessarily severe, or it can be woefully lacking. When an appellant comes to this Court with a death sentence imposed by the trial court and upheld by the High Court, the Court may conclude, as it did in this instance, that the case falls just short of the rarest of the rare and may be hesitant to uphold the death sentence. However, given the nature of the crime, the Court may firmly believe that a sentence of life in prison with remission, which typically equates to a term of 14 years, is excessively unfair and insufficient. So, what should the Court do now? If the Court's punishment options are restricted to two options, one of which is a sentence of imprisonment for all intents and purposes of not more than 14 years and the other of which is death, the Court may be enticed and prodded to support the death penalty. A route like this would be terrible. Expanding the alternatives and taking over what legitimately belongs to the Court, namely the huge gap between 14 years of imprisonment and execution, would be a considerably more just, reasonable, and proper path. It is important to note that the Court would adopt the extended option since, given the facts of the case, a sentence of 14 years in jail would be the equivalent of no penalty at all. Furthermore, the formalization of a specific type of sentencing, even for a very small number of instances, will have the significant benefit of keeping the death penalty on the statute book but using it as infrequently as possible, in the rarest of situations..."

The Court has applied the findings in Swamy Shraddhanand to several cases, including Haru Ghosh v. State of West Bengal, State of Uttar Pradesh v. Sanjay Kumar, Sebastian v. the State of Kerala, and Gurvail Singh v. State of Punjab, where full life or a sentence of a certain number of years was awarded instead of the death penalty.

**CLEMENCY POWERS**

A condemned prisoner can petition the President of India and the Governor of the State for compassion if his or her appeal against capital sentence is denied by the Supreme Court. According to Articles 72 and 161 of the Constitution, the President and Governors have the authority to "give pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the sentence of any person guilty of any offense." Both powers are not personal to the holders of the Office but must be utilized on behalf of the people (under Articles 74 and 163, respectively).

While clemency powers can be used for a variety of reasons and on a variety of circumstances, they can serve as the last line of defence against judicial mistakes or miscarriage of justice. This places a heavy burden on those who wield this power, necessitating a thorough examination of judicial records, as well as a wide range of inquiries, when deciding on a clemency petition, particularly one from a prisoner facing a judicially confirmed death sentence who is on the verge of execution.

The Indian government's Ministry of Home Affairs has created the "Procedure Regarding Applications for Mercy in Death Sentence Cases" to help state governments and prison officials deal with mercy petitions presented by death row inmates.

**REVIEW FROM THE VIEWPOINT OF JUDICIARY OF THE MERCY POWERS**

In the matter of Shatrughan Chauhan, the Supreme Court stated that before deciding on mercy pleas, the Home Ministry considers the following factors:

1. The accused's personality (such as age, sex, or mental deficiency) or the circumstances of the case (such as provocation or similar justification),
2. Cases in which the appellate court expressed doubt about the reliability of evidence but still found the defendant guilty,
3. Cases in which it is alleged that new evidence is obtainable primarily to determine whether a new investigation is warranted.
4. Where the High Court overturned an acquittal or increased the sentence after an appeal,
5. Are there any differences of opinion among the High Court Judges that would necessitate a referral to a larger Bench?
6. Evidence consideration in determining blame in a gang murder case,
7. Prolonged inquiry and trial times, etc.

When the actual actions of the Ministry of Home Affairs (on whose recommendations mercy petitions are determined) are examined, these principles were not followed in many cases. In several situations, Writ Courts have investigated how the Executive has handled mercy pleas. The Supreme Court considered 11 writ petitions contesting the Executive's denial of the mercy petition as part of the Shatrughan Chauhan case.

Even when a mercy plea is denied, the Supreme Court last year ruled that judicial clemency might be given based on undue delay.

**REPORT OF THE LAW COMMISSION OF INDIA ON DEATH PENALTY**

In its 262nd Report (August 2015), India's Law Commission proposed that the death penalty be abolished for all crimes excluding terrorism-related offenses and war. The following are the report's full recommendations:

* The Commission recommended that the government implement police reforms, a witness protection program, and a victim compensation program as soon as possible.
* The progression of our jurisprudence from 1955, when special reasons were not required for imposing life imprisonment instead of death, to 1973, when special reasons were required for imposing the death penalty, to 1980, when the death penalty was restricted by the Supreme Court to the rarest of rare cases, demonstrates the direction in which we must go. The Commission felt that the time had come for India to move towards abolition of the death penalty, informed by the expanded and deepened contents and horizons of the Right to Life, strengthened due process requirements in interactions between the State and the individual, and prevailing standards of constitutional morality and human dignity.
* Even though there is no solid penological rationale for treating terrorism differently from other crimes, there is frequently expressed fear that abolishing the death penalty for terrorism-related offenses and waging war would have an impact on national security. Given the legislators' concerns, the Commission saw no need to wait any longer to take the first step toward abolishing the death sentence for all offenses other than terrorism-related offenses.
* As a result, the Commission proposed that the death penalty be repealed for all offenses save those linked to terrorism and war.
* In addition, the Commission genuinely expects that progress toward total abolition will be rapid and unstoppable.

**CONCLUSION**

After considering the arguments for and against capital punishment, I have concluded that the death sentence is ethically justified to a large extent. When a criminal commits a capital crime, they should receive a punishment that is proportional to the crime, and it is widely believed that the death penalty is the worst punishment possible because it not only takes away a criminal's physical freedom by imprisoning them, but it also takes away their psychological freedom by removing their ability to choose whether to live.

As a result, the claim that it is a harsh system is incorrect, because torture is avoided, and death punishment is delivered compassionately in modern times. When a criminal is mercifully murdered for his or her heinous crimes, it implies that they will be unable to re-offend after being freed from jail, which is quite frequent, and even if they are not intended to be released, there is a small chance of their escaping. This is extremely useful to society since it will boost the confidence of innocent people who may otherwise be scared to leave their homes. As a result, lethal punishment is preferable to the majority, making more people happy.

Capital punishment also serves as a deterrent to future criminals, deterring them from committing capital crimes, therefore increasing public safety. Some say that capital punishment hasn't made a difference in crime rates; nonetheless, the fact that it exists makes a country's criminal justice system appear more serious, which deters future criminals. It's also hypocritical for the government to murder as a kind of retaliation for murder. However, the legal system responds to immoral behaviour by imposing a punishment that is proportional to the heinous crime; in these circumstances, the death sentence is the sole option for murder.

The fact that the criminal refuses to learn and cannot modify his or her ways; yet it may be argued that every human being is given one shot at life, and their morality is a personal choice for which they must pay a price. To sum up, I feel that capital punishment is ethically correct since it helps society tremendously, is administered compassionately, and is the only penalty that is proportional to the offense.

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**ABOUT THE AUTHOR**

Vedant Ratha is from KIIT Law School, Bhubaneswar. He is currently in 2nd year. He is also an intern at ProBono India. He is brilliant with all trades and have mastered a few as well. His interest lies in International Law. He wishes to pursue a career in the same.