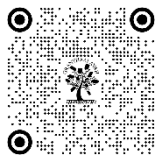


CONSTITUTIONAL VALIDITY OF CAPITAL PUNISHMENT IN INDIA: AN ANALYSIS

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ABSTRACT

Capital punishment is very important issue in the present situation as it is often challenges as the violation of human rights. But in India capital punishment is not rule but act as exception on the touchstone of rarest of rare case and it is applicable in such situations only. With the rising rate of crime, it is very much necessary to retain the capital punishment in the criminal law to instill deterrence in the mind of people from committing the same. India usually follows the deterrent and reformatory theory of punishment as per the case suited. There are so many landmark judgments whereby judiciary recognized the applicability of capital punishment in “rarest of rare” case only. The paper deals with the historical background of capital punishment highlighting its significance from the historical times. It focuses on theories of punishment which play an important role for punishing the offender keeping in mind the purpose behind it. It also covers the various judicial pronouncement starting from Jagmohan Singh to Machhi Singh which decided the constitutional validity of capital punishment in India which held that it is awarded in “rarest of rare” cases only. It further deals with legal framework of both national as well as international whereby capital punishment has been made applicable for some specified offences. It also emphasizes on law commission report like its 35th and 262nd reports which specifically mentions about different aspect of capital punishment. It also covers the judicial review and clemency power of President and Governor as a means of last resort to the offences punishable by capital punishment.

Keywords: Capital Punishment, Constitutional Validity, Clemency Power and Fundamental Rights

1. INTRODUCTION

The utilitarian justification for capital punishment is based on its potential to deter individuals from committing first-degree murder. Thorstein Sellin conducted a comparative study of states with and without the death penalty and found no evidence that capital punishment is more effective in deterring homicides than imprisonment. In contrast, Isaac Ehrlich's more comprehensive research, which accounts for various sociological factors such as race, heredity, regional differences, housing conditions, education, opportunities, cultural influences, and intelligence, determines that there is a deterrent effect of death penalty.¹

The execution of Ajmal Kasab on November 21, 2012 represented a pivotal moment in the aftermath of the November 2008 Mumbai attacks. This also represents a significant event in the modern history of capital punishment in India.²

A primary concern among most Indian citizens regarding a suspended death penalty is the fear of another terrorist attack, such as a repeat of the Mumbai massacre. However, the history of death penalty reform offers a credible approach

¹ Louis P. Pojman and Jeffrey Reiman, *The Death Penalty: For and Against* (Rowman & Littlefield Publishers, Inc., Lanham, Boulder, New York, Oxford, 1998).

² Franklin E Zimring and David T Johnson, “Executing Kasab: A New Beginning or the Beginning of the End of India's Death Penalty?” 47 *Economic and Political Weekly* 10-1 (2012).

to addressing and addressing this apprehension. Many countries initially suspend death penalty for “ordinary crimes” at the same time maintaining provisions that permit its use during wartime or for acts of war. Adopting a similar compromise in India could address the public's deepest security concerns while also eliminating the glaring inconsistencies within the current capital punishment system.³

The U.S. Supreme Court in *Furman v. Georgia*⁴ on 29 June, 1972 struck down Georgia's capital sentencing procedures, ruling that they violated the Eighth Amendment. As a result, the Court effectively invalidated similar death penalty statutes across the country.⁵

Over the past three decades, there has been a significant decline in both the number and proportion of countries that retain the death penalty. However, in the past decade, the momentum of the abolitionist movement appears to have slowed. One of the most notable developments during this period is the growing regional disparity in the application of capital punishment.⁶ So, we can say that retention or abolition of capital punishment may also depend on the regional disparity.

2. HISTORICAL BACKGROUND

Capital Punishment's history in India is as old as the nation's culture. Historical evidence suggests that the death penalty was recognized and practiced in ancient times, as reflected in early legal texts. These punishments were often executed alongside curses of suffering and were applied arbitrarily. During the Buddha's era, despite the principle of *Ahimsa* (non-violence) being a prevailing moral guideline, King Ashoka did not prohibit the execution of criminals. The *Mahabharata* also acknowledged the potential use of the capital punishment, advocating its use in situations where it could ensure public safety and protect society from harm, even if it meant eliminating an individual or a family. Manu, a prominent authority on ancient law, emphasized the necessity of public executions to instil fear and deter people from committing heinous crimes. He warned that without such measures, chaos would prevail, leading to societal collapse, akin to the natural order in a pond where the stronger fish devour the weaker ones.⁷

The presence of capital punishment can be traced back to ancient times, as reflected in the works of very renowned authors as well as thinkers such as Kalidasa and Kautilya, as well as religious texts such as the *Mahabharata*. Even during the Buddhist era, when the doctrine of *Ahimsa* (non-violence) was prominent, the concept persisted. With the advent of the Mughal Empire, Islamic law became the foundation for addressing criminal cases, with decisions made by the emperor in accordance with its doctrines and principles. Under Islamic law, the primary purpose of punishment was to deter future crimes and suppress criminal behaviour within society.⁸

3. THEORIES OF PUNISHMENT

3.1. DETERRENT THEORY

The principle of deterrent punishment aims to prevent crime by imposing exemplary sentences on offenders. This approach seeks to instil fear within society, deterring individuals from engaging in criminal activities through the psychological impact of terror. The severe nature of penal punishment serves as both a warning to the offender and a broader message to others.⁹

3.2. PREVENTIVE THEORY

While the principle of deterrence seeks to prevent crime as it leads to potential offenders be afraid of punishment, the principle of incapacitation aims to stop crime by physically restricting the perpetrator's ability to reoffend. This may involve measures such as imprisonment, suspension of a driving license, or, in extreme cases, the death penalty. The

³ Ibid.

⁴ 408 U.S. 238 (1972).

⁵ Sherod Thaxton, “Leveraging Death,” 103 *The Journal of Criminal Law and Criminology* (1973-) 475–552 (2013).

⁶ Carsten Ankar, “Why Countries Choose the Death Penalty,” 21 *The Brown Journal of World Affairs* 7–25 (2014).

⁷ Kashish Bhushan, “Rationale behind Death Penalty in India,” 5 Issue 1 *Indian Journal of Law and Legal Research* 1–7 (2023).

⁸ Bhala Vignesh, “A Jurisprudential View on Death Penalty in Indian Context,” 5 Issue 1 *Indian Journal of Law and Legal Research* 1–6 (2023).

⁹ Aditya M. Saran, “Critical Analysis of Theories of Punishment,” 3 *Legal Lock Journal* 13–29 (2023).

ultimate punishment, such as a death sentence, ensures that the offender is permanently prevented from committing further heinous crimes.¹⁰

3.3. REFORMATIVE THEORY

As the name implies, the primary goal of this theory of punishment is to rehabilitate and reform offenders. Punishment serves as a tool to guide and reshape their behaviour. This reformation is achieved through education and the introduction of different pursuits while they are imprisoned, such as industrial employment, craft, or art.¹¹

3.4. RETRIBUTIVE THEORY

Vengeance was the first known form of retribution for an offence. The retributive theory, which let the victim or the injured person to seek retribution on the offender, was the source of the idea of justice in prehistoric societies. According to this theory, it was made clear in *Shiv Ram v. State of Uttar Pradesh* that criminal administration was founded on the tenets of “an eye for an eye, a nail for a nail, and a limb for a limb”¹²

3.5. EXPEDITE THEORY

The expedite theory is based on the pragmatic approach like demand of justice by the society, setting example in the society and balancing the unrest in time of need.

4. CONSTITUTIONAL VALIDITY OF CAPITAL PUNISHMENT IN INDIA

*Jagmohan Singh v. State of U.P.*¹³, is country's first case where Supreme Court of India addressed legal challenge of constitutional validity of capital punishment. A five-judge bench upheld the capital punishment, concluding that it is constitutionally permissible and was envisioned by the framers as a legitimate form of punishment.

In *Rajendra Prasad v. State of Uttar Pradesh*¹⁴, the Court held that the “special reasons” necessary to justify the imposition of the capital punishment must pertain to the individual offender. Death sentence, it emphasized, should be awarded only in such cases where it is required to protect “societal security”, “maintain public order”, and “serve the broader interests of the general public”. This judgment came remarkably close to abolishing capital punishment in India and acknowledged a legislative trend favouring the restriction, rather than expansion, of its application.

India continues to uphold the capital punishment, maintaining that it should be awarded in the “rarest of the rare cases” only and for “special reasons.” It remains one of 78 countries that retain capital punishment, in contrast to 118 nations that have either fully or partially abolished it. The constitutionality of capital punishment was examined by honourable Supreme Court in the landmark judgement of *Bachan Singh v. State of Punjab*¹⁵, where the Court rejected the claim that it was unconstitutional. It held that the capital punishment does not violate Article 21 of the Indian Constitution, which protects the “right to life and personal liberty”. This position has been consistently reaffirmed by Indian courts.¹⁶

In *Machhi Singh v. State of Punjab*¹⁷, a three-judge bench of the Supreme Court, reaffirming the principles laid down in *Bachan Singh*, elaborated on what constitutes the “rarest of the rare” cases warranting the capital punishment. The Court observed that certain cases entail killings executed in an extraordinarily cruel, hideous, diabolical, repugnant, or atrocious manner that profoundly disturbs the collective conscience of society. It further observed that the capital punishment may be appropriate when motive behind murder reflects extreme depravity or cruelty-such as when the perpetrator holds a position of dominance or trust, when the crime involves betrayal of the nation, or when the victim

¹⁰ *Ibid.*

¹¹ Riddhi Jain, “Capital Punishment in Relation to the Theories of Punishment in Indian Context,” 3 Issue 6 *International Journal of Law Management & Humanities* 1040–56 (2020).

¹² *Ibid.*

¹³ (1973) 1 SCC 20.

¹⁴ (1979) 3 SCC 646.

¹⁵ AIR 1980 SC 898.

¹⁶ Monica Sakhrani and Maharukh Adenwalla, “Death Penalty: Case for Its Abolition,” 40 *Economic and Political Weekly* 1023–6 (2005).

¹⁷ (1983) 3 SCC 470.

belongs to a Scheduled Caste or minority community and the murder provokes social outrage rather than stemming from a personal dispute.

The Court also recognized the death penalty as potentially applicable in instances of large-scale or multiple murders, such as the killing of an entire family, a specific community, or a locality. Additionally, the vulnerability of the victim such as being a child, elderly, infirm, helpless woman, or a respected public figure can be a determining factor, especially when the murder is politically motivated or the victim is in a subordinate position relative to the offender. The Court laid down key propositions:

- 1) The capital punishment should be awarded in the severe situation exhibiting grave liability.
- 2) The offender's circumstances must be evaluated in conjunction with the offence.
- 3) Life imprisonment is considered the standard, whereas the capital punishment is awarded in exceptional situations.
- 4) A careful balance must be maintained between aggravating and mitigating factors before determining the appropriate sentence.

To apply these guidelines, the Court suggested that the following questions be examined:

- Is the crime so extraordinary that life imprisonment would be inadequate?
- Even after giving the utmost consideration to mitigating factors, does the case still leave no alternative but to impose the death penalty?

In *Kuljeet Singh v. Union of India*¹⁸, Court held “*The survival of an orderly society demands the extinction of the life of persons like Ranga and Billa, who are a menace to social order and security.*”

The Supreme Court, however, has deliberately refrained from providing a rigid definition of what constitutes a “rarest of the rare” case. Instead, it has left the determination to the discretion of the judges presiding over each case, fully aware that this approach could result in inconsistent and varying outcomes.¹⁹

5. LEGAL FRAMEWORK

5.1. CONSTITUTION OF INDIA

It ensures the right to life and personal liberty, encompassing the right to live with dignity. The state can restrict this right by only according to law and in the interest of public order, as affirmed in *Maneka Gandhi v. Union of India*.²⁰ Such restrictions must follow the “due process of law”, which requires the procedure to be just, fair, and reasonable.²¹

5.2. INDIAN PENAL CODE, 1860

It penalizes “rape of a woman under twelve years of age with rigorous imprisonment for a term not less than twenty years, which may extend to life imprisonment for the remainder of the offender’s natural life, and may also include a fine or the death penalty.”²²

It punishes “causing death or resulting in persistent vegetative state of victim with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, or with death.”²³

¹⁸ (1989) 1 SCC 204.

¹⁹ Supra note 3.

²⁰ (1978) 1 SCC 248.

²¹ The Constitution of India; art. 21.

²² Indian Penal Code; s. 376AB.

²³ Ibid; s. 376A.

It punishes gang rape with death,²⁴ offenders of gang rape of women within age of 16 years is punished with death,²⁵ gang rape of women within age of 16 years punishable with capital punishment²⁶ and provides capital punishment for repeat offenders of rape.²⁷

It provides for punishment of murder with either the death penalty or life imprisonment, along with a fine.²⁸

It prescribes punishment for “abetment of suicide of a child or a person of unsound mind with either the death penalty, life imprisonment, or imprisonment for a term of up to 10 years, and with fine.”²⁹

Dacoity resulting in murder is punishable by death.³⁰

Fabricating evidence with the intent to secure a capital conviction may result in the death penalty.³¹

An officer or member of army, navy, or air force who instigates armed rebellion leading to mutiny may be sentenced to death.³²

Any individual who attempts or succeeds in waging war against India may face the death penalty.³³

5.3. THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

It punishes aggravated penetrative sexual assault “with a minimum of 20 years of imprisonment, which may extend to life imprisonment for the remainder of the offender’s natural life, along with a fine or the death penalty.”³⁴

5.4. THE COMMISSION OF SATI (PREVENTION) ACT, 1987

Any individual directly or indirectly involved in the practice of Sati may face the death penalty under this Act.

5.5. NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Under Section 31A, individuals involved in financing, producing, or trafficking a specified quantity of narcotic or psychoactive substances may be sentenced to death.

5.6. THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

“The act of fabricating evidence that results in the wrongful conviction and execution of an innocent person belonging to a Scheduled Caste or Tribe is punishable by the death penalty.”

5.7. ARMY ACT, 1950; AIR FORCE ACT, 1950; AND NAVY ACT, 1957

Certain crimes committed by military personnel by purview of these legislations may carry the death penalty as a form of punishment.

6. INTERNATIONAL INSTRUMENT ON DEATH PENALTY

The abolition of the death penalty continues to be a subject of intense debate in the United Nations, where it is progressively regarded as a violation of human rights. The UN generally favours “the reformatory theory of punishment”

²⁴ Ibid; s.376D.

²⁵ Ibid; s. 376DA.

²⁶ Ibid; s. 376DB.

²⁷ Ibid; s. 376E.

²⁸ Ibid; s.302.

²⁹ Ibid; s. 305.

³⁰ Ibid; s.396.

³¹ Ibid; s.194.

³² Ibid; s.132.

³³ Ibid; s.121.

³⁴ The Protection of Children from sexual offences Act, 2012; s.6.

over “the deterrent theory”. According to “Amnesty International’s 2022 report”, 112 countries have fully abolished the capital punishment, while 9 others retained solely for exceptional offences committed during the times of war. Additionally, 23 countries have kept the death penalty in their laws but have not carried out executions in the past decade. Meanwhile, 55 countries, including India, continue to retain it within their legal systems.³⁵

Several international instruments and conventions play a vital role in advancing the global movement toward the abolition of the death penalty by promoting and protecting human rights. ICCPR is a foundational covenant in “international human rights” law³⁶. However, this does not explicitly ban the death penalty, it upholds the “right to life” and establishes important safeguards for states that retain capital punishment. In contrast, its Protocol specifically goals for the complete abolition of the capital punishment³⁷. Other significant instruments addressing this issue include some Protocols³⁸ that focus on abolition under defined circumstances, and other Protocol to Abolish the capital punishment³⁹. Additionally, the convention⁴⁰, along with committee⁴¹, provides key jurisprudence that seeks to impose limitations and ensure critical safeguards in countries that continue to enforce the death penalty.

7. LAW COMMISSION REPORT ON DEATH PENALTY

Law reform has been an ongoing process throughout Indian history. The government has periodically constituted Law Commissions to recommend legislative reforms aimed at clarifying and improving specific branches of law.

The Law Commission advised maintaining the capital punishment, arguing that it was not yet the right time for its abolition. Over the years, the constitutionality of the capital punishment has been consistently challenged in the courts.⁴²

While the report recommends that India should move toward the abolition of the capital punishment, it also advocates its retention in cases involving terrorism and waging war against the nation.⁴³

8. INCOHERENCE IN SENTENCE

The fundamental inconsistency in India's death penalty jurisprudence has been further deepened by a new wave of Supreme Court decisions. In February 2013, in *Gurvail Singh v. State of Punjab*⁴⁴, a two-judge bench introduced a fresh interpretation of *Bachan Singh*⁴⁵ case, asserting capital punishment can be awarded only if the aggravating circumstances (the “crime test”) are fully established and there are no mitigating factors (the “criminal test”) favouring the accused. In other words, the capital punishment should not be imposed unless offence is proven of exceptionally heinous and the offender’s background offers no indication of the possibility of reform. This approach adopted in *Gurvail Singh* was further reinforced in *Shankar Kisanrao Khade v. State of Maharashtra*⁴⁵ by honourable Supreme Court in this case.⁴⁶

9. INDIAN POSITION

The Court in *Bachan Singh*’s case rejected the argument that death through hanging amounted to an unwelcome, harsh, or excessive punishment. It observed although the U.S. Supreme Court in *Furman v. Georgia*, had held capital punishment is a harsh and excessive penalty for violation of the Eighth and Fourteenth Amendments, the legislative wing not fewer than 32 states swiftly amended their criminal laws to reinstate capital punishment for murder and some other offences. Further, in subsequent ruling of *Gregg v. Georgia*⁴⁷, the U.S. Supreme Court substantially narrowed the concerns

³⁵ Aman, “Death Penalty: Question on Human Rights” I Issue I ILE Journal of Criminology, Victimology and Penology Jurisprudence 8-11(2023).

³⁶ The International Covenant on Civil and Political Rights; s.6.

³⁷ The Second Optional Protocol to the ICCPR.

³⁸ Protocol No. 6 and Protocol No. 13 to the European Convention on Human Rights.

³⁹ Protocol to the American Convention on Human Rights.

⁴⁰ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴¹ The UN Committee against Torture.

⁴² Law Commission of India, 35th Report on Capital Punishment (1967).

⁴³ Law Commission of India, 262nd Report on the Death Penalty (2015).

⁴⁴ (2013) 2 SCC 713.

⁴⁵ (2013) 5 SCC 546.

⁴⁶ Suhrith Parthasarathy, “Law Commission Report on ‘Death Penalty’: A Chance to Overcome Incoherence in Indian Jurisprudence?” 49 *Economic and Political Weekly* 15–8 (2014).

⁴⁷ 428 U.S. 153 (1976).

raised in *Furman*, holding that such issues can be best addressed by a sentencing system which incorporates dual proceedings where the sentencing authority is provided with all relevant information and is guided by clearly defined standards.⁴⁸

The Supreme Court once again examined the question of whether death by hanging, is prescribed under the provision⁴⁹ constituted a cruel form of punishment in *Deena v. Union of India*⁵⁰. Upholding its constitutionality, Court observed that hanging was as painless a method of execution as possible under the circumstances. It emphasized that this method inflicted not much discomfort as compared to any other recognized means of carrying out the capital punishment and did not involve any element of barbarity, torture, or degradation. The Court's conclusion was grounded in reason and supported by expert evidence and findings.⁵¹

It is now well established that the capital punishment in India is given only in the "rarest of rare" cases. However, the Court's historical interpretation of what constitutes the "rarest of rare" remains complex and sometimes elusive. In making this determination, the Court typically assesses the degree of culpability by taking into consideration the circumstances of the offender, the nature and situations of the offence, along with mitigating factors. Life imprisonment remains the norm, with death penalty as the exception. In deciding whether the death penalty is warranted, the Court often examines the manner, motive, nature, the severity of the offence, and the profile of victim.⁵²

India proclaims its commitment to "the principles of justice and due process" for all, including the poor and those accused of the most heinous crimes. However, there remains a troubling arbitrariness in how the system determines who shall face the death penalty, often imposing its harshest penalty on those least equipped to defend themselves within it. There are no exhaustive criteria of rarest of rare and it is based on the judicial discretion.⁵³

Under the provision⁵⁴, the court is mandated to record "special reasons" when imposing the capital punishment. However, neither the Indian Penal Code (IPC) nor the CrPC provides clear guidelines or specifies circumstances to be considered, nor does it outline the criteria the court should follow when exercising this discretion. While a sentencing court must record its reasons for imposing life imprisonment under Section 354(3), it is required to record "special reasons" only when awarding the death penalty.⁵⁵

India has many times opposed the abolition of capital punishment in international footing. Notably, when voting against the 2010 Draft UN General Assembly Resolution calling for a moratorium on the death penalty, the Indian representative justified the negative vote by stating that "India could not support the draft as it conflicted with its statutory law."⁵⁶

The text of *Bachan Singh* clearly reflects this emphasis: mitigation was to be interpreted broadly and given significant weight, whereas aggravating factors were to be approached with caution. To even qualify as an "aggravating" circumstance, the situation had to demonstrate an aggravation of an "abnormal or special degree".⁵⁷

10. INTERNATIONAL POSITION

The mandatory death penalty for murder was overturned by the US Supreme Court in *Woodson v. North Carolina*⁵⁸ in 1976, making it the first court in the English-speaking world to do so. The court held that the mandatory capital punishment has violated "the Eighth Amendment's" ban on harsh and exceptional penalty. This choice deviated from the then-dominant worldwide consensus. In *Queen v. Runyowa*, decided almost 10 years prior, the London-based Judicial Committee of the Privy Council had affirmed a mandatory death sentence, setting American jurisprudence apart by citing

⁴⁸ S. Muralidhar, "Hang Them Now, Hang Them Not: India's Travails with the Death Penalty," 40 *Journal of the Indian Law Institute* 143-73 (1998).

⁴⁹ The Code of Criminal Procedure s.354(5).

⁵⁰ (1983) 4 SCC 645.

⁵¹ *Ibid.*

⁵² Abhinav Chandrachud, "Inconsistent Death Sentencing in India," 46 *Economic and Political Weekly* 20-3 (2011).

⁵³ Michel Guesdon, "On Death Penalty," 32 *Economic and Political Weekly* 2430-2430 (1997).

⁵⁴ The Code of Criminal Procedure s. 354(3).

⁵⁵ K I Vibhute, "Choice Between 'Death' And 'Life' For Convicts: Supreme Court of India's Vacillation Sans Norms," 59 *Journal of the Indian Law Institute* 221-64 (2017).

⁵⁶ S.B. Sinha, "To Kill or Not to Kill: The Unending Conundrum," 24 *National Law School of India Review* 1-29 (2012).

⁵⁷ Hrishika Jain, "Questionably foreclosing life imprisonment: The death penalty framework in Indian trial courts," 15 *Jindal Global Law Review* 61-88 (2024).

⁵⁸ 428 U.S. 280 (1976).

the Rhodesian Bill of Rights' distinctive phrasing., which prohibited cruel, inhuman, and degrading punishment or other treatment. The Commonwealth consensus then was that the prohibition against harsh and excessive punishment addressed the form of the punishment only, but not its magnitude or proportionality, but that position is now not regarded as efficient law. These days, *Woodson* is frequently cited globally for the idea that a mandatory capital punishment could be unduly severe if it ignores the specifics of the offence., thereby rendering it unconstitutionally cruel and degrading.⁵⁹

In 1972, the Supreme Court declared the U.S. capital punishment system unconstitutional, citing its arbitrary application in *Furman v. Georgia*⁶⁰. The Court found that capital punishment, violated "the Eighth Amendment's" ban on harsh and excessive penalty. As a result, capital punishment was effectively halted nationwide for four years. In 1976, with *Gregg v. Georgia*⁶¹ the Court allowed states to resume the death penalty, provided they introduced clearer sentencing guidelines for juries. This approach aimed to reduce the randomness that had previously characterized death penalty decisions.⁶²

11. JUDICIAL REVIEW AND CLEMENCY POWERS

The Home Ministry has recommended several circumstances to be considered while deciding mercy petitions:

- Prolonged delays in the trial and investigation process.
- The specific situations of case or character and background of condemned prisoner.
- Situations where judges of the High Court disagree, requiring a referral for larger bench.
- Taking into account evidence to weigh responsibility of cases involving gang-related murders.
- Cases where the appellate court expresses doubt about the evidence but still upholds the conviction.
- Allegations that fresh evidence is available, warranting a re-examination to ensure the validity of the newly conducted inquiry.
- Instances in which the High Court, on preferring appeal, has reversed an acquittal or increased the penalty.⁶³

12. SUGGESTION FOR CRIME PREVENTION

1) Role of Government in Crime Prevention

In most countries, crime prevention initiatives are developed through a National Crime Policy, which outlines the creation of committees at the national, state, and district levels to support the implementation of these programs. These are collectively known as Government Intervention Programs.

• Developmental Crime Prevention Programs

Developmental crime prevention focuses on implementing social and economic reforms aimed at reducing the pressures that lead to criminal behaviour. Programs like "Weed and Seed" in the United States, gang prevention initiatives, school-based gang intervention, job creation schemes, and skill development programs work to improve socio-economic conditions, thereby serving as long-term crime prevention strategies.

• Programs Delivered by Police, Courts, and Correctional Institutions

The criminal justice system—including police forces—uses territory-based prevention programs to tackle crime. Engaging with communities to understand their experiences, challenges, and needs is a key strategy. Working with the media for accurate, in-depth reporting on crime prevention efforts is also crucial, helping the public stay informed about both the progress and challenges encountered.

• Protection Against Crimes Targeting Vulnerable Groups

⁵⁹ Andrew Novak, *The Global Decline of the Mandatory Death Penalty: Constitutional Jurisprudence and Legislative Reform in Africa, Asia, and the Caribbean*, Ashgate Publishing, 2014.

⁶⁰ 408 U.S. 238 (1972).

⁶¹ 428 U.S. 153 (1976).

⁶² Robin Conley, *Confronting the Death Penalty: How Language Influences Jurors in Capital Cases* (Oxford Univ. Press 2016).

⁶³ Fayeza Farhana, "Death Penalty in India," 4 Issue 4 *International Journal of Law Management & Humanities* 3834–47 (2021).

Authorities often design specific measures to protect vulnerable populations. Legislation like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, seeks to protect marginalized communities from caste-based violence. Similarly, laws such as the Dowry Prohibition Act, 1961, the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has object to safeguard women, children, and the elderly. It remains crucial to continuously reassess and adapt these protections to effectively meet the unique needs of each minority group and prevent misuse of the laws intended for their protection.

- **Promoting Harmony Among Religious Groups**

As a secular nation, India upholds the equal treatment of all religions. However, historical incidents reveal instances where the state has failed to adequately protect the rights of certain religious or ethnic groups. It is essential for the state to maintain a neutral and protective stance towards all communities to promote social harmony, brotherhood, and, ultimately, reduce crime.⁶⁴

2) Non-Governmental Intervention in Crime Prevention

Non-governmental intervention programs often operate through public-private partnerships and are particularly active in developing countries. NGOs play a vital role in community-based crime prevention efforts, focusing on education, rehabilitation, and social development to address the root causes of criminal behaviour.⁶⁵

3) Public Education and the Role of Media

Involving the public and media in discussions about crime prevention is essential. Without proper information, public fear can drive calls for overly harsh measures. Since media outlets tend to highlight the most violent crimes, they heavily influence public perceptions. Therefore, it is critical for governments at all levels to engage with the public, provide comprehensive information, and foster informed discussions when developing crime prevention strategies.⁶⁶

13. CONCLUSION

Capital punishment is the highest form of punishment and is given to create deterrence in the society and to prevent further crime. It has been held constitutionally valid in India and retained in its penal provisions. It has been held by Supreme court that it will be awarded only in rarest of rare case. Law commission's 262nd report recommends for abolition of capital punishment except for terrorism and war crimes. The case of Bacchan Singh holds a lot of significance in determining the constitutional validity. The sentencing policy should follow the aggravating and mitigating factor while awarding the penalty. Capital punishment is not a rule but awarded in "rarest of rare" situations only. Many countries' stand has shifted towards the abolishment of capital punishment but we must consider that it is also highly depends on the regional disparity of countries. Some suggestions have been stated in this paper for the prevention of crime as preventing crime should be the first priority and punishment and that too with capital punishment will of last resort. So, in India it is held constitutionally valid by honourable Supreme Court. But the term "rarest of rare" has not been defined so I suggest that Judiciary should define this so that it will reduce the inconsistency in decisions of the court.

⁶⁴ Shubham Garg, "Psychology of Criminal (Increasing Crime Rate in India)" I And Issue I ILE Journal of Criminology, Victimology and Penology Jurisprudence 1-6 (2023).

⁶⁵ Ibid.

⁶⁶ Ibid.