

Capital punishment in India

Introduction

Punishment is an important part of our society. It helps enforce the law and maintain order. In the past, there were no clear laws, and the king decided how severely to punish crimes. Today, modern ideas about punishment allow the state to manage our rights and keep law and order. Punishments can include fines, imprisonment, or even the death penalty, which is the most severe punishment we have now. 'Capital punishment', also known as the 'death penalty', is the harshest or most severe punishment of the present time.

capital punishment

The term 'capital' is derived from the Latin word 'capitalis', which means concerning the head. Thus, to be subjected to capital punishment means to lose one's head. Capital punishment, also known as the death penalty, is the execution of a criminal who has been sentenced to death by a court of law for a serious felony. It is known as the most severe form of punishment. It serves as punishment for the most heinous, grievous, and abhorrent crimes against humanity.

The purpose of the death penalty is to deter people from doing something by instilling fear in them about the consequences. The death penalty is only applied to crimes that fall under the 'rarest of rare doctrine.'

History of the death penalty in India

To be more structured, the history of the death penalty in India is divided into the following four headings:

● Ancient India and the Concept of Punishment

In ancient India, punishment was closely tied to keeping society orderly and fair. Early texts, like the Dharmaśāstras and the Arthashastra, mentioned the death penalty for serious crimes like murder and treason.

The Manusmriti, one of the oldest law books, said that the death penalty was needed to maintain social harmony. The author, Manu, believed that harsh punishments were necessary to prevent people from committing serious crimes.

People in ancient India thought punishment served as revenge and was important for protecting society from those who caused harm. They also believed it could prevent others from committing crimes. The idea of Dand Niti, or "justice through punishment," was a key part of their legal beliefs.

● Death penalty under the Hindu law

Since the beginning of human history, punishment has been essential to society. The death penalty and exile have removed individuals who threaten community safety. Ancient Hindu texts mention the death penalty as an accepted punishment.

Stories like the Ramayana and Mahabharata emphasize that a king must keep society safe, sometimes requiring execution. Thinkers such as Katyayana and Brahaspati supported the death penalty.

Even during the Buddha's time, Emperor Ashoka saw the death penalty as fair. The principles of Dand Niti suggested that punishment helps prevent crime. Manu Smriti and Kautilya's writings also recognize the death penalty as necessary for public safety.

● **Death penalty under Muslim law**

Islamic rule in India during the medieval period significantly changed the legal system by introducing Sharia law. This law, based on the Quran and Hadith, set rules for capital punishment for serious crimes. These crimes are known as Hadd and Qisas, which includes retribution.

Capital punishment was limited to specific offenses such as murder, theft, apostasy, and rebellion. The Mughal Empire, which ruled from the 16th to 19th century, varied in its application of the death penalty. Emperor Akbar was lenient, often favoring imprisonment instead, while Emperor Aurangzeb enforced stricter punishments under Sharia law.

● **Death penalty in pre and post-independence era**

The death penalty was not discussed in the British India legislative assembly until 1931, when Shri Gaya Prasad Singh from Bihar proposed a bill to abolish it for certain crimes. However, the motion was defeated after the Home Minister spoke against it. Sir John Thorne, the Home Minister, stated that the government did not think it wise to repeal the death penalty for any crime.

After independence, India kept many colonial laws, including the Indian Penal Code of 1860, which still listed the death penalty among six punishments.

Crimes punishable by the death penalty under The Indian Penal Code, 1860

In India, several serious crimes can lead to the death penalty.

Waging war against the country is one such crime. Under Section 121 of the Indian Penal Code (IPC), anyone who tries to wage war against India can be sentenced to death.

Supporting mutiny is another punishable offense. Section 132 of the IPC states that those who aid in a mutiny within the armed forces can face the death penalty.

Fabricating evidence to secure a death sentence is also a crime. Section 194 of the IPC allows for the death penalty in these cases.

Murder, as laid out in Section 302, is punishable by death.

Assisting a minor or an intellectually disabled person in suicide can lead to the death penalty under Section 305.

Kidnapping for ransom or harm falls under Section 364A and is likewise punishable by death.

Additional offenses added by the Criminal Law (Amendment) Act of 2013 include:

- Rape resulting in death or a permanent vegetative state (Section 376A).
- Repeat rape offenders (Section 376E).
- Dacoity with murder (Section 396).

Groups Exempt from the Death Penalty in India

1. **Minors:** People under 18 cannot receive the death penalty because they can change with support. The Juvenile Justice Act (2015) addresses cases for minors.
2. **Pregnant Women:** Pregnant women are safe from the death penalty. If a woman on death row is pregnant, her execution can be delayed or changed to life imprisonment to protect the unborn child.
3. **Intellectually Disabled:** People with intellectual disabilities may be exempt if they don't understand their actions. The law focuses on rehabilitation rather than punishment for them.

Execution Procedure in India

1. **Hanging:** The only method of execution for civilians in India is hanging, as stated in the Code of Criminal Procedure.
2. **Shooting:** In military cases, shooting can be used. A firing squad executes this method, and it is allowed only for members of the Army, Air Force, and Navy under the Army Act of 1950.

Constitutional validity of capital punishment

Article 21 of the Constitution guarantees the right to life and personal liberty, but this right is not absolute. The state can limit or take away this right to maintain law and order.

In *Maneka Gandhi v. Union of India* (1978), the court stated that if the state takes a person's life, it must follow fair and unbiased procedures. The death penalty is reserved for the most serious crimes.

The issue of capital punishment has been debated in India for years, but lawmakers have not decided whether to keep or abolish it. India focuses on changing criminals' behavior rather than just punishing them and is one of 78 countries that still have the death penalty, which is applied under strict conditions like 'rarest of the rare' cases.

The constitutionality of the death penalty has faced challenges. In *Jagmohan Singh v. State of Uttar Pradesh* (1973), it was argued that the death penalty violated the right to life under Article 21 of the Indian Constitution. The Supreme Court ruled that the death penalty is constitutional and does not violate any part of the Constitution. The court also stated that the choice between the death penalty and life imprisonment considered all relevant facts and the nature of the crime.

The "rarest of rare" doctrine was established by the *Bacchan Singh v. State of Punjab* (1980) case. The Supreme Court ruled, with a 4 to 1 majority, that the death penalty is constitutional but should only be applied in the most serious cases. While life imprisonment is the standard punishment, the Court did not define what "rarest of rare" means.

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.

The "rarest of rare" doctrine came from the *Bacchan Singh v. State of Punjab* (1980) case. The Supreme Court ruled that the death penalty is legal but should only apply in extreme cases. In *Macchi Singh & Others v. State of Punjab* (1983), the Court stated that the death penalty should be used when the community expects it.

Key conditions include:

1. The murder must be extremely brutal, causing community outrage.
2. The crime involves bride burning or dowry death.
3. The crime is very serious.
4. A Scheduled Caste member is murdered, sparking significant upset.
5. The victim is an innocent child, vulnerable woman, or someone elderly or sick.

In *Santosh Kumar Satishbhushan v. State of Maharashtra* (2009), the Supreme Court reinforced that life imprisonment is the standard punishment, while the death penalty is an exception.