

## HUMAN RIGHTS AND CAPITAL PUNISHMENT

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### ABSTRACT

This particular research work is about the human rights that all the citizens of a country are granted. It talks about human rights in India and United Nations concerning capital punishment that is the death penalty. You will find the answers to a few questions like Is capital punishment constitutional? Is it valid to sentence an accused with capital punishment? Is it still prevailing in countries or not? Further, it contains the recent sentence passed by the Gujarat High Court where they sentenced 38 accused with capital punishment altogether for the 2008 Gujarat bombing massacre. There were controversies regarding the death sentence given to them. Is the death penalty violative of Articles 14, 19, and 21 of the India Constitution?

**Keywords:** Human Rights, Capital Punishment, United Nations, Universal Declaration.

### INTRODUCTION

Human Rights are those basic and necessary rights which each person should have against the State or other public authority by the excellence of his being an 'individual from the human family, independent of any other consideration. These rights are acquired by all human beings, irrespective of their gender, caste, religion, sex, nationality, place of residence, and so on. These rights are open and accessible to all, but there are a few individuals who do not experience these rights equally. The government and the individuals disregard common freedoms and sometimes end up exploiting other individuals.

The idea of Human Rights is the antiquated regulation of 'regular privileges' established on natural law, where the articulation of 'Human Rights' made an appearance from international Charters and Conventions, post the Second World War, due to a huge loss of humanity in that particular era there was a need for a change in this regard. Currently, around 55 countries are practicing capital punishment, whereas 140 countries have abolished the practice for most of the crimes, including the country of Canada and 19 states of the U.S. India is in one of the top

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10 countries out of the total of 55 countries where capital punishment is still prevailing. In 1948, the United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights (UDHR) along with which many internal human rights instruments and conventions came into being such as: -

- (1) The U. N. Charter, 1945,
- (2) Universal Declaration of Human Rights, 1948,
- (3) International Covenants of 1966,
- (4) European convention for preserving Human Rights, 1953.<sup>1</sup>

### HUMAN RIGHTS IN INDIA

India being a large democratic country with diverse cultures, its Constitution says that India is a democratic, Sovereign, Socialist, Secular, the Democratic Republic which secures to all its citizens with Social, Economic, and Political Justice, Liberty of thought, expression, belief, faith and worship, Equality of status and opportunity and to promote among them all, Fraternity assuring the dignity of the individuals and the unity of the Nation.

The preamble of the Universal Declaration of Human Rights states: —

*"It is essential if the human race is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."*<sup>2</sup>

The prehistoric community had no origin of human rights. It is because of the founder of the natural theory, who has encouraged the possibility that the man is invested by birth with specific basic privileges of which the right to life, freedom, and property is vital. Human rights are included in the International Covenant, 1966, providing a maximum of human rights. There is also a certain mention of 'Dignity of India' in the Preamble of India. Article 12 to 36 of the Constitution of India provides for the Fundamental Rights that are inalienable, basic, and natural rights which secure the people of our Country. These human rights are important for protecting human liberty along with the enhancement of human nature and upgrading social

<sup>1</sup> Anant Kalse, Human rights in constitution of India, Human Rights in. Pdf., (Mar. 1, 2022, 16:56 PM), <http://mls.org.in/books/H-2537%20Human%20Rights%20in.pdf>

<sup>2</sup> Supra note 1

and economic life. Since every citizen of India can avail of these fundamental rights, then what about the people or the accused who get the death penalty? Are they being destitute of their basic fundamental rights? Is the death penalty violative of Articles 14, 19, and 21 of the Indian Constitution? These all questions can be understood with a few cases that were the landmark judgments in this regard.

Article 21 of the Indian Constitution provides with the right of life and personal liberty according to the procedure established by law. This article is considered to be the Heart of the Constitution. This can be claimed only when the person is deprived of his life or some liberty that hence otherwise is his right in general. The article's 'clause p' deals with the sentence of death where the law commission of India, in its 35<sup>th</sup> report, 1967 dealt with the issue of abolition or retention of capital punishment and it was held that India is a very diverse country and cannot afford to experiment the abolition of capital punishment. But in the case of C. Muniappan v/s State Of Tamil Nadu<sup>3</sup>, Jayalalitha (AIADMK Supremo) was sentenced to one-year rigorous imprisonment for criminal conspiracy and criminal misconduct under sections 120-A of Indian Penal Code and section 13 of the Prevention of Corruption Act respectively. But this decision of the Supreme Court agitated the party workers and supporters of AIADMK and they violently put bus on fire, causing the death of three college-going girls. This agitation was found to be rigorous and they were sentenced to the death penalty but in a review, petition filed by the petitioners, Supreme Court commuted the death penalty to life imprisonment holding the fact that the case is not fit for extreme capital punishment.

In the case of Bachan Singh v/s. Union Of India<sup>4</sup>, the Supreme Court maintained the legality of capital punishment, yet bound its application to the 'most extraordinary of intriguing cases', to lessen the assertion of the punishment. But the arbitrariness has stayed a central issue in the settling of capital punishment cases in the 35 years since the chief point of reference on the issue was set down. In the case of Rajendra Prasad v/s State of Uttar Pradesh<sup>5</sup>, in 1979 Supreme Court examined what the "exceptional reasons" in overwhelming capital punishment could be. The Court ended up defying the sentencing discretion and not the constitutionality. The Court per greater part (of two judges) said, "special reasons necessary for imposing death penalty

3 C. Muniappan v. State Of Tamil Nadu, AIR 2010, S.C. 127-130 (India).

4 Bachan Singh v. Union Of India, AIR 1980, S.C. 898 (India).

5 Rajendra Prasad v. State of Uttar Pradesh, AIR 1979, S.C. 472 (India).

must relate, not to the crime as such but to the criminal.”<sup>6</sup> The court in 1983, took a hold on the mandatory death sentence as it was violative of articles 14 and 21 as seen in the case of *Mithu v/s State Of Punjab*<sup>7</sup>, where the constitutionality of section 303 of Indian Penal Code was upheld for the reason that it is arbitrary and unreasonable as it deprives the person of the fundamental rights of life by an unjust and unfair procedure. The court further held that the death penalty is to be imposed in rare of the rarest cases, and on the individuals who have perpetrated a crime that is grave.<sup>8</sup>

The question regarding the constitutionality of capital punishment was put up in the case of *Jagmohan Singh v/s State of U.P.*<sup>9</sup>, where it was argued by the petitioners that capital punishment is unconstitutional as it is violative of sections 19(1) (a) to (g), as it takes all the freedoms from the person who has been granted death penalty, Article 14 as it is the discretion of the court to give away the death penalty and as the petitioner’s contended, it is highly uncontrollable and unjustified. It violates Article 21 of the Indian Constitution as well as takes away the right of life and liberty from the person. They had mentioned a case of *Furman v/s Georgia*, a case of the United States where the court held the death penalty as unconstitutional. The Supreme Court of India after hearing all the contentions of the petitioner held under the CrPC act of 1973 that the death penalty is permissible and is not unconstitutional.

## HUMAN RIGHTS IN UNITED NATIONS

The making of a far-reaching assortment of human rights law, which is a widespread and universally safeguarded code to which everything countries can buy-in and all individuals aspire. It is one of the incredible accomplishments of the United Nations. United Nations has a settled instrument to advance and safeguard a broad range of universally acknowledged privileges such as civil, cultural, economic, political, and social rights and also to help states in completing their obligations. Adoption of the Charter of the United Nations in 1945 and the Universal Declaration of Human Rights in 1948 by the General Assembly has broadened the human rights law to incorporate explicit norms for women, children, handicaps, minorities,

<sup>6</sup> The death penalty, report number 262, Law Commission of India, 2015, (Mar. 1, 2022, 12:34 PM), <https://lawcommissionofindia.nic.in/reports/report262.pdf>.

<sup>7</sup> *Mithu v. State of Punjab*, AIR 1973, S.C. 473 (India).

<sup>8</sup> Parul Saxena. (n.d.). Capital Punishment and human rights perspective. Capital Punishment and Human Rights, (Mar. 6, 2022, 19:15 PM), <https://www.legalserviceindia.com/legal/article-4440-capital-punishment-and-human-rights-perspective-.html#:~:text=The%20Court%20held%20that%20delay,to%20life%20and%20personal%20liberty.>

<sup>9</sup> *Jagmohan Singh v. State of U.P.*, AIR 1972, S.C. 947 (India).

and other weak groups, who presently have freedoms that shield them from segregation that had for quite some time been normal in numerous social orders.

Article 3 of UDHR says that life is a human right and capital punishment or the death penalty is a violation of the most basic fundamental rights of humans. Though Article 6 of the International Covenant on Civil and Political rights with the use of the death penalty in limited circumstances, it also says that nothing in this article shall be invoked to prevent the termination of capital punishment by any State Party to the present Covenant. But the Office of the High Commissioner for Human Rights has proposed that the death penalty should be abolished universally. In *Roper v. Simmons*<sup>10</sup>, the Court referred to international human rights law in their decision, including the ICCPR and the 1989 Convention on the Rights of the Child (CRC), which forbids the inconvenience of capital punishment on people under 18 years old. The CRC, approved by 193 nations, is the most broadly acknowledged human rights treaty in history. The U.S. is one of just three nations that have not approved the CRC, the others are Somalia and South Sudan.<sup>11</sup>

## THE 2008 GUJARAT MASSACRE

The main question here is what exactly is the 2008 Gujarat bombing case and is the sentence given by the Gujarat High Court valid and justified?

On 26<sup>th</sup> July 2008, in one minute, the western part of India commonly known as the commercial and cultural heart of Gujarat state, Ahmedabad faced a series of 21 bomb blasts mainly in the city bus area of the Ahmedabad municipal transport service, hospitals, kids, Raipur, Sarangpur, Maninagar and many more areas, which killed 56 people and injured 200 people. The Harkat-ul-Jihad-al-Islami, which is an Islamic militant group, took responsibility for the attack. Their suspected leader Mufti Abu Bashir was arrested. In a total of 77 accused, 28 people were acquitted due to lack of evidence, 11 were given life imprisonment and recently the Gujarat High Court has sentenced the remaining 38 convicts to the death penalty. This sentence has been given after 13 years of the bomb blast.<sup>12</sup>

<sup>10</sup> *Roper v. Simmons*, AIR 2005, S.C. 543 (U.S.)

<sup>11</sup> CCR death penalty factsheet, Examination of Death Penalty in U.S., (Mar. 3, 2022, 12:44 PM) <https://ccrjustice.org/files/CCR%20Death%20Penalty%20Factsheet.pdf>.

<sup>12</sup> Wikipedia contributors, 2008 Ahmedabad bombings, Wikipedia, (Mar. 3, 2022, 12:44 PM) [https://en.wikipedia.org/wiki/2008\\_Ahmedabad\\_bombings#:~:text=The%202008%20Ahmedabad%20bombings%20were,large%20part%20of%20western%20India](https://en.wikipedia.org/wiki/2008_Ahmedabad_bombings#:~:text=The%202008%20Ahmedabad%20bombings%20were,large%20part%20of%20western%20India).

These people were convicted under section 302 of the Indian Penal Code and Sections 10 and 16(1)(a)(b) of the Unlawful Activities (Prevention) Act. The court cited this case to be the “rare of the rarest case”. There are a lot of controversies as the United Nations has called out many times to abolish capital punishment. According to the UN, this type of punishment sabotages human pride and also conveys the unsatisfactory gamble of executing guiltless individuals. But this kind of punishment is still prevailing in India as in our country, capital punishment is not unconstitutional as proved in the cases of *Bachan Singh v State of Punjab*<sup>13</sup>, which was categorized as the ‘rare of the rarest case’ and in the case of *Jagmohan Singh v/s State of U.P.*,<sup>14</sup> where the death penalty was said to be constitutional. But to sentence a convict with the death penalty, the ‘special reasons’ should be kept in mind and followed as per se, by section- 354(3) of CrPC.

Gujarat bombing caused a lot of distress amongst people. It is very uncommon that 38 people are being sentenced to the death penalty altogether. The controversy for this is in play as each individual is different and the acts are done by them or the role that individual performs is different, varies from each other so did the judge keep all the factors in mind and then took this decision of hanging all the 38 convicts? as said by Vibhakar Jain, litigation consultant at Project 39A, National Law University Delhi.<sup>15</sup> In the case in 2014, the Supreme Court drove the capital punishment of Ravinder Pal Singh Bhullar to life detainment. Bhullar was on death row in the wake of having been indicted in the 1993 Delhi bomb blasts case, and help for him came solely after a huge number of requests were documented and executed, spanning twenty years. His punishment was reduced from the death penalty to life imprisonment in the disposal of mercy petition and on the ground of insanity. In the Gujarat bombing, the decision to hang 38 convicts has been made after 13 years, which is a whole lot of time to keep the main factors in mind while sentencing.

## CONCLUSION

Delay in execution of Justice is not so rare in our country which itself is violative of Article 21 of the Indian Constitution as it is an infringement of basic human rights of a person and also

<sup>13</sup> *Bachan Singh v. State of Punjab*, AIR 1980, S.C. 898 (India).

<sup>14</sup> *Supra* note 9

<sup>15</sup> M. Saran, 38 Awarded Death Sentence in One Case: Is This Common? What Does the Law Say?, *The Quint*, (Mar. 3, 2022, 12:50 PM), <https://www.thequint.com/news/law/38-awarded-death-sentence-in-ahmedabad-serial-blasts-case-is-this-common-what-does-the-law-say>.

Universal Declaration of Human rights and assuming that capital punishment is forced, it is important to satisfy the circumstances for the assurance of basic freedoms in Criminal Justice Administration in India as the person sentenced with the death penalty has already been in the prison since the case is being gone on. The sentencing should be fair, just, and reasonable. It should not be any more than the nature of the crime committed. Capital Punishment is a very debatable topic and different for different countries. Some countries have abolished it but, in some countries, it is still prevailing. It provides some sought of closure and peace to the victim's family. Each criminal gets what their crime deserves. Some criminals repeat the crime while being on parole, these types of people are a threat to even the prison authorities as the criminal mind of a person never goes away, but the offender can. Again, the court has to keep in mind all the possible outcomes and all the possible circumstances and special references as mentioned in CrPC that is the punishment reasonable, just, fair, and equal to the crime that has been committed so that no innocent gets to suffer.

