

## **Death Sentencing**

### **Introduction:**

Death sentencing, also known as capital punishment, is a form of a penalty awarded by the courts in cases of heinous crimes committed by a person. The topic has been subjected to a very heated debate. Some considered it to be a violation of Article 21 of the Indian Constitution, whereas others believe that it is an appropriate punishment to end the element of evil from the society and instil a sense of fear in the minds of the perpetrators of such heinous crimes.

The death penalty is given to those who disturb the consciousness of society. Since India is a democratic country, it has always been debated whether it is right for the courts to take away a life or if it is unconstitutional based on the fact that it is a violation of the fundamental rights.

### **Importance of Death Sentencing punishment in India:**

After a lot of changes, controversies, debates and revolutions it was concluded that the punishment of death would be given only in the "rarest of the rare cases"; by following the Gandhian principles of "hate the crime and not the criminals". In any case, the predicament of having a moral commitment to ensure the security of the citizens and to kill anti-social components from the general public wins. The contentions encompassing capital punishment are built inside the domain of the circumstances and results it has on the general public. Those supporting capital punishments think about the causes, while those against it generally consider the impact it has on the general public.

Indian law does not wholly allow capital punishment, nor does it abolish it in every case. It is given in rare cases involving crimes like rape cum murder or terrorism cases. The first death sentence in independent India was issued on 15th November 1947, to Nathuram Godse and Narayan Apte in the Mahatma Gandhi assassination case. The latest death sentence was given to the criminals in the Nirbhaya rape case in 2020.

### **Statutory Provisions:**

The Indian Penal Code of 1860 lays down several offences for which death sentencing could be a punishment. These crimes are a threat to society and hence, should be given such a penalty. Such offences are mentioned under the Sections 121, 132, 194, 195, 302, 305, 307, 364, 376A, 376E and 396 of IPC<sup>1</sup>. These offences are considered so heinous and grave that capital punishment is awarded to anyone who commits these offences.

The Air Force Act of 1950<sup>2</sup>, The Army Act of 1950<sup>3</sup>, The Defense of India Act of 1971<sup>4</sup>, The Unlawful Activities Prevention Act of 1967<sup>5</sup> are some other laws that include capital punishment.

### **Evolution of the Punishment:**

Due to the arguments and contradictions regarding the constitutionality of the punishment, the courts have given various judgments regarding this punishment, impacting the discussions related to it. In the case of *Bacchan vs the State of Punjab*<sup>6</sup>, the doctrine of “rarest of the rare cases” is mentioned, whereas in the case of *Macchi Singh vs the State of Punjab*<sup>7</sup>, its main areas and significant involvement are mentioned.

Further, the Constitutional validity of the punishment was explained in the case of *Jagmohan Singh vs the State of UP*<sup>8</sup>. In this case, the Supreme court concluded that the punishment is not only a punishment, but also disapproval of the crime, grave by nature. Hence, the country cannot take the risk of the abolition of the fear of punishment in the minds of criminals.

Different points of view on the issue take into consideration the ethical, social, and financial effects of the death penalty. For example, the cost of the death penalty, when stood out from the cost of housing prisoners influences the prison structure overall. Regardless of whether or not a nation has the benefit of executing an individual, it can impact the locales of the institution as well.

---

<sup>1</sup> Indian Penal Code, No. 45 of 1860, INDIA CODE (1860).

<sup>2</sup> Air Force Act, No. 45 of 1950, INDIA CODE (1950), vol. 2.

<sup>3</sup> Army Act, No. 46 of 1950, INDIA CODE (1950).

<sup>4</sup> Defence India Act, No.42 of 1971, INDIA CODE (1971).

<sup>5</sup> Unlawful Activities Prevention Act, No. 37 of 1967, INDIA CODE (1967).

<sup>6</sup> *Bacchan v. the State of Punjab*, (1980) 2 SCC 684 (India).

<sup>7</sup> *Macchi Singh v. The State of Punjab*, (1983) AIR SC 1957 (India).

<sup>8</sup> *Jagmohan Singh v. The State of UP*, (1973) AIR SC 947 (India).

Rajasthan became the second state after Madhya Pradesh to add sections to the Indian Penal Code related to the of punishment of death for the gang rape of a girl below 12 years of age. This law was passed on the 10th of March, 2018, as Criminal Laws (Rajasthan Amendment) Bill, 2018.

Numerous cases that bantered upon the lawfulness of the death penalty contended it to be violative of Articles 14, 19, and Article 21 of the Indian Constitution, yet it was said and reasoned that death sentencing doesn't abuse any arrangement allowed under the articles; since it is apparent from the Constitution itself, as it characterises and recommends a methodology to be followed for a reasonable, legitimate and fair trying to remove the life of a person.

There were various cases in which this Constitutionality of the punishment was explained. In the case of *Deena vs Union of India*<sup>9</sup>, Constitutionality of section 354(5) of IPC was challenged on the ground that it violates Article 21 because of its degrading methods. Further, in the case of *Triveni Ben vs the State of Gujarat*<sup>10</sup>, it was argued that a fair trial is considered before awarding death sentencing. In *Madhu Mehta v. Union of India*<sup>11</sup>, disposal of mercy petition and speedy trial was laid down due to delay in the prosecution which resulted in awarding life imprisonment rather than capital punishment.

### **Analysis:**

After going through the evolution and contradictions regarding the punishment, it can be believed that capital punishment should not be abolished entirely. Death penalty should remain for grave crimes, as seen in the Nirbhaya case. There should be further rules and regulations to remove ambiguities regarding the punishment. The perpetrators of the Nirbhaya case were awarded the death sentence after eight long years, making it a failure of the Indian judiciary. Due to the increasing rate of crimes, the laws should be made stricter to make criminals fear the power of justice.

The issue of the death penalty isn't extreme in respect of capital punishments conceded by criminal courts in occurrences of the general course of nature. Since the death penalty is being allowed in very few examples of homicide, the particular discipline of life imprisonment is conceded. The

---

<sup>9</sup>*Deena v. Union of India*, (1983) 4 SCC 645 (INDIA).

<sup>10</sup>*Triveni Ben v. the State of Gujarat*, (1989) AIR SC 142 (INDIA).

<sup>11</sup>*Madhu Mehta v. Union of India*, (1989) 4 SCC 62 (INDIA).

granting of death penalty to chronic serial killers, rapists, and terrorists, who have no thought for human life and are blinded by desire, power, and misinformed by unscrupulous contemplations regains the individuals' confidence in the legal framework is justified.

**Conclusion:**

There should be stricter rules and regulations regarding the punishment so that the ambiguities are removed. This would lead to fear in the minds of the criminals. Even though the standards of death condemning have advanced, corrected, and amended with time, India battles with something concrete regarding this matter. There is an extraordinary delay between the hour of the beginning of the wrongdoing and when the capital punishment is granted. This postponement prompts a social shock. The legal caution prompts a degree of difference in the decisions that don't depict a decent and capable image of the Indian Judiciary framework. Hence, the punishment of death should not be abolished and should continue to induce fear within perpetrators.