

HOW EFFECTIVE IS THE DEATH PENALTY AS A DETERRENT IN INDIA?

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ABSTRACT

The life of a human is really important in society because it affects other living things like plants and animals. Humans are the ones who make everything else come to life, so they should be respected. It's never okay to take someone's life, but when the law allows it, there's a lot to think about. The death penalty means the law takes someone's life as a punishment for a heinous crime. This idea isn't new – it goes back to ancient times and has been used throughout history. Nowadays, in the 21st century, people are talking openly about whether we should stop using the death penalty. Ending someone's life isn't a small thing, and it makes us think a lot about a person's right to live. This article delves into India's history with the death sentence, as well as its present legislation and how it affects society. It investigates many approaches to crime and the complex mix of elements that determine how people behave criminally. Because it is still unclear whether the death sentence genuinely deters crime, it is critical to carefully consider broader changes in how we approach criminal justice in India.

Keywords: *Criminal, Death Penalty, Justice, Life, Punishment and Society.*

1. INTRODUCTION

The use of the death penalty in India has sparked a lot of talk and disagreement. Those who support it argue that it works as a strong deterrent, discouraging potential criminals from committing really heinous crimes¹. They emphasize the importance of keeping law and order, protecting society, and providing justice to the families of victims. On the other side, opponents challenge the idea that the death penalty actually deters crime, citing data that doesn't clearly show a decrease in criminal activity due to this punishment. The conversation gets complex because of factors like society, economy, culture, and concerns about wrong convictions.

2. DEATH PENALTY: MEANING AND HISTORY

The death penalty, often known as capital punishment, is applied when a person is sentenced to death after being proven guilty of a crime by a court². Executions carried out without due process or on the command of a court are to be separated from the death penalty. Even though a conviction is upheld on appeal, the application of punishment is not always carried out because it could be reduced to imprisonment. Nonetheless, the terms "death penalty" and "capital punishment" are used interchangeably at times. The most outrageous, harsh, and horrific offences against humanity must all face this punishment.

2.1 History

The discussion about the death penalty didn't really happen in Parliament until 1931. Back then, a person named Shri Gaya Prasad Singh from Bihar tried to make a new law to stop using the death penalty for crimes listed in the Indian Penal Code³. But this idea was rejected when the Home Secretary at that time responded to it.

In 1946, during talks in the Legislative Assembly, the Home Secretary, Sir John Thorne, explained the government's stance on the death penalty in pre-independence British India. The government believed it wasn't a good idea to get rid of the death penalty for crimes that were already considered serious.

¹ Vandana Tiwari, *Death Penalty In India: A Critical Analysis*, 38 L. REV. (2018)

² Himali Agarwal, *Status of Death Penalty in India*, 5 INT'L J. L. MGMT & HUMAN. (2022)

³ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1949 (India).

After India became independent, it still kept some of the laws made during British rule, like the Indian Penal Code and the Criminal Procedure Code. The death penalty was one of the punishments listed in the Indian Penal Code for certain crimes. If a person did a crime that could get them the death penalty, but the court gave them a different punishment, they had to explain why they didn't use the death penalty. This provision was changed by the 1955 Amendment⁴. Judges didn't need to explain themselves if they didn't give the death penalty.

In 1973, when the Criminal Procedure Code was amended, some more changes were made to the Code⁵. One important change was about explaining the sentences. If someone could get the death penalty or a life sentence for a crime, the court had to clearly state why they chose the punishment they did. This was different from before, when the death penalty was the main choice, and the reasons were explained if they gave a different punishment. Now, judges had to give detailed reasons if they chose the death penalty.

These changes also made it possible for someone who was sentenced, even to death, to have a post-conviction hearing about their sentence after they were found guilty. This is mentioned in Section 235(2), which says that unless certain rules apply, the judge has to listen if the defendant wants to contest the sentence before the final decision is made based on law⁶.

3. DEATH PENALTY UNDER IPC, 1860

India is one of the biggest and most crowded countries in the world, and it's rapidly growing economically. But, like any country, it also deals with crime and criminals. In India, the punishment someone gets for a crime depends on how serious the crime is. The main laws for dealing with crimes in India are the Indian Penal Code and the Criminal Procedure Code. The

⁴ The Code Of Criminal Procedure (Amendment) Act, 1955, No. 26, Acts of Parliament, 1955 (India).

⁵ The Code Of Criminal Procedure, 1973, No. 02, Acts of Parliament, 1974 (India).

⁶ The Code Of Criminal Procedure, 1973, § 235(2), No. 02, Acts of Parliament, 1974 (India).

point of punishment in criminal law is to make sure the person who did something wrong doesn't do it again. When someone breaks the law, they get punished as a consequence. The different types of punishments are explained in Chapter III, Section 53 of the Indian Penal Code⁷. This section tells us about the different kinds of punishments someone could get if they commit a crime listed in the Indian Penal Code. When a court decides on a punishment, it can make it less severe by considering different things and the circumstances of the case.

Punishments as provided under Section 53, IPC:

- Death Penalty
- Imprisonment For Life
- Imprisonment(simple or rigorous)
- Forfeiture of Property
- Fine

According to Section 53 of the Indian Penal Code, there are five main types of punishments a court can give to someone who's found guilty of a crime.

Offences under IPC that are punishable by Death Penalty:

- Section 118 of the Code addresses the act of concealing a criminal plan to commit a serious crime that could result in the death penalty or a lifetime in prison⁸.
- Section 115 of the Code deals with being involved in secret agreements or collaborations related to crimes that could lead to the death penalty or life imprisonment.⁹
- Under Section 121, it is forbidden to engage in warfare, aid in war efforts, or attempt to wage war against a government that is lawfully and constitutionally established¹⁰.

⁷ Indian Penal Code, 1860, § 53, No. 45, Acts of Parliament, 1949 (India).

⁸ Indian Penal Code, 1860, § 118, No. 45, Acts of Parliament, 1949 (India).

⁹ Indian Penal Code, 1860, § 115, No. 45, Acts of Parliament, 1949 (India).

- Section 132 covers cases where someone encourages the development of a rebellious group within the country's military forces. This is referred to as insurrection¹¹.
- Section 194 makes it illegal to provide fake or harmful evidence with the intention of forcing the wrongful execution of an innocent person¹².
- Section 302 pertains to the crime of murder, where one person unlawfully causes the death of another¹³.
- Going against Section 305, it is against the law to help a young person or anyone with a mental illness to commit suicide¹⁴.
- Section 303 comes into play when a person who is serving a life sentence for a previous crime ends up committing murder¹⁵.
- Section 396 tackles cases involving both murder and causing harm during the act of dacoity (robbery by a group)¹⁶.
- Section 364A focuses on cases of kidnapping, where someone is abducted against their will¹⁷.
- Section 376A, as per the Criminal Law Amendment Act of 2013, addresses cases of rape against women¹⁸.

¹⁰ Indian Penal Code, 1860, § 121, No. 45, Acts of Parliament, 1949 (India).

¹¹ Indian Penal Code, 1860, § 132, No. 45, Acts of Parliament, 1949 (India).

¹² Indian Penal Code, 1860, § 194, No. 45, Acts of Parliament, 1949 (India).

¹³ Indian Penal Code, 1860, § 302, No. 45, Acts of Parliament, 1949 (India).

¹⁴ Indian Penal Code, 1860, § 305, No. 45, Acts of Parliament, 1949 (India).

¹⁵ Indian Penal Code, 1860, § 303, No. 45, Acts of Parliament, 1949 (India).

¹⁶ Indian Penal Code, 1860, § 396, No. 45, Acts of Parliament, 1949 (India).

¹⁷ Indian Penal Code, 1860, § 364A, No. 45, Acts of Parliament, 1949 (India).

¹⁸ Indian Penal Code, 1860, § 376A, No. 45, Acts of Parliament, 1949 (India).

Each of these sections deals with different aspects of serious crimes and their consequences, aiming to maintain order and justice in society.

4. DEATH PENALTY UNDER OTHER LAWS

- In the Border Security Force Act of 1968, Sections 14, 17, 18(1)(a), and 46, it says that some acts like civil offences, mutinies, desertions, and crimes against the enemy could lead to the death penalty¹⁹.
- As per section 3(1) of the Andhra Pradesh Control of Organized Crime Act, 2001, when an act of organised crime results in a fatality it is punishable with the death penalty.
- The Army Act of 1950 has Sections 34, 37, and 38(1) that say if a soldier does acts like turning against their own army, rebelling, or leaving their post during a fight, they could face the death penalty²⁰.
- The Assam Rifles Act of 2006, Sections 21, 24, 25(1)(a), and 55, talk about crimes against the enemy, mutiny, desertion, and other serious actions that can be punished by death.
- Helping with a sati act, which is a terrible practice, is against the law according to Section 4 Part II of the Prevention of Sati Act²¹.
- Drug trafficking, which means selling illegal drugs, can lead to the death penalty in some situations, as mentioned in Section 31A of the Narcotic Drugs and Psychotropic Substances Act²².

¹⁹ Border Security Force Act, 1968, § 14, 17, 18(1)(a) & 46, No. 47, Acts of Parliament, 1968 (India).

²⁰ Army Act, 1950, § 34, 37 & 38(1), No. 46, Acts of Parliament, 1950 (India).

²¹ The Commission of Sati Prevention Act, 1987, §4, No. 03, Acts of Parliament, 1988 (India).

²² The Narcotic Drugs and Psychotropic Substances Act, 1985, §31A, No. 61, Acts of Parliament, 1985 (India).

But there are some exceptions to the death penalty. People who are mentally challenged, pregnant, or young can't be given the death penalty.

5. CONSTITUTIONALITY OF THE DEATH PENALTY

The topic of the death penalty has been around for a long time. It has been talked about, studied, and argued about for years. However, a clear decision hasn't been made yet on whether it should be kept or gotten rid of. In the past, England used the death penalty as a punishment, but many countries have gotten rid of this practice. In India, the death penalty is still in use, but it's reserved for very exceptional or rare cases. The Indian Constitution protects the rights to life, liberty, and dignity under Article 21²³. However, there are instances when the government can limit these rights in the interest of maintaining law and order. The Supreme Court of India introduced the "due process" principle, which allows the government to limit people's rights under certain circumstances, as seen in the case of *Maneka Gandhi v. Union of India*²⁴.

When someone is given a death sentence in India, certain procedures are followed:

- The accused person has the right to be heard, and the death penalty is only used in the "rarest of rare" cases.
- The Supreme Court reviews and confirms death sentences under Article 136 of the Constitution²⁵.
- Defendants can appeal their case to the Supreme Court under Section 379 of the Criminal Procedure Code²⁶. They also have the option to ask for pardon through Sections 433 and 434 of CrPC.

There have been debates about whether the death penalty is constitutional in India. In the case of *Jagmohan Singh v. The U.P.*²⁷, state, all five Supreme Court judges unanimously rejected the

²³ INDIA CONST. art. 21

²⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

²⁵ INDIA CONST. art. 136

²⁶ The Code Of Criminal Procedure, 1973, § 379, No. 02, Acts of Parliament, 1974 (India).

argument that the death penalty violated the "right to life" in Article 21, as well as Articles 14²⁸ (equal rights) and 19 (right to liberty²⁹). They also clarified that certain procedures apply only to convictions, not death sentences, under the Criminal Procedure Code.

In another case, *Machhi Singh v. Punjab*³⁰, the Supreme Court outlined when the death penalty might be used. They identified five situations where severe punishments could be given, such as particularly brutal murders, repeated offenses, and crimes that are especially heinous and anti-social.

In the case of *Mithu v. Punjab*³¹, the Supreme Court ruled that making the death penalty mandatory is against the law and the constitution. However, they didn't address the laws related to drug offenses and other crimes where the death penalty was considered mandatory. Indian courts have used the death penalty for these crimes, but there are ongoing discussions about it.

6. DETERRENCE THEORY

The theory of deterrence suggests that potential criminals might think twice about committing serious crimes if they know they could face severe punishment, like the death penalty. The main idea here is that people consider the consequences before breaking the law, and the fear of the most extreme punishment makes them less likely to do it.

Those who support this theory say that the death penalty sends a strong message to society, showing how serious the government is about certain crimes. They believe that having the death penalty could scare potential criminals and make them reconsider doing something that could lead to their own death. Supporters argue that the death penalty can make the public safer by

²⁷ *Jagmohan Singh v. The State of U.P.*, 1973 AIR 947

²⁸ INDIA CONST. art. 14

²⁹ INDIA CONST. art. 19

³⁰ *Machhi Singh And Others vs State Of Punjab*, 1983 AIR 957

³¹ *Mithu v. State of Punjab*, AIR 1983 SC 473

stopping potential criminals from acting on their violent thoughts since they know the punishment is severe.

Supporters of deterrence might point to specific cases in India where introducing the death penalty seemed to lower similar crimes. They say that the fear of this harsh punishment made potential criminals think twice. In India, where there are security concerns, some people who support the death penalty also say it's necessary to fight terrorism and other terrible crimes. But not everyone agrees with this theory. Critics of deterrence say it's not easy to prove that the death penalty directly stops crime because criminal behaviour is influenced by many things. They think the argument that harsh punishment alone deters crime doesn't work well in India. That's because the justice system in India sometimes takes a long time to give fair trials. Critics also bring up worries about false accusations and unfairness. When innocent people are given death sentences, it makes people doubt the fairness of the legal system. If potential criminals believe the system isn't reliable and might make mistakes, then the idea that the death penalty stops crime becomes less convincing.

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7. CONCLUSION

The death penalty is a very harsh and cruel punishment that takes away a person's most important fundamental right, i.e., the right to life. It ends a person's life completely. There's also a chance that it might take the life of someone who is innocent and wrongly accused in the complicated legal process.³² It doesn't give the accused person a chance to change and become better, which means they might not have the opportunity to improve and stop doing bad deeds³³. This is a problem because some people who did wrong things when they were young could change and become better with the right help and support. But if they don't get that chance, they might keep doing bad things.

Even though it's really cruel, there are some good points about the death penalty. It makes other potential criminals think twice because they know that they could end up facing the same

³² Himali Agarwal, *Status of Death Penalty in India*, 5 INT'L J. L. MGMT & HUMAN. (2022)

³³ Ibid

punishment. The idea of losing your own life makes most people afraid to do something really bad. Also, it helps society by getting rid of dangerous people, which makes everyone feel safer and less worried about crime.³⁴

To sum up, the deterrence theory is a major point of disagreement when it comes to deciding if the death penalty works in India. Critics say that criminal behaviour is more complicated than just fear of punishment, and there's not enough solid evidence to prove that the death penalty actually stops crime. On the other side, supporters argue that the fear of death can stop potential criminals from doing really terrible things.

When it comes to making laws about the death penalty in India, it's important to think about many factors, not just deterrence. The whole issue is complex and still being debated. There's no clear proof that using the death penalty lowers crime based on actual data. This topic is made even more complicated because people worry about unfairness and the moral side of letting the government decide who lives and who dies.

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³⁴ Vandana Tiwari, *Death Penalty In India: A Critical Analysis*, 38 L. REV. (2018)