

RATIONALE BEHIND DEATH PENALTY: A CRITICAL ANALYSIS

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ABSTRACT

“Capital Punishment” also called “Death Penalty” is a very debated issue that has received many heated arguments. The supporters and opponents of capital punishment have put forward various rationales to support their stand. Supporters have put forward that it creates a sense of fear within the minds of the criminals not to repeat the heinous crimes done by the others resulting in capital punishment and it also serves justice for the victims' families, offering them a form of punishment and closure that life imprisonment may not afford.

On the other hand, it has been argued by the opponents that the justice system is flawed, and that execution of innocent individuals still exists. They have also questioned the effectiveness of Capital Punishment as a deterrent, pointing to the various studies showing that it may not reduce heinous crimes. This risk is further exacerbated by racial and socio-economic biases that disproportionately impact marginalized communities. Critics also argue that Capital Punishment violates fundamental human rights because it is a form of cruel and unusual punishment. A critical analysis of these rationales reveals inherent complexities, putting forward various merits and demerits of having such punishment in the judicial system. The research underscores the need to cross-examine capital punishment keeping in mind both the merits and demerits of having such a heinous act as a punishment because merely keeping such an act as a punishment or justice will have a wrong impact on society and will result in insufficiency of Indian Legal System.

Keywords: Death Penalty (Capital Punishment), Racial, Socio-Economic, Indian Legal System.

INTRODUCTION

The Latin word "capitalis," which means regarding the head, is where the word "capital" originates. Therefore, to suffer the death penalty is to lose one's head. In India, the death penalty, also known as capital punishment, was introduced in 1973. Life in prison was then

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considered the standard punishment, and the death penalty was only applied in extreme circumstances, such as when a particularly horrible crime was committed, and the death penalty was deemed the appropriate punishment. Section 194 of the India Penal Code has provided the list of crimes that are punished by the Death Penalty¹. Some of the heinous crimes that are punished by the Death Penalty are:

Waging war against the country²: According to Section 121 of the Indian Penal Code “Anyone who attempts to wage war against India or is successful in waging war may be sentenced to death”.

Abatement of armed rebellion by an officer or member of the army, navy, or air force³: Any person who abets the commission of mutiny by any officer, soldier, sailor, or pilot of the Army, Navy, or Air Force of the Government of India, and whose collusion results in mutiny, is liable to death.

Murder⁴: Section 302 of the Indian Penal Code imposes the death penalty for a person who commits murder.

Assisting or supporting a minor's suicide has been associated with the death penalty⁵: The Indian Penal Code of the IPC, Section 305, addresses the penalties for aiding or encouraging a person under the age of eighteen or an individual with an intellectual disability to commit suicide. Anybody who commits this offense could therefore be executed.

Rape⁶: The death sentence is stipulated under Section 376A for rapes that leave the victim dead or permanently vegetative.

Repeated Rape⁷: According to Section 376E, repeat rape offenders may face the death penalty.

Dacoity with Murder⁸: According to Section 396 of the Indian Penal Code, dacoity with murder is punishable with Capital Punishment or Death Penalty.

¹ Indian Penal Code 1860, s 194.

² Indian Penal Code 1860, s 121.

³ Indian Penal Code 1860, s 132.

⁴ Indian Penal Code 1860, s 302.

⁵ Indian Penal Code 1860, s 305.

⁶ Indian Penal Code 1860, s 376(A).

⁷ Indian Penal Code 1860, s 376(E).

⁸ “Section 396 of the Indian Penal Code”.



The Above image⁹, shows the increase in the number of Death penalties from 400 in December 2016 to 539 as of December 2022, the Highest in the past two decades. It is a matter of concern that a punishment having numerous opposers is increasing day by day, this will result in people not believing in the legal system.

HISTORY

The history of the Death Penalty in India is a long and complex one, the death penalty was a punishment given to criminals at the time of the rulers but as India gained Independence in 1947, the concept of the Death Penalty was again introduced in India and since then it is a part of Indian Legal System but, many debates and arguments have been held upon this issue.

In 1980, a landmark case *Bachan Singh v. State of Punjab*¹⁰, led to the introduction of a "rarest of rare" doctrine, This implied that the death sentence ought to be applied only in the most dire circumstances. India has still persisted in applying the death penalty in a number of court rulings and cases.

"Article 3 of the Universal Declaration of Human Rights, adopted by the United Nations in 1948"¹¹, recognises the right to life, which further raises various global discussions and conflicts between the right to life and the Death Penalty. Many countries including ANGOLA, PARAGUAY, and SWITZERLAND began to abolish or significantly restrict its use in the latter half of the 20th century. The law remains the subject of intense debate, with proponents citing its deterrent effects and retaliation, and opponents citing concerns about wrongful

⁹ "Annual Statistics Report, 2022".

¹⁰ *Bachan Singh Jandoo v State of Punjab, 1964 SCC OnLine Punj 104.*

¹¹ "Article 3 of the Universal Declaration of Human Rights".

convictions and the sanctity of human life. rejects the meaning. The history of the death penalty is evidence of the evolution of human societies and their ideas about justice and punishment.

EXCEPTIONS FROM CAPITAL PUNISHMENT

There are various categories of persons who are exempted from the execution of Capital Punishment. They are:

Minors: According to Indian Law, any person who is still a minor (below 18 years of age) and has still committed a crime cannot be executed. The lawmakers argue that a person, who has not attained majority yet and has not reached adulthood has room for a lot of improvement and might be able to learn from his mistakes, environment, etc.

Additionally, the Justice Juvenile Act, known as *the Justice Juvenile Act (2015)*¹² a distinct legislation that specifically addresses issues involving children, is provided by our legal system. This is advantageous since it allows offenders to grow.

Pregnant Women: According to *Section 416 of the CRPC*¹³, when a pregnant woman commits a crime and is punished by Capital Punishment, in such a scenario the execution of the woman gets postponed till the delivery of the child. This is based upon the rationale that, executing pregnant women with Capital Punishment kills both the woman as well as her child in her womb who is innocent and is not guilty of any offence and cannot be merely executed, so, to save the life of a child such execution is postponed.

Intellectually Disabled: Persons who are Intellectually disabled come under the list of persons exempted from being executed under Capital Punishment, if the person committing any crime is not able to comprehend or know the exact consequences of his/her act then any such person cannot be held liable as it cannot be presumed that such person was having any intention to commit any such heinous crime.

CRITICAL ANALYSIS

The Death Penalty is a complex, continuous, and highly debated issue in India, which needs to be critically analysed so that it does not harm society in any matter. So, here is the critical analysis of the Death Penalty or Capital Punishment.

¹² “*Justice Juvenile Act (2015)*”.

¹³ “*Section 416 of the Code of Criminal Procedure*”.

Effectiveness of the Death Penalty as a Punishment in Detering Crimes: One of the primary and most debated arguments about the death penalty is its deterrent effect on crimes and its effectiveness in reducing such heinous crimes. However, studies worldwide have shown inconclusive evidence regarding the actual deterrent impact of capital punishment. In India, there's a lack of comprehensive research to definitively support the idea that the death penalty effectively deters crime. Having such a punishment merely without having any good impact on such instances is nuanced and creates disputes in society.

Risk of Wrongful Convictions: A significant matter of concern about the death penalty is wrongful convictions of the death penalty. India has a history of various wrongful convictions in the Indian Judiciary. Convicting the innocent with the death penalty and afterward realising that the convict was innocent and wrongfully convicted is a grave and irreversible error.

In such a situation it can lead to various mental informalities to the families and knowns of the convict, who was convicted of the death penalty even after being innocent. Having such a punishment that is irreversible and can cause havoc in society is not good for the society as well as the individuals.

Socio-economic Inequalities: There is an argument raised, that the punishment creates socio-economic disparities within the society. Many deaths of innocents due to the death penalty come from vulnerable backgrounds and lack basic resources due to which they often lack adequate legal representation, further diminishing their chances of a fair trial. Sometimes the wrongful convicts are the backbone of their families, the death of whom due to the death penalty leads to irreversible consequences and affects the social, economic, as well as mental condition of the families and creates a sense of fear within society about such consequences.

International Conventions and Human Rights Treaties: India is a part of various international treaties and Human Rights Conventions that are in Favor of abolishing the Death Penalty, this global trend towards abolition, and retaining capital punishment may put India at odds with its international commitments and Human Rights treaties.

So, not to have bad relations with the countries abolishing the Death Penalty, India should revise the section on the Death Penalty and then decide whether to keep it or not.

Delays in such cruel and unprecedented Punishments: The Indian legal system is known for its lengthy delays in the punishments and serving justice, keeping in mind this thing

delaying cruel punishments such as the Death Penalty can lead to various serious consequences, it can affect the psychological state of the convict, it can lead to mental disorder due to the fear of death and can lead to many more serious consequences.

So, by looking at these problems and analysing them, the concept of the death penalty should be revised by some professional committee or group and better should be done for society as well as the individuals.

Rarest of the Rare Doctrine: The “Rarest of the Rarest” doctrine was established in the case of *Bachan Singh v. State of Punjab*¹⁴. The Supreme Court, in this case, endeavored to cut out a doctrine particularly for offenses culpable with death to decrease the ambiguity for courts regarding when to go for the highest punishment of the land.

In the judgment of *Machhi Singh vs the State of Punjab*¹⁵, a new interpretation was provided for the doctrine of 'rarest of rare' which was laid down in the case of *Bachan Singh vs The State of Punjab*¹⁶. The Court of First Instance states, in its interpretation, that society as a being is based on the principles of "reverence for life". So, for the convict to be punished by the death penalty, the crime committed by the convict must come under the ambit of the “Rarest of the Rare” doctrine.

In the case of *Santosh Kumar Bariyar v. State of Maharashtra*¹⁷, the Supreme Court held that “The rarest of rare dictum serves as a guideline in enforcing *Section 354*¹⁸ and establishes the policy that life imprisonment is the rule and death punishment is an exception.” *Section 303*¹⁹ Of the Indian Penal Code mandated the loss of life penalty for all offenders serving an existing sentence. This phrase was struck down as being held unconstitutional.

The year 2008 accounted for the case of *Prajeet Kumar Singh v. State of Bihar*²⁰, in which the court ruled exactly on what would result in a “rarest of rare cases.”

¹⁴ *Bachan Singh Jandoo v State of Punjab, 1964 SCC OnLine Punj 104.*

¹⁵ *Machhi Singh v State of Punjab, (1983) 3 SCC 470.*

¹⁶ *Bachan Singh Jandoo v State of Punjab, 1964 SCC OnLine Punj 104.*

¹⁷ *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra, (2009) 6 SCC 498.*

¹⁸ Indian Penal Code 1860, s 354.

¹⁹ Indian Penal Code 1860, s 303.

²⁰ *Prajeet Kumar Singh v State of Bihar, (2008) 4 SCC 434.*

According to the Supreme Court, a death sentence would only be given "when a murder is committed in a manner so grotesque, diabolical, revolting, or dastardly as to provoke intense and extreme indignation of the community."²¹

In a 4-1 decision, the Supreme Court maintained the death penalty's constitutionality and set the rule that it should only be applied in the "rarest of rare cases." It was not made clear what this term meant, though. According to the Ratio Decidendi in the Bachan Singh case, the death penalty is constitutional if it is used as a deterrent to murder, and life in prison is the typical punishment for the crime. The death penalty can only be applied in the "rarest of rare cases" when there are no other options.

In *Kehar Singh v Delhi Administration*²², The capital penalty was imposed on the three appellants, Kehar Singh, Balbir Singh, and Satwant Singh, for organizing and carrying out the murder of Smt. Indira Gandhi was upheld by the Supreme Court and the High Court. under Sections 302²³, 120B²⁴, 34²⁵, 107²⁶, and 109²⁷ of the Indian Penal Code. According to the court, the murder represents one of the "rarest of rare cases" in which a hired killer and his conspirators should face severe punishment.

Last, In the case of *Santosh Kumar Singh v. Union Territory of Delhi*²⁸, Santosh Kumar Singh was charged with raping the victim and breaking every bone in her body. Still, his actions were not deemed to be sufficiently brutal to qualify the incident as "rarest of rare."

SCOPE OF "RAREST OF THE RARE" DOCTRINE

In the case of *Jagmohan Singh v. State of U. P.*²⁹, the Supreme Court affirmed the death penalty's constitutionality, stating that its mere testing serves as a social symbol of disapproval for crime as well as a deterrent. The Court also believed that India could not take a chance by trying to outlaw the death penalty.

²¹ *Ibid*

²² *Kehar Singh v State (Delhi Admn.)*, (1988) 3 SCC 609.

²³ Indian Penal Code 1860, s 302.

²⁴ Indian Penal Code 1860, s 120B.

²⁵ Indian Penal Code 1860, s 34.

²⁶ Indian Penal Code 1860, s 107.

²⁷ Indian Penal Code 1860, s 109.

²⁸ *Santosh Kumar Singh v Union of India*, 2023 SCC OnLine AFT 4845.

²⁹ *Jagmohan Singh v. State of U.P.*, (1973) 1 SCC 20: 1973 SCC (Cri) 169.

The constitutionality was again upheld in the case of *Bachan Singh v State of Punjab*³⁰. From this case it finally emerged that:

- It is not necessary to apply the death penalty unless there is an extremely high degree of guilt.
- Before stepping for the death penalty, the aggravating as well as mitigating circumstances of the offender should be considered critically.
- The death penalty is an exception, but life in prison is the norm. This means that the death penalty ought to be saved for situations in which it has been determined beyond a reasonable doubt that the life sentence was wholly insufficient given the particulars of the offense.

SHOULD THE “RAREST OF RARE” DOCTRINE BE REPEALED FROM INDIA?

As there is no statutory definition of Capital Punishment, this always raises issues and conflicts when it comes to awarding capital punishment. There are various cases in which the convict has done the same crime and is being punished with capital punishment while some other convict has done the same crime but still not punished with capital punishment. This makes it very conflicting and difficult for the judges to determine whether exactly to award capital punishment as, while looking to precedents there are various cases of the same scenario in which the death penalty was not awarded.

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This means that abolishing the death penalty would put India at serious risk because it is not yet developed enough to experiment with such harsh circumstances. The doctrine was supposed to be society-centric but now due to these conflicts and issues, it has become judge-centric. If the judiciary wants to keep the doctrine, then it should be revised, and they also need to ascertain certain elements to clearly define the doctrine of “the Rarest of Rare”.

APPLICATION OF THE “RAREST OF RARE” DOCTRINE

Like any other topic, the structure of the rarest of the rare cannot escape criticism from others. Numerous critics have emphasized that the doctrine is ambiguous and open to various interpretations.

³⁰ *Bachan Singh Jandoo v State of Punjab*, 1964 SCC OnLine Punj 104.

Such a criticism arose from the statement of Justice Bhagwati “Such a criterion would give rise to a greater amount of subjectivity in decision making and would make the decision whether a person shall live or die dependent on the composition of the Bench.” He clearly contended that such a punishment is violative of *Article 14*³¹ and *Article 21*³² of the Indian Constitution.

Application of “Rarest of Rare” not only depends upon the brutality of the act but also depends upon various other factors, here the case of “*Kumudi Lal v. State of U. P.*”³³ becomes relevant as in the case of *Kumudi Lal v. State of U.P.* “*which is also a case involving rape and murder of a fourteen-year-old girl, the court refused to confirm death sentence*”. In *Amrit Singh v. State of Punjab (2006)*³⁴, a girl of 2nd standard was brutally raped. She died subsequently due to excessive bleeding. Both the trial and High Court convicted the accused under “*Section 302*”³⁵ and sentenced him to death. But the Supreme Court held that the death was not intentional though the rape was brutal. Both the judgments were decided by the court on the various factors.

RIGHT TO LIFE VS. CAPITAL PUNISHMENT

There have been several heated arguments and debates on the issue that the punishment of Capital Punishment violates the Right to Life of the convict by executing the person to death because of the crime or wrong done by the convict. As mentioned in the case of *Maneka Gandhi v. Union of India (1978)*³⁶, the procedure must be a due procedure as it takes away a person’s sacred life, so it needs to be just, fair, and reasonable.

It suggests that if there is a reasonable and lawful process, the state may use legislation to limit or abolish a person's right to life. Because it violates the right to life, the validity of the death penalty has been contested numerous times; the first such challenge was made in the case of “*Jagmohan Singh v. State of Uttar Pradesh (1973)*”³⁷, In this case, the five-judge bench of the Apex Court issued its ruling and held that Capital Punishment or the Death Penalty is constitutionally valid, and it does not violate any fundamental rights of the convicts.

³¹ Indian Constitution 1950, a 14.

³² Indian Constitution 1950, a 21.

³³ *Kumudi Lal v. State of U.P.*, (1999) 4 SCC 108: 1999 SCC (Cri) 491.

³⁴ *Amrit Singh v. State of Punjab*, 2006 SCC OnLine P&H 1898: (2006) 5 SLR 182 (P&H).

³⁵ Indian Penal Code 1860, s 302.

³⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248: AIR 1978 SC 597: (1978) 2 SCR 621.

³⁷ *Jagmohan Singh v. State of U.P.*, (1973) 1 SCC 20: 1973 SCC (Cri) 169.

In another case *Rajendra Prasad v. State of Uttar Pradesh* (1979)³⁸, Justice Krishna Iyer held that Capital Punishment or the Death Penalty is clearly a violation of *Articles 14*³⁹, *19*⁴⁰, and *21*⁴¹ of the Indian Constitution. So, he set two guidelines that need to be fulfilled before executing someone with Capital Punishment they were:

- The specific reason or circumstance for which the offender was given this punishment must be recorded.
- Capital Punishment can only be applied in extraordinary circumstances.

GLOBAL SCENARIO OF CAPITAL PUNISHMENT OR DEATH PENALTY

Death Penalty or Capital Punishment is a type of punishment that came into force in India with the motive to serve justice and teach convicts a lesson so that no more such heinous crimes occur again. Talking about Capital Punishment in Global Scenario, it is a highly debated issue as there are numerous countries that have already banned such a punishment on the other there are various countries, that think that this is the best punishment to teach lessons to the convicts and serve justice and equality.

When considering the world at large, Michigan was the first state to outlaw the death penalty in 1846. The 1948 drafting of the Universal Declaration of Human Rights (UDHR) provided support for the abolitionist movement. However, the Human Rights Council disagreed with the Indian perspective on the death penalty because it violates the statute that states that executions are only permitted in "Rarest of Rare" circumstances.

International organisations such as Amnesty International and Human Rights Watch, actively campaign for the abolishment of such a punishment, considering it a violation of the "*Fundamental Right to Life*"⁴². They argue that there should be alternate punishment for such "Rarest of Rare" crimes. The ongoing international discourse on Capital Punishment reflects a complex interplay of legal, cultural, and human rights considerations surrounding Capital Punishment.

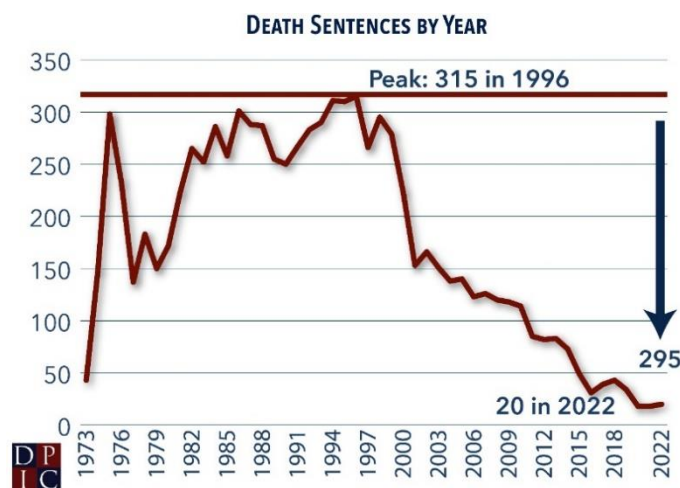
³⁸ *Rajendra Prasad v. State of U.P.*, (1979) 3 SCC 646: 1979 SCC (Cri) 749.

³⁹ Indian Constitution 1950, a 14.

⁴⁰ Indian Constitution 1950, a 19.

⁴¹ Indian Constitution 1950, a 21.

⁴² *Ibid.*



The above Image⁴³ depicts the decrease in the number of convicts punished by the Death Penalty, this is because “more than 70% of the world's countries have abolished the death penalty as the punishment”⁴⁴ as they do not find it an effective method of being executed and it also violates various fundamental rights of the convicts leading to various mental emotional and social atrocities to the relatives and knowns of the convicts this is because Capital Punishment is an irreversible punishment, once executed cannot be reversed which leaves the room of innocents being executed without being guilty.

Looking at these global trends, India should also revise the concept of the Death Penalty and critically analyse it then decide whether to keep it as a punishment or repeal or substitute it with some other form of punishment.

EXECUTION PROCEDURES OF CAPITAL PUNISHMENT IN INDIA

Death by hanging: According to Section 354(5) of CrPC⁴⁵, “When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead”. This is the only procedure of Capital Punishment followed in India.

Death by Shooting: A firing squad member executes a prisoner who has been given the death penalty in India using another method of execution known as shooting the offender. The only organisations capable of executing Capital Punishment by shooting the convict, are the Army, Air Force, and Navy. According to the Army Act of 1950⁴⁶, the army court-martial system

⁴³ Death Penalty Information Centre 2022 Report.

⁴⁴ *Ibid*

⁴⁵ Section 354(5) of CrPC.

⁴⁶ Army Act of 1950.

considers both hanging and shooting as legitimate methods of executing a convict by Capital Punishment or Death Penalty.

RECOMMENDATIONS

Standard guidelines should be set: To award Capital Punishment without raising any issues or conflicts, it is very much needed to set some standard guidelines to decide whether the convict should be punished with capital punishment or not. It is necessary to provide a unified set of guidelines that specify the standards for identifying the most exceptional circumstances. This can assist in removing the confusion-causing cloud that has developed in the minds of various jurists.

Capital punishment should be awarded with reasonableness and due care: It is necessary to properly examine the convict and properly check whether the convict is liable or not to reduce the chances of awarding capital punishment to innocents. Although the convict has committed the brutal act even after that it should be ensured if there is any chance that proves that the accused shall not inflict further harm to society, on this ground, he/she must not be given capital punishment.

Capital Punishment should not be delayed after its pronouncement: In the case of *Triveni Bai v. State of Gujarat*⁴⁷, “the Supreme Court held that the execution process must be delayed on reasonable grounds, so that the accused may get a fair trial”. However, it was also argued in the same case that capital punishment should not be delayed further after the pronouncement of it, as it leads to various mental as well as emotional damage to both the convict as well as the knowns of the convict.

The punishment should be reasonable with the wrongful act done by the convict: The execution of the death penalty should be done after considering the wrongful act done by the convict. This must be proportional to the seriousness of the act, to create fear in potential offenders to have a deterrent effect, preventing them from committing such heinous crimes.

Awarding of capital punishment should not merely be done in haste: Capital punishment the death penalty should be awarded by accurately analysing each factor and not just merely hastily. Before imposing the death penalty, the constitutional court should carefully consider

⁴⁷ *Smt. Trivenibai v State of Gujarat*, (1989) 1 SCC 678: AIR 1989 S.C. 1335.

all aspects of the case and ensure that the decision is not made in haste, as the consequences of any mistake can lead to irreversible consequences.

CONCLUSION AND DISCUSSION

Death Penalty or Capital Punishment is a punishment or process of execution that has been used in India Since time immemorial. Since the days of the monarchy, Capital Punishment has been the most common punishment for convicts in India for offences violative of the law. But, at that time there were no such concepts of 'rarest of rare cases,' 'special reasons,' 'grievous crimes,' 'serious offences,' etc. It is the present era where these concepts are taken into consideration before executing the convict with the Death Penalty.

The use of the death penalty as a form of punishment is controversial; there is growing international opposition to it, and several countries have done away with it entirely. "*Article 6 of the International Covenant on Civil and Political Rights*⁴⁸, spells forth important provisions that signatories who still use the death sentence must preserve, but nowhere does it explicitly forbid its application".

"*In its 262nd Report, the Law Commission*⁴⁹, additionally argued against the death sentence overall, except for terrorism, avoiding a clear ban in the process". It is important to keep in mind the cases where the accused in India obtained the death penalty and were put to death at that point.

The use of Capital Punishment is considered an effective deterrent in society as well as form of a retaliatory and preventive punishment. Many contend that it is ineffective in reducing the number of crimes and violates fundamental rights, so it is no longer a deterrent to society. In India crimes are these days getting so horrific and heinous that the society agrees that no punishment less than Capital Punishment can provide fair and equal justice.

As Justice ML Tahaliyani observed in the case of "*MD. AJMAL MD. AMIR KASAB ABU V STATE OF MAHARASHTRA*⁵⁰", "*he lost his right to humanitarian treatment,*" similarly, such offenders lose their right to humanitarian treatment for the commission of heinous offences. In India, death warrants are only issued in the rarest of rare cases and are always the exception.

⁴⁸ Article 6 of the International Covenant on Civil and Political Rights.

⁴⁹ 262nd Indian Law Commission Report.

⁵⁰ *Mohd. Ajmal Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1: (2012) 3 SCC (Cri) 481.

Therefore, abolishing Capital Punishment entirely would put the nation at greater risk because the State would be unable to take the necessary action when these rarest of rare cases arise.

