Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

Trends of Capital punishment or life imprisonment and Heinous crimes

Jade Prajaktha[a]

[a]Advocate & Trademark Attorney, Bangalore, India

Received 26 September 2022; *Accepted* 08 October 2022; *Published* 18 October 2022

Capital punishment is a heinous punishment for a heinous crime committed. The constitution that protects the right to life enables the state to take it away under the due procedure of law. However, it is inducive to understand to whom it should appear a heinous crime and if the death penalty is awarded in order to vet justice to the victim or stop potential offenders form from following suit. It has been a practice of punishing wrongdoers in public places, behind prison walls, or in open lands where their wails are unheard, suffering they are put through in an attempt to make them realise their actions were grave and non-moral. A rather retributive method than providing reformation, in an attempt to sow fear among citizens and prevent further commission of crimes. But the effect the retributive practices has on society at large is a known fact that the lesser-known reformative forms of punishments. Any criminal justice system is going to have its share of detractors. There will always be people who think that it is too harsh, or not harsh enough. However, even in the 21st century, capital punishment still exists as a form of punishment for certain crimes. Elaborate research, deliberations, and conclusive studies of psychoanalysis, criminology, and the relation between victimology and penology are yet to deduce why capital punishments are a necessary practice to prevent the commission of crimes.

Keywords: *capital punishments, heinous crimes, encounters.*

INTRODUCTION

Capital Punishments are the gravest punishments to be awarded to a human as a consequence of an inhuman crime. Article 21 of the Indian Constitution[1] guarantees the "**Protection of life and personal liberty** - No person shall be deprived of his life or personal liberty except according to procedure established by law" thus encompassing provisions for capital punishments. Article 21 of the Indian Constitution guarantees the right to a dignified life and it cannot be taking it away without providing a chance for reformation. Though it is explicitly mentioned, unless provided under the law, it is an ancient practice that is not in consonance with today's judicial jurisprudence.

There are seven crimes in the state which are capable of attracting the death penalty: murder, dacoity with murder, abetment of suicide of a lunatic or a minor person, revealing secrets of the state that question the sovereignty, waging war or terror crimes, false evidence leading to capital punishments of naïve persons. In a country where it constitutes a crime to attempt to take your own life under Section 309 of the Indian Penal Code, capital punishments seem too vague a punishment. It is a staunch practice that there is a need to take extreme precautions and into consideration the gravity of a crime before vetting out a death penalty. With evolving times, the United Nations have come to the conclusion that capital punishments are not necessary and hence, should be abolished. As a result, countries have abolished/ illegalized capital punishments completely, some countries have it in their laws but do not practice/ have not had executions in over 10 years, and other few countries have the provision in the statutes and execute only in the rarest of the rare cases. It is an eminent question as to the validity of the state pronouncing the death sentence.

WHAT IS CAPITAL PUNISHMENT?

Capital punishments are where accused persons are sentenced to death by hanging, under the CrPC in Section 354(5)[2] or by shooting, under the Army Act in Indian laws by the state as

[1] Constitution of India, art 21
[2] Code of Criminal Procedure 1973, s 354(5)

retributive punishment to the society and incite fear in offenders so as to avoid repetition of the crimes. When considering the various laws that exist in our societies, it is easy to view them as superfluous. Many people do not see why certain rules need to be implemented in the first place, especially when some of them seem so arbitrary. Punishing criminals can feel like an unnecessary response to crimes that have already taken place and which society has now moved on from.

The main argument against capital punishment is that it holds little more than retributive value. This is a valid argument, as it is not an effective way to prevent crime. With that being said, though, it is necessary for certain crimes. The most obvious example of this is when someone has committed something grave and heinous. For a person to have taken another's life, they have committed one of the most egregious crimes that a human being is capable of. They have taken away the most fundamental right of another human being. For this reason, the only viable response is one that holds the same amount of gravity.

There are plenty of cases in which someone has committed a crime that would not have been committed had they not been facing some sort of coercion. However, in these cases, there is another reason capital punishment is necessary. We see this at work in cases of terrorism. Someone commits a terrorist act, and they are sentenced to death because their actions are considered a threat to the security of the public. If there is no punishment for the crime, then it becomes a viable option for those intending on committing acts of terrorism. In some cases, the only reason for capital punishment is that society has determined this is the only viable response to a certain crime. This is true both of hate crimes and genocide. While there are plenty of people who would argue that capital punishment is too harsh of a response to these types of crimes, they are a response nonetheless. If there is to be any sort of justice for the people who have suffered as a result of the atrocities that have been committed, then those responsible must be punished accordingly.

ORIGIN OF CAPITAL PUNISHMENTS

The history of capital punishment is a long and gruesome one and in practice since time immemorable. From the use of execution as a means of mutilating, shaming, public hanging, and guillotine executing wrongdoers in ancient civilizations to its use as a form of government-sanctioned murder to punish those who break laws. Capital punishment has been used as a way for governments to assert control over their citizens through fear, but it has also been challenged as an unethical practice that violates basic human rights.

Creating laws, implementing them, and punishing those who break them is something that has been around for a very long time. The oldest written records date back to the Code of Hammurabi from around 1750 BCE. Laws have continued to develop ever since. They evolve with society and often emerge as a direct result of current events or other concerns. One major example was during the reign of King Henry VIII when he dissolved the monasteries, which eventually led to The Statute of Uses in 1536.

Over time, many people and organisations have campaigned against the use of capital punishment, arguing that it is immoral and unjustifiable no matter what society might stand to gain from it. While some countries still continue using the death penalty today, there has been a global trend away from this practice in recent decades—and not just because of arguments about morality or ethics. In fact, recent drops in usage can be attributed to purely practical considerations: executing someone is expensive and messy work, not to mention other difficulties.

COUNTRIES STILL PRACTISING CAPITAL PUNISHMENT

Human rights activists and organisations like United Nations, ECHR- European Centre for Human Rights, and Amnesty International have been pursuing nations to abolish the cruel system of Capital punishment. The United Nations, 2007 proposed its member states stop awarding the death penalty, irrespective of the nature of the offence. Amnesty International, in a 2021 report brought to light the four approaches taken by countries.

- Legal - The death penalty is considered legal and continues to be in practice to date. Countries such as China, the United States of America, India, Saudi Arabia, etc have carried out executions in the recent past.
- Suspended - Death penalty is legal, but no executions have taken place in at least 10 years. 23 countries including South Korea, Myanmar, Sri Lanka, etc fall under this category.
- Retentionist - Death penalty is legal, but only used in extreme cases such as war crimes. 15 countries have them in the legislature but executions take place only in rarest cases and terror crimes like in Israel, Brazil, etc.
- Abolished - Abolished these as a form of punishment. 118 countries have totally banned the practice such as Southern America, Canada, Australia, Russia, and most European countries. Among them only 80 of them have wholly, i.e; in statutes and practice banned capital punishments.

IS CAPITAL PUNISHMENT STILL RELEVANT?

In some instances, capital punishments are necessary in order for a just and safe society to exist. Here are three reasons to ponder over:

Retribution:

The first reason why capital punishments are necessary is because of the concept of retribution. When a person commits a crime, they inflict harm on another person or group of people. In doing so, they have not only violated the law but have also wronged the victims in its course. This does not just apply to violent crimes. If a person steals a bicycle from a child, they have done something wrong to that child. Almost all crimes will cause harm to another person or group, and for that reason, the offenders deserve to have some harm done unto them in return. This does not mean all punishments have to be equal. But if someone steals a bicycle, they shouldn't be put in jail for the rest of their lives. They should instead be fined, made to give the bicycle back to the child, and/or be made to do community service. And if they steal something of greater value, they should be jailed for a shorter period of time.

Deterrent:

Certain types of crimes almost always require capital punishment. This is because they are so harmful to society that they cannot be tolerated, and so there can be no room for forgiveness. This is particularly true of crimes such as murder, sexual offences, and wagging wars in which the perpetrator has not only killed another human being but has also robbed their family of the chance to see their loved one again. Crimes such as these can never be washed away. The most common response to these types of crimes is to imprison the murderer for a long period. This is a decent enough response and will cause the murderer to suffer/repent. There will always be a stain on society's conscience and a missing person who can never be brought back. In order to properly address these types of crimes, capital punishment is required. This not only addresses the crimes themselves but also shows the rest of the world that these crimes cannot be tolerated. This is necessary because it sends a message to potential offenders that they cannot get away with their crimes.

SOCIETY HAS DETERMINED THAT THIS IS THE ONLY VIABLE RESPONSE

Another reason why capital punishments are necessary in some cases is that society has determined that this is the only viable response to a given situation. In the past, people were often killed for crimes such as adultery, fornication, and blasphemy. These crimes are no longer punished with death, but that does not mean that capital punishments are bad or superfluous. It just means that society has determined that these no longer require death, and will instead punish them with fines and/or imprisonment. Similarly, in the past, homosexuals were often punished with death. This is no longer the case, but it does not mean that capital punishments are totally irrelevant. It just means that society has determined that certain actions no longer require to be punished with death, and will instead punish them with fines and/or imprisonment. "In India, the concept of the death penalty is present but there were only 7 executions done from 1998 to 2018."[3] A total of 1303 capital punishment verdicts were pronounced yet only 3 were executed between 2004 and 2013 and none of the executions were

[3] Abhinav Narayan, 'Capital Punishment: A comparative study' <https://amity.edu/UserFiles/aibs/3fc0Article-XII%20(Page%2088-92).pdf> accessed 26 September 2022

made till 2012. In the last 20 years, 3751 death sentences were commuted to life imprisonment.[4]*However, these numbers cannot be held uptight as there are no credible statistics available for public records.

HOW IS IT VIEWED WITH CHANGING TIMES?

Initially, when tit for tat was a practice of delivering justice, it was practised widely but with changing times it came to be condemned as barbaric practice/behaviour. As laws progressed and people processed and inculcated the justice system, they became more of an opinion of practising *Audi alteram partem,* as it is impossible to deliver justice without knowing both sides of the story. Principles of Natural Justice, and humanity, on the grounds of equity and fair conscience, deemed capital punishments a wrongful deed. The Indian Law Commission in their 262nd Report, 2015 made a recommendation to abolish the Death Penalty with the exclusion of cases relating to terror.[5] "In India, at a time when legislation imposing death sentences is increasing, raising the procedural bar in imposing capital punishment is a crucial balance between total abolition and active advocacy of the death sentence."[6] It is believed that reformative theories are more beneficial to sap crimes at bud rather than punish an individual with their life.

RAREST OF RARE CASE THEORY

This theory was promulgated in the case of the **Bacchan Singh v State of Punjab**.[7] It became a necessity to lay down rules to pronounce death sentences only to grave crimes. As the rate of crimes rose, the death penalty could not be pronounced in all but only the rarest of uncommon cases. The court held that while sanctioning the death penalty it is not only liable to look into the crime but also the criminal and the mitigating factors. There were certain criteria laid to differentiate what sets a case apart as the rarest among the rare crimes and the importance to

[4] *Ibid*
[5] 262nd Report, Law Commission of India 2015
[6] 'Life and death: The Supreme Court's initiative to raise the bar on capital punishment is welcome' (*Times of India*, 21 September 2022 <https://indianexpress.com/article/opinion/editorials/life-and-death-capital-punishment-supreme-court-8162899/> accessed 27 September 2022
[7] *Bacchan Singh v State of Punjab* (1980) 2 SCC 684

not only keenly examine the crime but also the criminal and his circumstances. However, there were no specific guidelines that define them yet several courts have been bound by the rules all these years. The rationale applied by the Apex court was ".. death penalty can be constitutional only if it acts as an alternative to life imprisonment. This approach is applicable only in the rarest of the rare cases and other alternative punishments are insufficient, hence ruled out."[8]

Following this, Justice M P Thakkar provided a set of issues to focus on as to what constitutes the 'rarest of rare case' in **Macchi Singh v State of Punjab;**[9]

- How was the crime committed?
- What was the motive?
- What was the Nature and Magnitude of the crime?
- What are the aggravating and mitigating factors?

In **Jagmohan Singh v State of Uttar Pradesh**,[10] the five-judge bench of the Supreme Court, by a unanimous verdict, upheld the constitutional validity of the death penalty and held that capital punishment was not violative of Articles 14,[11] 19[12] , and 21[13]. When the circumstances necessitate a "requirement for the death penalty to mean the death penalty should be awarded only in the rarest of rare cases when the alternative option is unquestionably foreclosed". Thereby answering the Constitutional validity. The Apex Court is of the opinion that the death penalty is no more relevant and the guidelines laid down in the Bacchan Singh case are insufficient and ambiguous to the day.

Justice S B Sinha in the case **Santosh Kumar Bariyar v State of Maharashtra**[14], 2007, held "The rarest of rare dictum only serves as a guideline in enforcing the provisions mentioned in Section 354(3) of the Criminal Procedure Code and entrenches the policy that life imprisonment is the

[8] *Santosh Kumar Bariyar v State of Maharashtra* Criminal Appeal No 1478 of 2005
[9] *Macchi Singh v State of Punjab* 1983 AIR 957
[10] *Jagmohan Singh v State of Uttar Pradesh* 1973 AIR 947
[11] Constitution of India, art 14
[12] Constitution of India, art 19
[13] Constitution of India, art 21
[14] *Santosh Kumar Bariyar* (n 8)

rule and death penalty is an exception." The bench raised also raised doubts about whether the parameters put forth in the Bacchan Singh and Micchu Singh cases are sufficient to pronounce a verdict of the death penalty.

In **Mithu v State of Punjab**[15], Section 303 of the IPC was struck down as violative of Articles 21 and 14 of the Constitution of India, as the offence under the Section was punishable only with capital punishment and did not give the judiciary the power to exercise its discretion and thus result in an unfair, unjust and unreasonable procedure depriving a person of his life. The Apex court has opined that Death Penalty is anything but fair and untenable at present times considering the ways through which the verdict is pronounced.

PROMINENT CASES THAT CHANGED THE DISCOURSE OF SENTENCES

Mukesh and ANR v State for NCT of Delhi and Others[16] infamously aka **Nirbhaya case:** The most recent case, that sentenced all the accused persons except the minor to a death sentence, of which one of them committed suicide in Tihar jail. A case that questioned the collective conscience of the nation and fight for justice, which enabled an amendment resulting in the Criminal Law (Amendment) Ordinance, 2013. Changes were introduced in the following provisions:

- Section 166A, dealing with sexual offences involving public servants;
- Section 326A and 326B, the acid attack was made punishable with imprisonment up to 10 years or a fine or both;
- Section 365 pertains to sexual offences, 365A being sexual harassment, 365B being offences compelling a woman to undress, 365C being voyeurism, and 365D is stalking inclusive of online stalking. These were criminalized and punishment increased to 10 years of imprisonment or life/death and rigorous punishments for second-time or habitual offenders.

[15] *Mithu v State of Punjab* 1983 AIR 473
[16] *Mukesh & Anr v State for NCT of Delhi & Ors*, Criminal Appeal Nos 607-608 of 2017

Over seven years of fight for justice saw an end to it, though it was delayed justice, it was served right in the nation's collective. Four convicts of the 2012 Delhi gang rape and murder case were hanged till death on March 20th, 2020.[17] It is the first time that the country witnessed four convicts being executed together on the same day.

Yakub Abdul Razak Memon v State of Maharashtra[18]: Serial Bomb blasts took place in 12 spots of Bombay within two hours, sending shocks throughout the commercial hub. Yakub Memon, the Prime accused who conspired and put it in action was executed in 2015, and the rest of the appellants had their sentences commuted to life terms, taking mitigating factors and the benefit of the doubt.

State v Mohd. Afzal And Ors[19]: Afzal Guru case, executed in 2013 in connection to criminal conspiracy, procuring arms and ammunition, and a Parliamentary attack when in session. The life sentences pronounced were concurrent and a fine of 10 Lakh rupees was ordered. Afzal was granted the death penalty while other appellants were reduced by remission to a life sentence and fine.

Md.Ajmal Md. Amir Kasab v State of Maharashtra[20]: Mohammad Ajmal Amir Kasab, was awarded five death penalties and several life imprisonments in several crimes with relation to common intention, criminal conspiracy, waging war against the state, robbery/ dacoity with an attempted causing grievous hurt or death. The Apex Court upheld the death sentence of the lower court in the case of Amir Kasab and acquitted the other two accused persons. It was pronounced in 2010 and was executed in 2012.

Bilkisbanu (Bilkisbano) v State of Gujarat [21]: The case of Bilkis Bano, a pregnant mother of a three-year-old, who was gang-raped by 11 and had to witness several members of her family

[17] Taran Deol, 'Rarest of rare' — history of death penalty in India and crimes that call for hanging' (*The Print*, 19 March, 2020) <https://theprint.in/theprint-essential/rarest-of-rare-history-of-death-penalty-in-india-and-crimes-that-call-for-hanging/383658/> accessed 25 September 2022

[18] *Yakub Abdul Razak Memon v State of Maharashtra* Criminal Appeal No 1728 of 2007

[19] *State v Mohd. Afzal & Ors* 107 (2003) DLT 385

[20] *Md Ajmal Md Amir Kasab v State of Maharashtra* Criminal Appeal Nos 1899-1900 of 2011

[21] *Bilkisbanu (Bilkisbano) v State of Gujarat* R/Criminal Misc Application No 12478 of 2021

being killed in one night and her child smashed to boulder, during the 2002 riots. It was the unshaken faith in the judiciary to promulgate justice and stern determination to pursue the trial, that put the 11 accused persons behind the bars for a life term. It was a crime that amounted to the rarest of rare cases, where the spirits, faith, and safety of the nation were shaken and questioned. It was not very long ago that we witnessed the havoc created on the release of all 11 accused persons, on remission of their sentence.

The Registrar General v Mohan Kumar, aka the **Cyanide Mohan case**[22]: A middle-aged, calm-natured school teacher, who came to be known as cyanide Mohan after the gruesome killing of around 20 unmarried women for jewellery over a false promise of marriage came to light. Killings took place from 2004-09, mostly in southern Karnataka, and women from meek economic backgrounds were the prey. Found guilty in all except 5 cases charged against him and awarded the death penalty in some and a life sentence in others. The 57-year-old convict was sentenced to a life term until his death without any remission after the death penalty was commuted to a life sentence under an appeal.

Jollyamma Joseph v State of Kerala, aka **Koodathai Cyanide case**: Murder of 6 family members aged as young as two and oldest as 66, over 14 years by a woman who merely had some lies to hide about herself while amassing family wealth. Not until recently did one of the family smell the chain of deaths fishy and demanded an autopsy after exhuming the body of the husband of the accused. Leading to exhuming all other bodies to find cyanide to be the omnipresent ingredient in all those deaths. The case lies in the confession of the accused and the finding of circumstantial and corroborative evidence of the same. The 47-year-old attempted suicide while in judicial custody by biting off her veins due to regret. The case is currently under trial and a verdict is awaited.

Do such crimes deserve the death penalty to create retribution among the citizens or are reformation necessary? When looking at the statistics regarding capital punishment and other types of punishment for criminal acts, we see that they are not commonly used or even effective.

[22] *The Registrar General v Mohan Kumar* Criminal Appeal No 178 of 2015

For example, despite being one of the most common punishments for murder, capital punishment doesn't appear to deter people from committing this crime. But this is because we are viewing punishments as a stand-alone solution; something which cannot be assumed always applies within any given society or system.

Do Encounters amount to Capital Punishment?

Encounters are another form of punishing/ executing criminals or accused persons for an alleged offence. More often than not the killings are found to be arbitrary and the police abuse the powers vested in them. Encounters are sightings in cases where they are said to have attacked the police escort and thereby killed as a matter of self-defense. There are also plenty of cases where encounters have taken place posing the accused persons as an eminent danger to society.

WHAT EFFECT HAVE ENCOUNTERS KILLINGS?

Technically encounter killings are illegal and sheer abuse of powers vested in the police. However, it was deemed that this was a need in society to instill fear among the wrongdoers and withhold others from committing crimes in fear of punishment. But time and again it has only been proven to us that people do not willfully hinder from committing crimes but through coercion and undue influence the government and its functionaries continue to propagate. The Hyderabad encounter case took place on December 6^{th,} 2019, where a Veterinary doctor was gang-raped and murdered on the night of November 27^{th,} 2019, and the corpse was recovered on November 28^{th,} 2019. Following this the Hatras rape, a gang rape by 4 on a Dalit 19-year-old girl took place on September 14^{th,} 2020, she succumbed to her injuries two weeks later. It is a fact enough that encounters do not have the effect with which they were effectuated. These have failed to have a deterrent effect on society at large. Such acts outright question the policy 'innocent until proven guilty' and execute them overriding the mandatory procedures. Most of these cases exhibit exorbitant use of powers. While exercising their powers they are bound to function within the prescribed ambit but these showcase the outcome of undefined vested powers as a threat to human rights.

TRENDS FOLLOWING

The Supreme has reiterated in the case of **Naib Singh v State of Punjab**[23] that life imprisonment means till the end of the convict's life with an exception to remission and commutation of the sentence as under Section 55 of the Indian Penal Code. The trends visible are a prominent decrease in the number of death sentences and an increase in life-term sentences. It comes to the acceptance that life sentences are a better punishment than capital sentences. Tested times have made the Apex court pronounce order in the case of **State of Haryana v Anand Kindoo**[24] that "fixed term sentences exceeding 14 years can be an alternative to a death sentence".

PROVISIONS FOR COMMUTATION OF PUNISHMENT

Remittance or committal can happen to consider the mitigating factors such as the sole breadwinner, economic conditions, health conditions, pregnancy, etc. Articles 72 and 161 of the Indian Constitution empower the President and the State Governor to award pardons, reprieves, respites, or remission of penalty or to suspend, remit or commute the sentence of any person convicted of any offence.

- "In all cases where the punishment or sentence is by a Court Martial;
- In all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union/State extends.
- In all cases where the decree is a verdict of fatality."[25]

The Supreme Court stressed that the trial courts must take into account the following factors before granting the death penalty; "the social milieu, the age, educational levels, whether the convict had faced trauma earlier in life, family circumstances, psychological evaluation of a convict and post-conviction conduct, were relevant factors at the time of considering whether the death penalty ought to be imposed upon the accused".[26] This would provide the accused with an opportunity to introspect and correct their behaviour and lead a seemingly normal life.

[23] *Naib Singh v State of Punjab*, 1983 AIR 855
[24] *State of Haryana v Anand Kindoo* Criminal Appeal No 1797-1978 of 2010
[25] Constitution of India, art 72
[26] Life and death (n 6)

In a recent occurrence a 95-year-old terror convict, imprisoned for 26 years, applies for permanent parole to die in peace at his home. The laws are more retributive than reformative for convicts of the draconian laws.

CONCLUSION

Capital punishments are no longer relevant in this society where people commit barbaric crimes against animals, let alone humans. People have time and again refused to learn from the mistakes of others thereby, narrowing the scope for retributive punishment. Reformative punishment still holds some hope as there would be one less crooked mind at the end of the sentence term. Having stringent procedures of investigation and trial would help cut down most of the ambiguity Capital punishment is not a practice that we should be proud of. It is a messy, complicated, and often problematic practice that we should be ashamed of. In some cases, though, it is necessary. When it is necessary, we must be willing to shoulder the burden that comes with it. Only then can we ever hope to make the world a safer place. Capital punishment should be banned as human life is invaluable and the punishment/sentence is irrevocable, at least life sentences leave a scope of parol, and commutation/ remittance of punishment.