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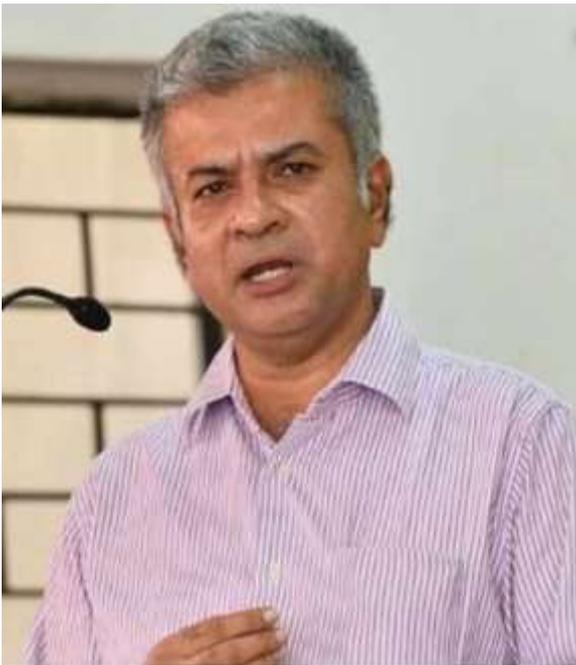
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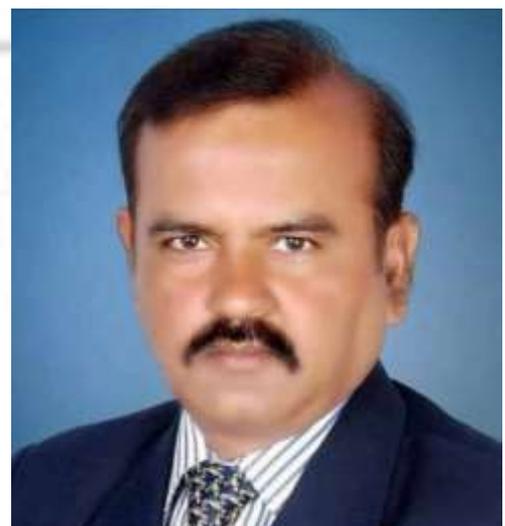


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CAPITAL PUNISHMENT IN INDIA: A LEGAL AND JUDICIAL ANALYSIS OF ITS EVOLUTION, APPLICATION, AND CONTEMPORARY CHALLENGES

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ABSTRACT

The main emphasis of this paper is on the legislative framework and judicial development surrounding the death penalty in India, focusing on *Bachan Singh v. State of Punjab* in which 'rarest of rare' doctrine was laid out. It tracks the use of the death penalty by examining important laws, constitutional articles and significant court rulings. This article critically examines concerns pertaining to sentencing inequalities, delay in the disposal of mercy petitions, and implication on human rights. This paper also analyse arguments in favour and against of the jurisprudential and policy. Suggestions for mitigating procedures and uniform sentencing are also stated.

Keywords: Capital Punishment, Rarest of Rare, Collective Conscience, Mitigating Factors, Aggravating Factors. Death Penalty

2. RESEARCH METHODOLOGY:

Doctrinal analysis of the relevant judgements of courts, constitutional provisions, and other interpretations is used in this research paper. Qualitative methodology is also used in this paper by analysing scholarly publications, judicial decisions, and legal documents.

Keeping in focus these objectives, this research paper provides a nuanced and thorough knowledge of capital punishment in India. It serves dual understanding on both academic and practical levels.

3. INTRODUCTION:

3.1. Historical Context of Capital Punishment in India:

Death penalty or capital punishment, refers to the execution or killing of individuals which is sanctioned by the state. This is given mainly to the convicts of murder, treason or gang rape. It can be traced in India from ancient texts like the *Arthashastra* and *Manusmriti*, which prescribed death for offenses which are serious in nature, though restraint is provided in Buddhist and Jain principles. Mughals employed executions frequently for rebellion like crimes. Britishers codified capital punishment to use it frequently to suppress dissent in the Indian Penal Code (1860).

After independence, India retained the death penalty, guided by the Constitution and judicial discretion. The Supreme Court gave “rarest of rare” principle (*Bachan Singh v. State of Punjab, 1980*) restricts its application to exceptional cases. Executions remain infrequent, with prominent examples including *Dhananjoy Chatterjee (2004)* and *Ajmal Kasab (2012)*.

3.2 International Discussion on the Death Penalty: Retention vs. Abolition

A. Arguments Advanced by Abolitionists:

Human rights organizations and some Indian officials have called for its abolition, arguing it violates the right to life and can constitute cruel, barbaric, or subhuman treatment. (Narwal, T. 2022). Human rights watchdogs like Amnesty International asserts that capital punishment constitutes a breach of fundamental human rights such as right to life and right against torture (Amnesty International. 2025). Abolitionist while opposing capital punishment maintain that it is a irrevocable and cruel measure, endangering the life and liberty of individuals who may be erroneously convicted due to fallibility in the criminal justice system protected under Article 3 of the Universal Declaration of Human Rights, 1948. This stance finds affirmation in the case of *Shatrughan Chauhan v. Union of India (2014)*, which draws attention towards the prolonged delays in the execution of death sentences, which amounts to degrading and inhuman treatment, thereby violating there Article 21 of the Constitution. Project 39A (2016) highlights the risk of miscarriage of justice by wrongful convictions due to faulty legal procedures and inadequate representation, while judicial fallibility is highlighted by the 185+ exonerations that have occurred worldwide since 1973 (*Sangeet v. State of Haryana, 2013*). Abolitionists also point to studies by the National Research Council (2012) and the Law Commission of India (2015), which indicated that prison had a very nominal deterrent impact

and that crime rates were stable in abolitionist countries like Canada. India's retentionist position is under pressure from more than 140 abolitionist nations worldwide (Amnesty International, 2024).

B. Arguments Advanced by Retentionists:

Retentionists argue that, as seen in the Nirbhaya case (*Mukesh & Ors. v. State, 2017*), in which the Supreme Court highlighted public indignation, the death sentence provides closure and a sense of justice for the families of victims. Despite the lack of empirical proof, they assert deterrence for heinous acts, citing *Bachan Singh v. State of Punjab (1980)*. Cultural retentionists contend that it reflects societal values and is in line with public mood in India, similar to that of the United States and China (Law Commission, 1967). They claim that legal protections under the *Manoj v. State of Madhya Pradesh (2022)* guidelines and the Bharatiya Nagarik Suraksha Sanhita, 2023 (Sections 260, 394, 409) rules reduce errors. Retribution and cultural context-based retentionist viewpoints are criticized for lacking deterrence data.

This paper will explore the provisions of Code of Criminal Procedure (CrPC), Indian Penal Code (IPC), and other relevant laws that prescribe the capital punishment. It will assess the constitutional principles related to the right to life under Article 21 and the "rarest of rare" theory established in the case of *Bachan Singh*. A close examination of landmark Supreme Court judgments will reveal how judicial reasoning has shifted over time.

4. LEGAL FRAMEWORK GOVERNING CAPITAL PUNISHMENT IN

INDIA:

4.1. Provisions under the Constitution of India:

A. Article 21 (Right to Life and Personal Liberty):

According to Article 21 of the Constitution of India, "No person shall be deprived of his life or personal liberty except according to procedure established by law." It provides safeguards to both life and personal liberty. This privilege does apply to the death sentence, which is only allowed when it follows a reasonable, just, and fair legal process. In *Bachan Singh v. State of Punjab (1980)*, the Indian Supreme Court gave the "rarest of rare" theory, which put restriction on the death sentence as a form of punishment and is only used in extraordinary circumstances where the crime is such that no other form of punishment serves justice. This way, while protecting the rights under Article 21, it also gives corrective justice when the crime is of such

a heinous nature that it shakes the conscience of the society, and the mitigating considerations are negligible when compared with the brutality of the crime.

B. Article 72 and Article 161 of the Indian Constitution:

Executive clemency powers are provided in Articles 72 and 161, which serve as a safety valve in situations where on humanitarian concerns or to rectify judicial errors in circumstances involving capital punishment. However, the President's power is more expansive and covers all offenses, even those covered by central laws, compared to the Governor's clemency powers. Articles 72 and 161 maintain a balance between mercy and justice. An integral part of India's legal structure regarding capital punishment is judicial monitoring, which guarantees that these powers are used as per constitutional principles. It also states that inordinate deferment in resolving mercy petitions supports the commutation of capital punishment to life imprisonment.

4.2 Provisions in Indian Penal Code:

The legislative desire to save the death sentence for extremely serious crimes is manifested in the Indian Penal Code, 1860 (IPC), which provides for capital punishment for some grave and atrocious crimes. According to *Bachan Singh v. State of Punjab (1980)*, these clauses are implemented within the constitutional framework of the "**rarest of rare**" doctrine. Few sections prescribe capital punishment are;

A. SECTION 121 of IPC: This section focuses on acts of rebellion or treason, including armed revolt. National Crime Records Bureau (NCRB) data from 2016 to 2019 shows that out of 55,870 persons who were arrested under provisions of section 121 to Section 124A but the conviction rates for this offence are very low, and courts are very reluctant to give the death sentence under this section.

B. SEC 302 of IPC: Most of the death penalties given by our courts s to this section. While giving the death sentence under this section, judges first weigh the mitigating and aggravating circumstances as described in the *Bachan Singh* case. This principle was later reinforced by the judgment of *Machhi Singh v. State of Punjab (1983)*, which stated that severity and social impact are to be considered while giving the death sentence.

C. 376A of IPC: In the wake of *Nirbhaya* case, Criminal Law (Amendment) Act, 2013 was passed on the recommendations of Justice Verma Committee as a legislative response to crimes involving sexual violence with serious violence or lethal outcomes, capital punishment is prescribed When sexual assault is coupled with severe violence or lethal outcomes, the death

sentence is given.

D. Section 396: It states that while committing dacoity, if death of a person is caused, each person who is involved in dacoity may face the punishment of death.

E. Section 376E: This section was also added in 2013 after the Nirbhaya case it punishes serial rape offenders with other punishments as well as death sentence is also prescribed for this.

F. Section 132: This section relates to offences which relates to mutiny . This section is invoked rarely but it also includes death sentence as a punishment

4.3. Provisions of Criminal Procedure Code of India 354(3) of CrPC, 1973:

A crucial clause in India's criminal legal architecture that keeps a check on the use of the death sentence is Section 354(3) of the Code of Criminal Procedure, 1973 (CrPC). A major change from the previous method under the CrPC, 1898, where judges had to give reasons if they give a punishment of imprisonment instead of the death penalty. This standard is overturned by Section 354(3), which makes life in prison the norm and the death sentence an exception, to be applied only in the "rarest of rare" circumstances with reasoned justification. The need for "special reasons" in Section 354(3) of the CrPC, 1973, emphasizes that the death sentence is an exception, reserved for exceptional situations in which the seriousness of the offense and the surrounding circumstances warrant the harshest punishment possible.

4.4 Indian Position on Article 6 of ICCPR:

International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations General Assembly in 1966, and India ratified it later in 1979. This is considered one of the foundational instruments of International human rights law.

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to life and encourages the abolition of the death penalty, it permits its retention under strictly limited circumstances. As a Party to the ICCPR, India continues to retain the death penalty within its legal framework, justified by domestic legal, cultural, and socio-political considerations, while working on legal and legislative frameworks to ensure that its application remains consistent with the safeguards enumerated under Article 6."

4.5. Trends of Indian Judiciary:

India has retained the capital punishment but applies it sparingly, with the norm of life imprisonment and the death sentence is reserved for the most heinous crimes only. (Law

Bhoomi. 2024).

Rajendra Prasad v. State of Uttar Pradesh (1979): This case promoted the theory of reformation, but this was later overruled in the Bachan Singh case.

State of Punjab v. Bachan Singh (1980): Laid down the doctrine of "rarest of rare", which calls for a harmony between exacerbating and mitigating factors. This case advanced the arguments that influenced the constitutional and procedural foundation of capital punishment. Bachan Singh, who was found guilty of killing three family members, contested the legitimacy of the death sentence on the ground that it was unconstitutional under Articles 14, 19, and 21. Supreme Court held that capital punishment is constitutional and also gave the circumstances under which it can be given. It was held that the death sentence is an exception under Section 354(3) of the CrPC, 1973, and that the judges must give "special reasons" before giving this punishment. The default rule will be to give life imprisonment. To achieve customized sentencing, the court required a balanced examination of aggravating circumstances and mitigating considerations. This will conform to the right to life and reduce arbitrariness. Justice Bhagwati, gave his dissenting judgment, suggesting that the death sentence should be abolished since it is arbitrary and has no deterrent effect.

State of Punjab v. Macchi Singh (1983): The legal doctrine devised in Bachan Singh v State of Punjab, was further clarified in this case by enumerating the variables such as severity of offence, potential for repentance as aggravating and mitigating circumstances.

Mithu v. State of Punjab (1983): It was held that 303 of the IPC is unconstitutional as this puts a restraint on the power of judges to exercise discretion in giving death sentence.

Shatrughan Chauhan v. Union of India (2014): This case raised the concern of delay in deciding the mercy petitions and excessive delay is a violation of Article 21.

(The Nirbhaya Case) Mukesh & Anr. v. State, 2017: This case affirmed the principle of "collective conscience" in cases of serious offence which deserves that penalty.

Manoj v. State of Madhya Pradesh (2022): A crucial flaw in the trial court's and High Court's methodology was noted by the Supreme Court in the Manoj case: an excessive focus on crime-

centric elements (such as the heinousness of crime) and a failure to adequately consider the accused's mitigating circumstances. The Court emphasized the need for customized sentencing that takes into consideration the accused's psychological condition, socioeconomic background, and prospects for reformation. Among the judgment's main points are:

A. Mandates for Psychiatric and Psychological Assessments: The Court mandated that the State provide documentation, ideally gathered in advance, revealing the accused's mental and psychological assessments in situations involving the death sentence (*Para 213*). These assessments are necessary to determine the accused's mental health, reformation potential, and any underlying psychological issues that might lessen guilt.

B. Thorough investigations into mitigation: The Court ordered the State to gather more material within a certain time frame, such as the accused's demeanour, work, and involvement in activities while incarcerated (*Para 214*). Courts utilize this information to assess the accused's potential for rehabilitation. To guarantee a fair hearing, the court must have all information from the accused and the State. This will enable the accused to provide mitigating circumstances and, if need, refute State evidence (*Para 215*). The Court acknowledged that mitigation investigations are essential to identifying pertinent personal circumstances because many death penalty convicts in come from marginalised strata and frequently lack adequate legal representation (*Para 211*).

5. DOES THE DEATH SENTENCE DISSUADE HEINIOUS CRIMES?

Deterrence argument:

Heinous crimes are frequently impulsive, emotionally motivated, or performed in situations where the risk of punishment is ignored, despite the deterrence argument's assumption that rational actors consider the repercussions of their acts. Effective police and socioeconomic initiatives, along with life in prison, may generate comparable or even higher deterrence without the permanent hazards associated with the death sentence, according to studies and judicial findings. The argument against deterrence is also presented because the punishment's certainty and promptness—two essential components of deterrence—are rarely fulfilled.

"Collective Conscience" Argument:

The death sentence is justified by retribution, which satisfies society's moral outrage by applying a punishment commensurate with the crime. According to the "collective conscience" theory, which is frequently used in India, some acts are so horrible that they shock society's

moral sensibilities and call for the death sentence to restore social harmony. A woman was gangraped and killed in Delhi in December 2012. Four accused were given the death sentence by the Supreme Court, which cited society's "collective conscience" as a major justification.

6. SUGGESTIONS TO ROBUST THE MECHANISM AND SAFEGUARDS AGAINST THE DEATH SENTENCE:

- A. Abolition or Moratorium:** As recommended by the Law Commission (2015), enact a moratorium until a thorough study is conducted.
- B. Boost Protections:** Require thorough legal aid and mitigation studies in every case involving the death sentence (Manoj standards).
- C. Judicial Education:** To lessen arbitrary sentence, improve instruction on sentencing concepts.

7. CONCLUSION:

The death sentence is a highly debatable question in India, while emphasizing its effectiveness to serve as a deterrent, there is always the risk of judicial error, human fallacy, and concerns about human rights. In India, the death sentence is still a divisive topic, with retentionist assertions of retaliation and cultural alignment opposing abolitionist arguments based on human rights, error risk, and lack of deterrence. There is not sufficient empirical evidence to justify the deterrence argument; research and court rulings indicate that life in prison and institutional changes are just as effective, if not more so, at deterring horrible acts. As seen in the Nirbhaya case, the retribution-based "collective conscience" argument addresses social indignation but runs the risk of subjectivity and outside interference, therefore, it must be applied carefully by the courts. Both ideas draw attention to the intricate interactions between penological objectives in Indian death sentence law, emphasizing the necessity of principled sentencing to uphold justice while reducing arbitrary decisions. To comply with international trends and meet calls for justice, India's framework must strike a compromise between these conflicts, maybe favouring life in prison.

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