



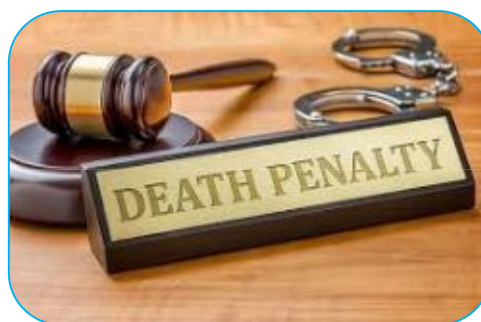
CONTEMPORARY STUDY ON CAPITAL PUNISHMENT

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ABSTRACT :

Life is precious and death is irrevocable'. "Capital Punishment" or "Death Penalty" is the uppermost level of punishment presented in any democratic society to maintain law and order. In the world we live in today, crime rates are steadily rising. There have been more homicides, kidnappings, rapes, terrorist attacks, and incidents involving child abuse. Both the Indian Penal Code and the Code of Criminal Procedure address the death punishment. Since its inception, the death penalty has been used in India, sometimes known as capital punishment, is "the state's sanctioned death penalty for certain crimes," according to one definition. The arguments in favor and against have not substantially altered over time. The type of crime and the method of punishment are related to the culture and civilization from which they originate. Article 21 of the Indian constitution states that only legal procedures may be followed in order to take away someone's life or personal freedom. The study's objectives were to analyze "Capital Punishment" in India critically by examining current research, legal rules, historical occurrences, and some judicial decisions etc.



KEYWORDS : Capital Punishment, Death Penalty, Indian Penal Code.

INTRODUCTION:

"I support the death penalty, but I also think there has to be no margin for error."

George H. Ryan, former American Politician

Over the centuries, various rulers in India have ordered death as punishment. With the progression of time, there have been a lot of significant changes in the mode of execution, viz. a shift from crushing to hanging, spinning and the headman's axe to hanging, electric chair to lethal injection, etc. However, there neither seems much of change nor as much debate on the methods of execution in India as in major democracies like the United States.¹ In ancient India, the King was considered divine and he had supreme authority. Death was a rule for most of the crimes such as theft, tax evasions, rebellion, etc.² The ability to punish by death is an attribute of power. India's earliest recorded policy of punishment in sixth century also talks of the same.³ During the Maurya Dynasty, Emperor Ashoka talks of death penalty as a standard feature of his polity and his kingdom's highly evolved jurisprudence. He mentions the death penalty matter-of-factly in passant in his Pillar Edict IV: 'it is most desirable that there should be absolute equality for all in the legal proceedings (viyohalasamata) and in the punishment awarded (dandasamata).⁴ In order to create deterrence among others, people were punished publicly for their crimes. Elephants were considered smarter than other wild animals and

were easy to train. So, the rulers adopted the most brutal method of crushing by Asian elephants to carry out public executions.⁵ This method was used by the Mughal Emperor Akbar the great, and was known as "Gunga Rao".⁶ But this method declined faster to the point of extinction and was not able to find a place in medieval period.

The demonstration of crushing lost its significance another hundred years later. The rise of Peshwa to the fore brought a new system of punishment with it. Executions were carried out either by hanging the condemned man, cutting him to pieces, or decapitating him. A further refinement included breaking the skull with mallets.⁷ But Brahmins, if sentenced to death, was executed more compassionately – they were poisoned.⁸ Later, hanging transformed into the exceptionally ritualized process of 'drawing, hanging and quartering' – the more serious the crime, the harsher the punishment. In this, drawing refers to dragging the person to the place of execution where they were hanged; their body was rebuffed further by disemboweling, beheading, burning, and 'quartering' – removing the head and limbs of the condemned. The head and appendages were regularly openly shown following the execution.⁹ By the end of the seventeenth century, India's new guest, British East India Company, was making inroads into the country.

The Supreme Court of Judicature was set up in Calcutta at Fort William under the Regulating Act of 1773.¹⁰ In its very initial years, the Court was approached for the verdict on Raja Nanda Kumar. Nanda Kumar brought up the charges of bribery and corruption against the then Governor General, Warren Hastings. The council found the charges to be true and Hastings had to pay the amount back to the Company's treasury and had to leave the seat. Revengefully afterwards, he took the help of the Chief Judge, and got Nanda Kumar booked for forgery.¹¹ A jury of twelve Englishmen returned the verdict 'guilty' thereby sentencing him to death under the Perjury Act, 1728.¹² Nanda Kumar was finally hanged at Fort William on August 5, 1775.¹³ An other example is the execution of Panchalankurichi. The Collector of Tinnevely conquered the defiant ruler of Panchalankurichi in 1799 and had him hanged from a tamarind tree.¹⁴ These examples remained strong on every colonial and colonized mind and eventually became a practice to be followed by the European Empire during late 18th and 19th century in Modern India.¹⁵ Since then, hanging by chain is the most common ritual that is being followed throughout the nation for penalizing the condemned.

The British valued execution as a deterrent punishment and adopted variegations in the post execution practices. They adopted the practice of displaying severed heads after beheading and hanging by chain, anatomization and dissection, burial and burning of the dead bodies. Same was adopted by India and is followed till date. The British termed it as a judicial murder with the command of the supreme and has got it written in the statute 'The Murder Act'.¹⁶ Same practice was adopted in India during the making of Indian Independence Act.¹⁷ At the time of Independence, India retained many of the civil and criminal laws framed by the British colonial government during its regime. This includes the Indian Penal Code and the Code of Criminal Procedure, 1898 (now repealed and substituted by Code of Criminal Procedure, 1973).

The earlier code gave wide powers and solicitude to judges in cases punishable with death and in cases where the accused is convicted of an offence punishable with death but not awarded death sentence, special reasons were need to be recorded.¹⁸ This gave rise to the issue of desirability of the death penalty and its arbitrary imposition on convicts. For the very first time, a resolution was passed against the death penalty by the Congress government in its Karachi session¹⁹ and this punishment was again questioned in the Indian Constituent Assembly in 1947 and 1949.²⁰ At that time, it was left to the Parliament as a matter of legislation to decide upon. Later, in 1967, The Capital Punishment, a report of the Law Commission of India.²¹ Was released which recommended that India cannot risk the abolition of capital punishment owing to the circumstances and condition of the country. The commission recommended that keeping in view the vast population, variety of social upbringing, literacy rate, unevenness in the levels of morality of the people and in order to maintain law and order in the country, it is necessary to retain death penalty for grave and heinous offences.²² Having regard to the diversity of population in India, the state of affairs in the country has changed significantly. India has not carried out any execution in either 1990s or 2010s.

The figure of execution during several years has declined remarkably. Only two prisoners were executed from 2013 to 2017 in the country. The execution rate has reached its lowest to 0.0003 among fifty-six nations that presently impose death penalty.²³ As of 2017, India has long used its judicial execution that during the span of last twenty two years, India hanged only four people, giving it an annual rate of execution that is around 1/25,000th the rate of executions in China.²⁴ With the progression in time and society, it is evident that this punishment is losing its significance and becoming a subject of hatred and disaffection with evolving concepts of human rights. It has been challenged before the court in numerous cases as inconsistent with the fundamental rights enshrined in the Constitution of India.

Capital Punishment-

The legal system in India does not restrict death penalty or capital punishment in Bharatiya Nyaya Sanhita or any other laws. Hence, for serious crimes, death can be the punishment. It is followed as a deterrent effect against committing crimes. What we can generally understand by capital punishment or death penalty is that a person who is convicted for committing a specific crime be killed as a kind of punishment in BNS.⁴⁰ How it may be executed, is provided under Section 393 (5) of the BharatiyaNagarik Suraksha Sanhita, 2023. Stating about the language and contents of judgment, the provision states that “When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.” When finalised, a warrant of execution of a sentence of death under Form 43 is ordered by the Court concerned.

Punishable by death

1. **Rape on woman under 12 years** -Section 65(2) of BNS provides punishment for anyone who commits rape on a woman/girl below the age of 12 years. Considering the age of innocence and the heinous crime, the legislature makes the offence punishable with rigorous imprisonment of at least 20 years which may be extended to life imprisonment (remainder of natural life) with fine, or death penalty.
2. **Gang rape with woman below 18 years**-For someone who commits gangrape on a woman, the offence is punishable with rigorous imprisonment of minimum 20 years extendable to life imprisonment. However, as per Section 70(2) of Bharatiya Nyaya Sanhita, 2023, when the victim is aged below 18 years, each one of the offenders are punishable with life imprisonment along with fine, or capital punishment, as the case may be.
3. **Rape causing death or resulting in persistent vegetative state of victim**-While rape is in itself soul shaking act, when it results in the death of the victim, or persistent vegetative state wherein she is left unconscious or brain dead, not truly aware of whatever happens around them, the law makers have provided severe punishment. Section 66 makes the culprit punishable with rigorous imprisonment of not less than 20 years, extendable to life imprisonment, or death penalty under BNS.
4. **Repeat offenders of rape**-Anyone who has been convicted for an offence punishable under Sections 64/65/66/70 and subsequently convicted for one of the said offenses is punishable with life imprisonment for remainder of life or capital punishment under BNS Section 71.
5. **Murder**-While tit for tat is for kids, “A life for a life” has been considered the reason for punishing someone with death penalty for murder. Section 103 of BNS states the punishment for murder. Any person who commits murder under Section 101 is punishable with death penalty or life imprisonment along with fine.
6. **Mob Lynching**-While the Indian Penal Code was silent about this, the Bharatiya Nyaya Sanhita, 2023 addresses the newly erupted menace of mob lynching in India. While sub-section (1) of Section 103 states the punishment for murder, sub-section (2) poses the punishment when murder is caused by 5 or more persons on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground. Each participant in the said offence is punishable with death penalty or imprisonment for life along with fine.

7. **Murder by Life Convict**-When you are already serving severe punishment for an offence, it is better to watch over your conduct. If someone is already serving a sentence of life imprisonment and commits murder, he/she is punishable with capital punishment or imprisonment for the remainder of life.
8. **Abetment of suicide of child or person of unsound mind**-Life is precious, and if someone takes his/her life due to someone else boosting or supporting the act, that other person has to bear the wrath for inhuman action. If a person who is a child, any person of unsound mind, any delirious person or any person in a state of intoxication, commits suicide, and someone abets such a person to commit suicide, Section 107 punishes him/her with death penalty under Bharatiya Nyaya Sanhita, or life imprisonment along with fine.
9. **Attempt to murder by person serving Life Imprisonment**-As per Section 109 of BNS, if someone already serving a severe sentence of imprisonment and attempts to commit murder has to face capital punishment in BNS for such intended action or imprisonment of 10 years along with fine.
10. **Organized Crime resulted in death of a person**-Organized crime if the newly introduced offence in the New Criminal Laws. As per Section 111(2)(a) of BNS, if organized crime resulted in death of someone, the one who committed the offence has to face capital punishment under BNS 2023 or imprisonment for life along with minimum fine of Rs 10 lakhs.
11. **Terrorist act resulted in death of a person**-Terrorism is a global issue, and the Indian Penal Code did not particularly deal with the problem, since there were other laws. However, the death penalty under Bharatiya Nyaya Sanhita has been provided for terrorist act when it results in death of a person, or with life imprisonment along with fine.
12. **Kidnapping/abduction to kill/for Ransom**-Section 137 of the BNS defines what kidnapping is, and Section 138 defines abduction. The Section 140 (2) punishes a person who kidnaps or abducts another or detains such detained/kidnapped person, and threatens to cause death or hurt to such person, or gives reasonable apprehension of putting to or actually causing death or hurt, just to compel the Government/foreign State/international inter-governmental organization/ any other person to do or abstain from doing something or for paying ransom, with capital punishment in BNS, or imprisonment for life along with fine.
13. **Waging/attempting/abetting war against Government of India**-As per Section 147 of Bharatiya Nyaya Sanhita, anyone who wages war, or attempts/abets such war against the Government of India is punishable with death penalty or imprisonment for life with fine.
14. **Abetment to commit mutiny**-Mutiny means an open rebellion against the proper authorities. When someone abets mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India has to face capital punishment under BNS after conviction. The offence under Section 159 also includes attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, commonly termed as honey traps.
15. **Giving false evidence leading to conviction/execution of innocent person**.-The Indian Legal System resonates around the theory that hundreds of culprits may be released, but one innocent fellow should not be convicted. But the system works based on evidence to decide guilt of accused persons. So, if someone gives convincing but false evidence, and an innocent person is convicted and thereby executed of a capital offence, i.e., for which death penalty under BNS has been provided, such a person who gave false evidence is punishable with capital punishment in BNS.

Table 1: Capital Offences in IPC

S. No.	Section Number	Description
1.	Section 121	Treason, for waging war against the Government of India
2.	Section 132	Abetment of mutiny actually committed
3.	Section 194	Perjury resulting in the conviction and death of an innocent person

4.	Section 195A	Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person
5.	Section 302	Murder
6.	Section 305	Abetment of a suicide by a minor, insane person or intoxicated person
7.	Section 307 (2)	Attempted murder by a serving life convict
8.	Section 364A	Kidnapping for ransom
9.	Section 376A	Rape and injury which causes death or leaves the woman in a persistent vegetative state
10.	Section 376E	Certain repeat offenders in the context of rape
11.	Section 396	Dacoity with murder

Source: India. Law Commission of India, Report no.262 on Death Penalty, August 2015, pp.31-32

Table 2: Mercy Petitions Decided by the President of India

Sl. No.	Name of the President	Tenure	Number of Mercy Petitions Accepted	Number of Mercy Petitions Rejected	Total
1.	Dr. Rajendra Prasad	26.1.1950 – 3.5.1962	180	1	181
2.	Dr. Sarvapalli Radhakrishnan	13.5.1962 - 13.5.1967	57	0	57
3.	Dr. Zakir Hussain	13.5.1967 – 3.5.1969	22	0	22
4.	Shri V.V. Giri	3.5.1969 – 20.7.1969; 24.8.1969 – 24.8.1974	3	0	3
5.	Dr. Fakrudhin Ali Ahmed	24.8.1974 – 11.2.1977	NA	NA	0
6.	Shri N Sanjeeva Reddy	25.7.1977 – 5.7.1982	NA	NA	0
7.	Giani Zail Singh	25.7.1982 – 25.7.1987	2	30	32
8.	Shri R. Venkatraman	25.7.1987 – 25.7.1992	5	45	50
9.	Dr. Shankar Dayal Sharma	25.7.1992 – 25.7.1997	0	18	18
10.	Shri K.R. Narayanan	25.7.1997 – 25.7.2002	0	0	0
11.	Dr. A.P.J. Abul Kalam	25.7.2002 - 25.7.2007	1	1	2
12.	Smt. Pratibha Devisingh Patil	25.7.2007 – 25.7.2012	34	5	39
13.	Shri Pranab Mukherjee	25.7.2012 --	2	31	33
Total		306	131		437

Source: India. Law Commission of India, Report no.262 on Death Penalty, August 2015, pp.188-189

Recent Legislative Developments w.r.t. Death Penalty

- In 2021, Punjab and Madhya Pradesh introduced the death penalty for causing deaths by spurious liquor.
- Maharashtra introduced death penalty for 'heinous' offences of rape and gangrape.
- The Union Ministry of Women & Child Development also introduced a Bill proposing the capital punishment for repeat aggravated trafficking offences involving children and women.
- Only one death sentence was confirmed by a High Court (the Karnataka HC in a murder case) in 2023, marking the lowest rate by the appellate courts since 2000. In 2022, HCs confirmed the death sentences of four convicts, five in 2021 and three in 2020. The dip was steep after 2019 when HCs confirmed death sentences of 26 convicts.
- This year (2023) also saw the Supreme Court not confirming any death sentences, the second time since 2021.
- There has been a 15% decrease in the rate of disposal of death penalty confirmation proceedings at the HCs in 2023.
- 57 death penalty cases were disposed of in 2023, compared with 68 cases in 2022.
- This significant decline in the case disposal rate of death penalties is attributed to the high death row population in the country.
- There was a 45.71% increase in the number of prisoners under death sentence by the end of December 2023, from that in 2016.
- With 120 death sentences (167 in 2022) imposed by trial courts and 561 prisoners under the sentence of death by the end of December, 2023 had the highest number of prisoners on death row in nearly two decades.
- Similar to the last five years, the majority of death penalty cases in trial courts involved crimes related to sexual offences.
- Of the 120 death sentences imposed by trial courts, more than 50% were for homicidal rapes.

Findings of the Annual Death Penalty Report 2023

- Under Section 366 of the Code of Criminal Procedure (CrPC), all death sentences awarded by trial courts are to be confirmed by the concerned HCs.
- Both the conviction and the quantum of sentence are examined by the first appellate court (HCs).
- Acquittal and remand by the SC and HCs in 2023 indicate significant concerns with the quality of police investigations and appreciation of evidence by lower courts in cases.
- For example, in acquitting six prisoners in five cases and remanding two cases involving two prisoners, the SC criticized negligence in investigation and trials.
- In one particularly grievous case, it found that the prisoner had been a minor at the time of the offence, 28 years after his imprisonment.
- The trial courts-imposed death sentences in 86.96% of its cases in the absence of any information relating to the accused, despite the SC's mandate in *Manoj v. State of Madhya Pradesh* (2022).
- In this case, SC mandated the Trial Courts to collect psychiatric and psychological evaluation reports of the accused before awarding the death sentence.

Recent Developments with respect to Capital Punishment

- Recently, Ghana (where the Parliament passed a Bill to abolish the death penalty for ordinary crimes) and Malaysia (eliminated the mandatory death penalty for 11 criminal offences) are some of the international developments in death penalty laws.
- However, in India, the passing of the Bharatiya Nyaya Sanhita (BNS) 2023 would increase the number of offences punishable by death from 12 under the Indian Penal Code (1860) to 18 under the Act.

CONCLUSIONS

"We are all the creation of God. I am not sure a human system created by a human being is competent to take away a life based on artificial and created evidence". - A.P.J. Abdul Kalam

The death penalty does not serve the penological goal of deterrence any more than life imprisonment. Further, life imprisonment under Indian law means imprisonment for the whole of life subject to just remissions which, in many states in cases of serious crimes, are granted only after many years of imprisonment which range from 30-60 years.²⁵

To conclude, the practice of hanging by neck is not new and has been in practice since the advent of British in India. Hanging was the only mode of execution during the time of the Constituent Assembly. The system of hanging has evolved much since then and is perfectly scientific. Though the process of hanging is a prolonged process but is quick and simple with no extra cost involved. Death becomes a certainty as there is no probability of recovery of consciousness owing to it resulting into a definite stoppage of breathing. The method also inflicts no further pain than required as other known methods of executing the death sentence do. The entire process of hanging is carried out with complete decency and decorum; it does not involve any kind of humiliation, torture or degradation directly or indirectly, as death supervenes instantaneously without any strangulation. The chances of any lingering death or botched executions are minimal and can safely be excluded. Therefore, the authors conclude that hanging is the best mode of execution of death sentence suited to the present times.

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