

THE CRIMINAL JUSTICE SYSTEM AND EXECUTION OF CAPITAL PUNISHMENT IN INDIA A CRITICAL STUDY

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INTRODUCTION

The criminal justice system deals with the institutions of government that are in charge of upholding the law throughout the nation, preserving peace and harmony, and dealing with criminal activity. Every person who experiences harm or loss at the hands of another must be given the opportunity to argue his case and seek redress, and this is the goal of the criminal justice system.

The execution of a person sentenced to death after being found guilty of a crime by a court of law is known as capital punishment, sometimes known as the death penalty. The Indian criminal justice system is a crucial component of the death penalty.

NEED AND EVOLUTION OF CRIMINAL JUSTICE SYSTEMS AND EVOLUTION OF CAPITAL PUNISHMENT IN INDIA

- *Criminal Justice System*

Hobbes claimed that since man is naturally greedy and will do everything for pleasure. According to Bentham, a human must pursue pleasure in order to escape pain. He typically follows his instincts, and in former times, there weren't any rules or restrictions to restrain his behaviour. His interests conflicted with those of others due to the growing population and number of villages, which created an unfavourable situation. Hence, a system that could keep an eye on a man's actions was required to

control his behaviour. The criminal justice system has evolved in a similar manner to how man has.

He responded according to his needs and desires at the initial stage when he had no control over his behaviour. He was capable of harming anyone in order to accomplish his goals. After that, the second stage began, during which time the realm grew and the idea of a "state" developed. At this point, a ruler presided over the realm, and other people carried out his orders. The clash of interests, however, was too much for this stage to handle, so the king imposed severe penalties based on the eye-for-an-eye and body-for-a-body philosophy. Retaliation and resentment abounded at this period. There was a need for a good system when the king was still unable to control human behaviour and society was in disorder. The criminal justice system came into existence as a result of the government's belief that it had a system to control the level of crime in each state as a result of the progress of time and social development, which saw the monarchy replaced by the aristocracy, which was then replaced by democracy.

- ***Capital Punishment in India***

The number of people who received death sentences and were put to death between 1980 and the mid-1990s is increasingly difficult to count. According to estimates, two or three persons are hanged every year. The Supreme Court declared in the Bachan Singh case from 1980 that only India should continue to apply the 1861 Criminal Code which imposed the death penalty for murder after gaining independence in 1947. While the Indian Constitution was being written between 1947 and 1949, numerous members of the Constituent Assembly indicated support for removing the death sentence, but no such provision was included. Throughout the following two decades, private member legislation to end the death sentence were submitted in both the Lok Sabha and the Rajya Sabha, but none of them were passed. Although it is unclear what constitutes the "rarest of the rare," it has been believed that between 1950 and 1980, 3000 to 4000 executions were carried out.

NEED FOR REFORMS IN THE CRIMINAL JUSTICE SYSTEM IN INDIA

Pendency of Cases

Justice is delayed as a result of the numerous open cases in the court. Justice delayed is justice denied, goes a proverb. Almost 4.7 crore cases are still waiting in court, according to the reports for 2022. Hence, there is a need to change the laws, and the criminal justice system needs to put a greater emphasis on a swift trial and justice.

Prisoners Under Trial

Undertrial inmates clog up prisons around the nation, which contributes to the issue of overcrowding. Reports from 2020 indicate that convicts awaiting trial make up 70% of the jail population. According to Article 21 of the Constitution, this also violates their fundamental right to life.

Lack of Judges

The lack of judges in Indian courts strains the judiciary as more cases are waiting, which adds to the problem of a judge shortage. There are currently 19 judges in the country, which indicates a severe shortage, according to statistics and reports.

Affectionability of the Justice System

The criminal justice system is dysfunctional because of corruption and political sway on the judiciary. As a result, an innocent person ends up spending their entire life in prison and an accused person effortlessly escapes legal responsibility.

Questions Concerning the Police Force

The police have a responsibility to look into the situation and gather information in order to discover the truth. Unfortunately, occasionally the police abuse their authority by torturing and harassing the populace. As a result, the country's criminal justice system needs to be reformatted.

Reforms

The aforementioned problems and weaknesses of India's criminal justice system make it clear that reforming it is urgently needed. The Malimath Committee issued its recommendations as a result in 2004.

The Malimath Committee's Recommends

On criminal legislation and the criminal justice system, the committee issued a number of suggestions. It makes the following suggestions, for example:

- It recommended the right to silence for the accused against self-harming statements under Article 20(3) of the Constitution.
- It is believed that the presumption of innocence of an accused places an extraordinary and unreasonable burden on the prosecution to prove the charges, which delays justice.
- It suggested changing the adversarial form of the criminal justice system to an inquisitorial system for speedy trials and to address the issue of pending cases.
- The committee provided recommendations for the victim's restitution as well as for reforming the nation's police force to make it more transparent and accountable.
- It emphasised that public prosecutors are chosen through competitive exams.
- It was suggested that judges with expertise in criminal law be present on every higher court.
- It was suggested that the offences be reclassified as socioeconomic offences, crimes under the penal code, etc.
- To regularly review the criminal justice system, a presidential commission must be constituted.

POSITION OF CAPITAL PUNISHMENT IN INDIA

India opposed a UN resolution that called for a moratorium on the death sentence because it conflicts with Indian law and with each nation's sovereign right to build its own legal system.

It is given out for the worst offences in India. It is given for egregious and terrible offences. No one may be denied their "right to life," which is guaranteed to all Indian citizens, according to

Article 21. According to the Indian Criminal Code, a number of offences, including murder, dacoity with murder, war against the government, aiding a mutiny, and anti-terrorism, are punished by death (IPC). In cases of the death penalty, the president has the authority to show mercy. In *Bachan Singh v. State of Punjab*, the court ruled that the death penalty will only be applied in the rarest of instances.

When it comes to death sentences, only the president has the authority to grant mercy. The High Court must confirm a Sessions Court death sentence for a criminal defendant after it has been handed down. The offender may submit a "mercy petition" to the President of India if his Supreme Court appeal is unsuccessful. States are required to follow specific guidelines regarding the process for dealing with requests for mercy submitted by or on behalf of death row inmates. Such prisoners must follow the procedures outlined by the Ministry of Home Affairs for Supreme Court appeals and requests for special leave to appeal to that court. According to Article 72 of the Indian Constitution, the President has the authority to pardon, reprieve, respite, or remit punishment, as well as to suspend, remit, or lessen the sentence of any individual who has been found guilty of an offence.

What are the Execution Methods followed in India?

There are two methods of execution in India and they are:

- ***Hanging***

In India, hanging is the only method used to administer the death penalty. Godse was the first person to receive the death penalty in India after the country gained its independence, as was the case with Mahatma Gandhi. The Supreme Court of India recommended that the death sentence only be used in the most extreme circumstances.

- ***Shooting***

The military court-martial system recognises both hanging and gunshot as acceptable methods of death in accordance with the 1950 Army Act.

What are the Death Penalty Crimes?

The crimes and offences which are punishable by death are:

- Aggravated Murder

According to Section 302 of the Indian Criminal Code, 1860, it is a capital offence. The Court of India ruled in *Bachan Singh v. State of Punjab* that the death sentence is only legitimate when used as an extreme punishment in "the rarest of the rare" circumstances.

- **Other Offences that result in Death**

The death sentence is applied under the Indian Criminal Code to those who murder someone while committing an armed robbery. If the victim is killed, the crime of kidnapping someone for money carries the death penalty. If involvement in organised crime results in death, it is a capital offence. The death penalty is also applied when someone assists in committing Sati to another person.

- **Offences Connected to Terrorism but not Fatal**

On February 9, 2013, Muhammad Afzal was hanged to death. He was executed for the attack on the Indian parliament in December 2001, which resulted in the deaths of nine people at the hands of five shooters using both explosives and weapons. On November 21, 2012, Mohammad Ajmal Amir Qasab, the sole survivor of the 2008 shooting, was hung for a number of offences, including waging war against India, murder, and terrorist acts. The death sentence is applied when any kind of special category of explosive is used to set off an explosion that could threaten life or seriously damage property.

- **Not Necessarily Fatal Rape**

According to the Criminal Law Act of 2013, a perpetrator of a sexual assault who causes harm that leads to death or a "permanent vegetative condition" may be executed.

Death sentences are imposed for gang rapes. After the gang rape and subsequent death of medical student Jyoti Singh Pandey in New Delhi in 2012, these modifications were made.

According to the 2018 Criminal Law Ordinance, a person who is found guilty of raping a girl who is under the age of 12 may receive a death sentence or a 20-year prison term combined with a fine. In addition, the 2018 amendment includes the death penalty or life in prison for gang raping a girl under the age of 12. Following the rape and murder of Asifa Bano, an eight-year-old girl, who caused significant political turmoil in Jammu and Kashmir State and across the nation, new criminal laws were implemented.

- Not necessarily fatal kidnapping
Kidnapping that does not result in death is a crime that carries a death sentence, according to Section 364A of the Indian Criminal Code, 1860. A person will be held accountable under this clause if they detain someone and make threats to kill or hurt them, and then the victim dies as a result of the kidnapper's actions.
- Drug trafficking does not result in fatalities
A person who has been found guilty of a variety of drug trafficking offences, including the funding of specific types and quantities of narcotic and psychoactive substances, can get the death penalty.
- Treason
Every person who attempts to overthrow the government and aids officers, soldiers, or members of the Navy, Army, or Air Force in committing a mutiny is subject to the death penalty.
- Military offences not resulting in death
If committed by a member of the Army, Navy, or Air Force, assault, mutiny, or attempting to entice a service member away from his or her duty, as well as a number of other offences, are punishable by death.
- Some crimes that don't result in death
A person who participates in a criminal conspiracy to commit a capital offence faces the death penalty.
Attempts to murder persons who have been given a life sentence are punishable by death if the victim is wounded.
False testimony can result in the conviction and execution of an innocent person, thus anyone who gives testimony knowing that it could convict someone from a scheduled caste or tribe for committing a capital offence on the basis of that testimony will face the death sentence.

Who is exempt from Capital Punishment as a Conduct Offender?

- Minor
Indian law states that a minor who commits a crime while under the age of 18 is not put to death.
- Pregnant Women

A 2009 amendment mandates that a pregnant woman who has been given a death sentence be granted clemency.

- Mentally handicapped

A person who commits a crime while mentally sick, unable of understanding the nature of the act, or incapable of understanding that the act is unlawful may be held legally responsible and subject to the death penalty, according to the Indian Criminal Code.

CONSTITUTIONAL LAW

The right to life and personal freedom, especially the right to live with dignity, are guaranteed to all by Article 21 of the Constitution. In the interest of maintaining peace and order, the state has the authority to restrict or even revoke the right to life. However according to the ruling in *Maneka Gandhi v. Union in India*, this process must be "due process." The process used to end a person's sacred life must be just, fair, and reasonable. The following is an explanation of our founding principle:

- The death sentence should only be applied in the most extreme situations.
- The death penalty should be reserved for extraordinary circumstances and only applied when necessary.
- The accused has a right to an audience.
- The statement needs to be customised based on each person's unique situation.
- The High Court must approve the execution of the death sentence. The Supreme Court may be petitioned under Article 136 of the Constitution and Section 379 of the Criminal Procedure Code.
- Under Sections 433 and 434 of the Criminal Procedure Code and Articles 72 and 161 of the Constitution, the accused may plead for pardon, remission of sentence, and other relief. The President and governor have the discretionary authority under Articles 72 and 161 to intervene in the merits of the case, in addition to the judicial authority. The judicial authorities have a limited authority to review the case, and they must make sure that the President or governor is in possession of all pertinent documents and material.

- But the foundation of the governor's authority should not be based on race, religion, caste, or political allegiances, but rather on the rule of law and logical issues.
- The accused has the right to a timely and fair trial in accordance with Articles 21 and 22 of the Constitution.
- Under Articles 21 and 22, the accused has no right to be tortured.
- The accused enjoys the right to freedom of speech and expression under Articles 21 and 19 of the Constitution while they are in custody.
- The accused has a right to be represented by attorneys who have been lawfully appointed and competent.

CASE LAW

The Supreme Court determined that Articles 14, 19, and 21 did not contravene the death penalty in *Jagmohan v. State of U.P.* According to reports, the judge considered the circumstances, the evidence, and the specifics of the crime that were presented throughout the trial before deciding between the death penalty and life in prison. So, in accordance with the legal process established by law as required by Article 21, the decision to impose the death penalty was made.

In *Rajendra Prasad v. State of U.P.*, however, the judge ruled that the death penalty would not be appropriate unless it could be proven that the criminal posed a threat to society. The distinguished judge argues in favour of abolishing the death penalty and said that it should only be kept in place for "white collar offences." The death penalty for murder, which was imposed in accordance with I.P.C. Section 302, was also declared not to have violated the fundamental tenet of the constitution.

However *Bachan Singh v. State of Punjab* clarified that the constitutional bench of the Supreme Court has acknowledged Article 21 the State's power to revoke a person's right to life in line with a legal process that is equitable, fair, and reasonable. Furthermore, the imposition of the death penalty for murder offences under Section 302 I.P.C. does not violate the Constitution's fundamental principles.

CONCLUSION

The criminal justice system is a framework that regulates the operation of agencies like the police, prisons, courts, etc. that work to bring victims justice. Maintaining peace and harmony in society is the responsibility of the state, and this can only be done with an effective legal system and criminal justice system. Although several changes were made to the laws, the British East India Company was mostly responsible for enacting the criminal laws in India.

The government recognises the need to overhaul the justice system to deal with new crimes like organised crime, white collar crime, cyber crime, etc. that are emerging as a result of time and technological improvement. As a result, the government established numerous committees that provided various suggestions and recommendations. Yet the situation hasn't changed at all. Due to the backlog of cases that come from the lack of judges, courts are still under strain. The general population believes that corruption has rendered the police force incapable of carrying out their duty and that they are controlled by politicians.

Custodial rapes and deaths are becoming more commonplace every day. This instills terror in the public's minds. Prisons experience overpopulation, and inmates get cruel and inhumane treatment. While the recommendations of numerous committees are documented, they are not fully carried out. For India's criminal justice system to deliver fair justice, all of the problems and loopholes must be resolved.

It is a hotly debated subject that has moral and social implications. The Supreme Court affirmed the conviction in the Bachan Singh case and widened the list of "alternative possibilities" that had to be explored before the death penalty was chosen. We run the risk of putting to death an innocent person if we continue to use the death sentence.

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