

**LEGAL LOCK JOURNAL**  
**2583-0384**

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**VOLUME 1 || ISSUE 3**

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**2022**

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**CAPITAL PUNISHMENT VIS-À-VIS RIGHT TO LIFE- A CRITICAL STUDY**Kancharla Snigdha<sup>1</sup>**INTRODUCTION**

Capital punishment was first challenged in India in the 1973 case of *Jagmohan Singh v. State of Uttar Pradesh*<sup>2</sup>, in October 1972. The verdict was re-enacted by the CrPC in 1973, and the death sentence was considered an extreme penalty<sup>3</sup>. It was contended that the death penalty contradicts the Indian Constitution's provision of the right to life and equality.

‘Punishment for murder by life-convict. —Whoever, being under sentence of 1[imprisonment for life], commits murder, shall be punished with death’<sup>4</sup> – IPC 303

‘Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law’<sup>5</sup>. – article 21

Capital punishment and death sentences are used interchangeably by courts to refer to a penalty that entails taking the wrongdoer's life in cases of serious crimes such as terrorism, murder, etc. Execution is a method in which an offense has been committed so seriously that the state opposes the conduct by condemning the culprit to death.

In India, the severity of the murder is insufficient to justify the death penalty. The death penalty will be passed only in the "rarest of the rare" cases. The first documented example of death sentence was Hammurabi<sup>6</sup> in the 18<sup>th</sup> century BC. Capital punishment can be traced back to 1750BC, in the *Laz Talionis* of the Hammurabi Code<sup>7</sup>. Death, as a punishment was also mentioned in the Bible for offenses including violating the sabbath, homosexuality, witchcraft, incest, and rape. According to anthropologists, the engravings made by ancient cave homes in Valladolid imply an execution. During the negotiations over the introduction of the French

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<sup>2</sup> *Jagmohan Singh vs The State Of U.P.*, AIR 1973 SC 947, 1973 CriLJ 370.

<sup>3</sup> Dr. S. Muralidhar, *HANG THEM NOW, HANG THEM NOT: INDIA'S TRAVAILS WITH THE DEATH PENALTY*, 40 JILI 143 (1998).

<sup>4</sup> Indian Penal Code. 1860 § 303

<sup>5</sup> india const. art. 21

<sup>6</sup> Hammurabi- “Hammurabi, also spelled Hammurapi, (born, Babylon [now in Iraq]—died c. 1750 BCE), sixth and best-known ruler of the 1st (Amorite) dynasty of Babylon (reigning c. 1792–1750 BCE), noted for his surviving set of laws, once considered the oldest promulgation of laws in human history” taken from <https://www.britannica.com/biography/Hammurabi>

<sup>7</sup> Hammurabi Code- “ The Code of Hammurabi was one of the earliest and most complete written legal codes and was proclaimed by the Babylonian king Hammurabi, who reigned from 1792 to 1750”, “The Hammurabi code of laws, a collection of 282 rules, established standards for commercial interactions and set fines and punishments to meet the requirements of justice” taken from <https://www.history.com/topics/ancient-history/hammurabi#:~:text=The%20Hammurabi%20code%20of%20laws,and%20finally%20rediscovered%20in%201901.>

Penal Code in 1791, there was a heated dispute about whether or not the death sentence should be abolished. Cesare Beccaria's ideas, which persuaded many leaders of the death penalty's ineffectiveness and inhumanity, sparked the contemporary abolitionist movement. The trials of fire, water, and other forms of deadly punishment that followed in the 1600s can be considered another sort of capital punishment. During the Middle Ages, the death sentence was characterized by extreme harshness. Philosophers like Grotius, Thomas Hobbes, and John Locke, on the other hand, advocated for this type of punishment. The abolitionist movement expanded in the nineteenth century, famous jurists like Bentham and Romilly supported such notions. Michigan was the first to abolish death punishment in 1846. Following the adoption of the Universal Declaration of Human Rights in 1948, the abolitionist movement was highlighted as a goal for industrialized countries. Capital punishment is now carried out in 58 nations, including the United States, Japan, Belarus, Cuba, and Singapore. Except for the Republic of Belarus, it is now practically extinct throughout Europe.

Amnesty International has recorded a total of 657 executions in 20 countries in the year 2019; which is the lowest number of executions in at least the past one decade. China is the world's leading executioner. Only four countries have been responsible for 86 percent of all verified executions: Iran, Saudi Arabia, Iraq, and Egypt. The Central African Republic, Equatorial Guinea, Gambia, Kazakhstan, Kenya, and Zimbabwe all took important steps or made statements in 2019 that might lead to the abolition of the death sentence. By the end of 2019, 106 nations have legalized the abolition of the death penalty for all crimes. 142 nations have either legally or de facto abolished the death penalty. At the end of 2019, at least 26,604 persons were sentenced to death. The most common methods of execution in 2019 were beheading, lethal injection, electrocution, and shooting<sup>8</sup>.

### **CAPITAL PUNISHMENT:**

The death penalty is the execution of a person who has been sentenced to death by a court of law. Extrajudicial executions should be segregated from capital punishment. The phrases "death penalty" and "capital punishment" are used interchangeably at times. Even when the punishment is upheld on appeal, it is not necessarily followed by an execution appeal, because life imprisonment is an option.

"Capital Punishment" refers to the harshest type of punishment. It is the judgment that will be meted out to those who commit the most atrocious, severe, and abhorrent crimes against mankind. While the meaning and scope of such offenses differ from nation to country, state to

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<sup>8</sup> Taken from <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>

state, and age to age, the death penalty has always been the connotation of capital punishment. The capital sentence refers to a death sentence in law, criminology, and penology<sup>9</sup>.

#### **CAPITAL PUNISHMENT IN INDIA:**

A comprehensive review of discussions in British India's Legislative Assembly indicates that the question of capital punishment was not discussed until 1931, when Shri Gaya Prasad Singh, a member from Bihar sought to present a bill to abolish the death sentence for offenses under the Indian Penal Code. However, the proposal was lost after Home Minister reacted to it. Sir John Thorne, the then-home minister, expressed the government's view on capital punishment in British India twice in debates in the Legislative Assembly before Independence. "The government does not believe it is wise to eliminate death punishment for any crime for which it is being used." The Code of Criminal Procedure, 1898 ('Cr.P.C. 1898') and the Indian Penal Code, 1860 ('IPC') were among the laws in effect when India gained independence from the British colonial administration. The IPC stipulated six penalties, including death, that might be inflicted under the statute. Section 367(5) of the CrPC 1898 requires courts to record the reasons for not imposing the death penalty for offenses where the death penalty was an option. Section 367(5), CrPC 1898, was abolished by Parliament in 1955, drastically affecting the position of the death penalty. The death penalty was no longer the norm, and judges didn't require exceptional justifications for not enforcing it in circumstances when it was a mandatory punishment. In 1973, the Code of Criminal Procedure ('CrPC') was re-enacted, and various amendments were made, most notably to Section 354 of the Code. This was a significant deviation from the situation prior to the 1955 amendment (when both the death penalty and imprisonment terms were authorized under capital cases), as well as a reversal of the position under the 1898 Act. Judges must now provide detailed justifications for inflicting the death punishment. Section 235 of the Act was also altered to provide a post-conviction hearing on punishment, which includes the death penalty.

#### **RAREST OF THE RARE CASES:**

The Indian judiciary is dedicated to balancing aggravating and mitigating elements on one hand and public uproar on the other. Recently, the Supreme Court upheld the death penalty for the perpetrators of the Nirbhaya murder rape case, describing it as the "rarest of rare" cases. In India, capital punishment has been reserved for the rarest of rare cases. Section 121 (taking up arms against the state), Section 302 (murder), Section 364A (kidnapping for ransom), and other

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<sup>9</sup>Gupta, Subhash C. Capital punishment in India, Deep & Deep Publications, c1986.

acts punishable by death are recommended by the Indian Penal Code 1860. Two of the most well-known cases involving death convicts are fear-based oppression and murder cases.

#### **ORIGIN OF THE TERM “RAREST OF RARE” CASES:**

The case of *Nathuram Godse v Crown*<sup>10</sup> (Assassination of Mahatma Gandhi) is the most conspicuous illustration of the rarest of rare occurrences in independent India. On January 30, 1948, Nathuram Godse shot Mahatma Gandhi during a petition meeting in Delhi. After a protracted preliminary hearing, Justice Amarnath condemned him to death, which was unanimously affirmed by three judges of the Punjab High Court.

In *Kehar Singh v Delhi Administration*<sup>11</sup>, the supreme court maintained the death penalty issued by the trial court and supported by High Court against the three appellants Kehar Singh, Balbir Singh, and Satwant Singh for conspiring and carrying out Smt. Indira Gandhi's assassination was under sections 302, 120B, 34, 107, and 109 of the Indian Penal Court. The court decided that the homicide was one of the “rarest of rare” situations in which a professional killer and his accomplices deserved a severe penalty.

*Santosh Kumar Singh v Union Territory*<sup>12</sup> of Delhi (Mattoo Murder Case) was accused, but his acts were not considered serious enough to make the case “rarest of rare”.

#### **WHAT COMES UNDER THE “RAREST OF RARE” CASE:**

Section 303 of the Indian Penal Code made death sentences mandatory in India. In any regard, in *Mithu Singh v State of Punjab*<sup>13</sup>, the supreme court invalidated Section 303 ultra vires the constitution, arguing that it breaches articles 14 and 21 of the Constitution.

Following that, in *Machhi Singh v. the State of Punjab*<sup>14</sup>, the court endeavored to establish guidelines for determining when a case qualifies as a “rarest of rare” case. The following points were made:

1. When a homicide is committed in an incredibly fierce, detestable, revolting, or unforgivable manner in order to elicit exceptional and extraordinary outrage from the network; for example, when a homicide is committed in an incredibly fierce, detestable, revolting, or unforgivable manner in order to elicit exceptional and extraordinary outrage from the network; for example, when a homicide is committed in an incredibly detestable, fierce or unforgiving manner.

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<sup>10</sup>Nathuram Godse v Crown, 1949 CriLJ 834.

<sup>11</sup>Kehar Singh v Delhi Administration 1988 AIR 1883.

<sup>12</sup>Santosh Kumar Singh v Union Territory, (2010) 9 SCC 747.

<sup>13</sup>Mithu Singh v State of Punjab, (1983)2 SSC 277.

<sup>14</sup>Machhi Singh v. the State of Punjab, 1983 AIR 957.

2. When the victim's home is set on fire with the intention of keeping him alive.
3. When the victim is subjected to brutal acts in order to realize his or her death.
4. When a casualty's body is ruthlessly damaged or ripped into pieces.
5. In the commission of a homicide, there is a rationale. When the cognitive processes underlying a homicide are pure depravity and barbarism.
6. The nature of the offense is socially disgusting when the killing of a person belonging to one of the regressive groups.
7. Size of wrongdoings when the scope of crime is massive as in the case of serial killings.
8. Characteristics of the victim. When the victim is a blameless child, a vulnerable woman, an older individual, public figures, and so on.

*Santosh Kumar Bariyar v. the State of Maharashtra*<sup>15</sup>, the Supreme Court held that the “rarest of rare” decrees fill in as norm in upholding Section 345(3), establishing that life imprisonment is the rule and the death penalty is an exception. Under Section 303 of the Indian Penal Code, all guilty parties who carried out the actual execution of punishment were sentenced to death. The segment was removed because it was considered immoral and cruel. The case of *Prajeet Kumar Singh v. the State of Bihar*<sup>16</sup> was a rare case in which the court determined exactly what would be termed as the “rarest of rare” case.

The court concluded that capital punishment is appropriate when a crime is committed in a brutal, peculiar, or offensive manner to arouse significant and extreme irrationality in society. There are no definite conditions to what is considered as the “rarest of rare” case and is dependent solely on how the Judge perceives the whole crime. These inconsistencies are one of the major drawbacks of capital punishment.

### **RIGHT TO LIFE:**

The right to life is the most fundamental of all rights. All other rights contribute to the overall quality of life and rely on the presence of life to operate. Because human rights can only be tied to living persons, it is reasonable to expect that the right to life will come first because without it, none of the other rights would be meaningful. “life” According to Article 21 is defined as more than only breathing. It does not imply a purely animal existence or a labor-intensive existence it covers a far spectrum of rights including the right to a dignified life, right to livelihood, right to health, right to education, and so on. The right to life is essential to our survival as human beings because without it we would cease to exist. It encompasses all aspects

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<sup>15</sup>Bariyar v. State of Maharashtra, 2009 6 SCC 498.

<sup>16</sup>Prajeet Kumar Singh v. State of Bihar, (2007) 2 PLJR 656.

of a man's life that make it relevant and worthwhile. It is only part of the Constitution that has been given the broadest conceivable interpretation. As a result, the bare necessities and requirements of a person are derived from the core concept of the right to life.

In *Sunil Batra v. Delhi Administration*<sup>17</sup>, It was considered that the "right to life" encompassed the right to live a healthy life in which all the human body's capabilities were in great form. It would also include the right to preserve traditions and cultures as well as anything else that gives significance to his existence. It also includes the right to sleep and rest in peace, as well as the right to rest and health. The Supreme Court granted Art. 21 a new depth in *Maneka Gandhi v. Union of India*<sup>18</sup>. The Court determined that the right to life included not only a physical right but also the right to live with dignity.

Apart from the above-mentioned privileges, article 21 also says that "No person shall be deprived of his life or personal liberty except according to a procedure established by law". The question of what comes under "procedure established by law" and if the procedure includes judicial homicide has not been answered in detail by any of the articles referred by the researcher (in the literature review).

#### **PROCEDURE ESTABLISHED BY LAW:**

It signifies that legislation that has been lawfully adopted by the legislature or the relevant authority is legal if the procedure has been followed correctly. Following this idea, a person's life or personal property can be taken away from them if they are done according to legal procedures.

So, if Parliament adopts legislation, a person's life or personal liberty can be taken away if by the law's provisions and processes. It does not attempt to determine whether the laws passed by Parliament are fair, just, or arbitrary. "Procedure established by law" indicates that a law that has been lawfully enacted is valid, even if it violates justice and equitable ideals. The tight adherence to the legal system may increase the risk of persons' lives and personal liberty being jeopardized as a result of unjust laws enacted by the law-making authority. SC emphasized the need for due process of law to avoid this situation.

#### **DUE PROCESS OF LAW:**

The due process of law evaluates if law is depriving a person of his life and liberty, as well as if the legislation is fair and not arbitrary. The Supreme Court will declare legislation as null and void if it is found to be unfair. Under this idea, individual rights are handled in a better and

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<sup>17</sup>Sunil Batra v. Delhi Administration, 1980 AIR 1579.

<sup>18</sup>Maneka Gandhi v. Union of India, AIR 1978 SC 597.



fairer manner. Due process is a legal requirement that the state respects all of a person's legal rights, fundamental rights, and liberty. It also enables the courts to examine any statute for basic fairness, justice, and liberty.

In England, due process originated from clause 39 of the Magna Carta. Due process was not preserved in England when English and American law diverged, but it was included in the United States Constitution. After 1978, the Indian judiciary adopted a liberal interpretation, attempting to make the term "procedure established by law" equivalent with "due process" when it comes to defending individual rights.

In the case of *Maneka Gandhi vs Union of India* (1978, the Supreme Court of India held that a "procedure established by law" under Article 21 must be "right, just and fair" and not "arbitrary, fanciful or oppressive" or it will not be a procedure established by law and the requirement of Article 21 will not be met. As a result, in India, the "method established by law" carries the same weight as the "due process of law" clause in the United States.

In *Jagmohan Singh vs. State of Uttar Pradesh*<sup>19</sup>, The supreme court's panel of five judges affirmed the death penalty's constitutional legitimacy, ruling that it did not violate Articles 14, 19, or 21. It was argued that the methods outlined in the Cr. Pc. were limited to determining guilt and not imposing a death sentence. The Supreme Court ruled that the decision to condemn someone to death is made following the "procedure established by law". It was noted that the judge chooses between death and life imprisonment based on the circumstances, facts, and nature of the offense presented during the trial.

The constitutional validity of section 345(5) of the Indian Penal Code was challenged in *Deena vs. Union*<sup>20</sup> because the use of rope as mandated by this provision was barbaric, inhumane, and demeaning, and so violated article 21 of the constitution. According to the court, section 345(5) of the IPC, which specified hanging as a method of execution was a fair, just, and reasonable process within the meaning of Article 21 and it is perfectly constitutional.

In *Sher Singh vs. State of Punjab*<sup>21</sup>, Chandrachud CJ., speaking on behalf of all three judges, declared that the death penalty is lawful and admissible within the limits of the Bachan Singh rule. This must be regarded as the rule of law.

In *Triveniben vs. the State of Gujarat*<sup>22</sup>, the Supreme Court said that the death sentence is not prohibited by the Constitution.

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<sup>19</sup>Jagmohan Singh vs. State of Uttar Pradesh, 1973 AIR 947.

<sup>20</sup>Deena vs. Union of India, 1983 AIR 1155.

<sup>21</sup>Sher Singh vs. State of Punjab, 1983 AIR 465.

<sup>22</sup>Triveniben vs. State of Gujarat, 1989 AIR 1335.



The study of the above-mentioned cases and exceptions of Article 21, clearly shows that the death penalty is regarded as constitutional in India although various legislative attempts have been made to abolish it, and it is still used in India today, following the recent cases of Ajmal Amir Kasab and Nirbhaya.

**CONCLUSION:**

After studying the articles and cases, it is only summarised that however cruel or immoral the act of judicial homicide is, it is still legal in India after considering both the downsides and advantages. It is true that the death penalty is cruel and often an innocent is executed instead of the guilty but the risk of letting the man roam free is higher than the risk of hanging the innocent.

The punishment should always be in correlation to the severity of the crime they committed or the people will stop fearing the law, this leads to hardened criminals as they develop this confidence in them that however horrible crime, they committed they still have a chance to escape the law. However, too harsh of punishment also makes way for hardened criminals. The concept of “rarest of rare” case helps in such situations by filtering which crimes need the most severe punishments in order to imply to the public at large that such acts are strictly against the state and which acts are comparatively less severe.

When it comes down to the ultimate question “does capital punishment infringe the right to life of an individual”, yes, yes it does. But it is a necessary evil to let the public at large feel safe knowing that the person who has committed heinous crimes such as terrorism and murders is no longer among them. However, the fact that our judiciary system is uncertain of what constitutes the “rarest of rare” case is what is making the death penalty an unreliable form of justice.