

CAPITAL PUNISHMENT AND CRIMINAL JUSTICE SYSTEM

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Abstract

The criminal justice system is a collection of public and private organisations set up to handle criminal suspects and offenders who have been found guilty. The courts, law enforcement, forensic services, education, and prisons are the several interconnected pillars that make up the criminal justice system. These pillars are designed to uphold the ideas of justice under the law. Due process is the method through which the rights of people and the government's obligation to uphold and preserve those rights are combined to create legal justice. Without the unwavering devotion of individuals working in the criminal justice system, these constitutional rights cannot be granted and safeguarded. As a result, these professionals must abide by the ethical standards of the criminal justice system and display steadfast integrity in their behaviour. This is made possible with the aid of a respectable code of professional ethics, which, when correctly applied, communicates competence, dependability, responsibility, and general trustworthiness.

The primary goal of this essay is to provide the reader with a comprehensive picture of the situation and perspective of the Indian Courts about the imposition of the death penalty. It ends by discussing the legitimacy of the death penalty.

Keyword: Capital Punishment, Criminal Justice, Section 302 IPC, Bacchan Singh

Introduction

Execution of an individual sentenced to death in the wake of being found blameworthy by an official courtroom of a criminal offense is the death penalty, generally known as capital punishment. It is critical to recognize capital punishment and extrajudicial killings that happen without a court request. Albeit the burden of the punishment (in any event, when it is supported on bid) doesn't be guaranteed to bring about execution, the expressions "capital punishment" and "the death penalty" are much of the time utilized conversely. This is on the grounds that quite possibly the sentence may be driven to life in jail. In India, there are several human rights movements that believe the death penalty is wrong because it violates a person's rights. The death penalty has grown more divisive over time. The general public, who prohibits this instruction, declares it to be callous and inappropriate. They acknowledge that no life should be taken, with little regard for the injustice that has already been done.

Statement of problem

India's position on the death penalty is still quite erratic. Not only is the legality of the penalty under discussion, but also its social and moral implications. If the legal issues is set aside, there are two points of view on the problem. The safety of society and public opinion are the main concerns.

The argument against it is that it supports the "eye for an eye" maxim, which is unacceptable in a civilised society. On the one hand, keeping the death penalty might result in the execution of an innocent person. However, by giving someone a second opportunity, we would be handing them ammunition to shoot us just because they missed the first time.

Objective of study

The death penalty or capital punishment has forever been a place of logical inconsistency not just in the Indian Legal executive anyway likewise in most evolved nations. The state's power is both addressed and laid out after the execution of capital punishment. The target of the review is to attempt to track down the legitimacy of the death penalty and perspective on open on the death penalty in India.

Review of literature

1. Hood, R., 2001. Capital punishment: A global perspective. *Punishment & Society*, 3(3), pp.331-354.

2. Blackshield, A.R., 1979. Capital punishment in India. *Journal of the Indian Law Institute*, 21(2), pp.137-226.
3. Nayak, S. and Pattnaik, S., 2020. CAPITAL PUNISHMENT IN INDIA: AN ANALYSIS. *PalArch's Journal of Archaeology of Egypt/Egyptology*, 17(6), pp.5059-5065.
4. Shyam, A. and Sandeep, M.N., 2021. Does death deter? A critical analysis of the need For Capital punishment in India”.
5. Johnson, D.T., 2019. A factful perspective on capital punishment. *Journal of Human Rights Practice*, 11(2), pp.334-345.

Research methodology

The exploration approach utilized in the examination paper is doctrinal and depends on auxiliary sources. The optional wellsprings of data incorporate web-based sites, research papers, books in light of the Indian correctional code, Reports distributed by famous specialists, papers, lawful data sets that assist us with giving a translation on different cases, and so forth.

India bases its justification for punishment on two tenets: first, that the criminal should suffer; and second, that punishing wrongdoers would deter others from acting in an improper manner. The death penalty or capital punishment has historically been controversial, not only in the Indian judicial system but also in the majority of developed nations. After the imposition of the death penalty, the legitimacy of the state is both called into doubt and confirmed. India made its position on this issue known in December 2007, yet the judiciary spares the country for egregious legal violations.

In India, there are several human rights movements that believe the death penalty is wrong because it violates a person's rights. The death penalty has grown more divisive over time. The general public, who prohibits this instruction, declares it to be callous and inappropriate. They acknowledge that no life should be taken, with little regard for the injustice that has already been done. The primary goal of this essay is to provide the reader with a comprehensive picture of the situation and perspective of the Indian Courts about the imposition of the death penalty. It ends by discussing the legitimacy of the death penalty.

Capital punishment or the death penalty has forever been questionable, in the Indian legal executive as well as in most of current countries. After capital punishment is completed, the authenticity of the state is both called into uncertainty and affirmed. In India, there are a few basic freedoms developments that accept capital punishment is off-base since it disregards an individual's rights. The reformative hypothesis, which holds that wrongdoing looks like a disease, is one of the two thoughts that comprise the underpinning of Indian criminal regulation. As indicated by this conviction, "You can't treat by killing." The fundamental point of this hypothesis is to get a change the character and character of the transgressor, to make him a supportive citizen. The other hypothesis that is followed is Preventive Hypothesis, which says 'Avoidance is superior to fix. Taking counteraction before the responsibility of a crime is better. This hypothesis targets forestalling wrongdoing by impairing wrongdoing by forcing the death penalty on the crook, or by keeping him in prison.

“The Indian Constitution moreover offered powers to the President and agent to suspend or absolve capital punishment. In India, the death penalty is allowed for the most real and appalling offenses. The death penalty is given for homicide, robbery with murder, waging war against the organization, etc”¹. This punishment is given when the court shows up at an end that life confinement is missing, considering the conditions of the case.

¹ Nayak, S. and Pattnaik, S., 2020. CAPITAL PUNISHMENT IN INDIA: AN ANALYSIS. *PalArch's Journal of Archaeology of Egypt/Egyptology*, 17(6), pp.5059-5065.

Crimes in which capital punishment is given

Serious murder

A murderer must get the death sentence, according to "Section 302 of the Indian Penal Code, 1860. The Supreme Court ruled in Bachan Singh's case that the death penalty is only legitimate when it is used as an exception in "the rarest of the rare" instances"².

Other crimes that end in death

According to the Indian criminal law, a person who commits a murder while committing a furnished theft is subject to the death punishment. Sati submission or submission to another person is also a crime that should result in death.

offences connected to terrorism that do not result in death

The use of any special type of explosives to finish a detonation that poses a risk to one's life or seriously damages one's property is justifiable.

Death is not a result of rape

Under the Criminal Law Act of 2013, a person who commits rape and causes harm to another person such that they die or remain in a "persistent vegetative state" may get the death sentence. Death is the ultimate punishment for gang rapes. These were established following the gang rape of medical student Jyoti Singh Pandey in New Delhi in 2012. Any damage to someone's property deserves to be punished with death.

Not all kidnappings result in deaths

According to Section 364A of the Indian Penal Code, 1860, grabbing without the intent to kill is a crime that calls for the death sentence. In the unlikely event that someone kidnaps someone and attempts to kill him, and the attempted murder results in the victim's death, the kidnapper is put at risk under this provision.

Drug trafficking does not cause deaths

In the event that someone attempts to engage in any type of drug trafficking offence or finances such drug-related activities, they may get a death sentence. sentenced to death as punishment.

Treason

The death sentence shall be applied to anybody who intends to take up arms against the government or is already doing so while aiding Navy, Army, or Air Force officials, troopers, or civilians to submit a mutiny.

Military crimes that do not result in death

A member of the Army, Navy, or Air Force who aids in an attack, mutiny, or other comparable offences will get the death sentence as a punishment.

CLASSIFICATION OF GUILTY PARTIES REJECTED FROM THE DEATH PENALTY

Minor

According to Indian Regulation, a person who is more youthful than eighteen years at the hour of obligation to the wrongdoing can't be given the death penalty.

Pregnant lady

According to the modification made in the year 2009, Leniency should be yielded to a pregnant woman who is sentenced to capital punishment.

Mentally Debilitated

As shown by the Indian correctional code, an individual though perpetrating out terrible bad behavior, was soundly debilitated or can't appreciate that the idea of the exhibition performed by him is dangerous, can't be repelled by the death penalty

² Sarat, A. and Boulanger, C., 2005. *The cultural lives of capital punishment: Comparative perspectives*. Stanford University Press.

VALIDITY OF CAPITAL PUNISHMENT

“The instance of *Bachchan Singh v Territory of Punjab* again raised the topic of the legitimacy of the death penalty”³ and for this situation, the precept of "most uncommon of the interesting" was formed. The five-judge Seat proclaimed that the taking of human existence ought not be supported even in that frame of mind of discipline besides in "most uncommon of the intriguing" situations where no elective technique can be utilized and is dispossessed.

At the point when the legitimacy of the death penalty was addressed, the seat (larger part choice) thought that death penalty didn't disregard either Article 19 or Article 21 of the Constitution. They additionally called attention to the way that the producers of the Constitution were absolutely mindful that death penalty might be granted at times, and it was demonstrated by the presence of the arrangement of allure and arrangement of exculpating powers of the President and the Lead representative. It was likewise set out that relieving, and irritating variables ought to be considered while choosing the matter.

The instance of *Machchi Singh v Province of Punjab* expounded the precept of "most extraordinary of intriguing." The Court gave rules with respect to what to be thought about while settling on the issue that whether the case falls under the class of "most extraordinary of uncommon" or not.

1. Way of Commission of the Wrongdoing:

That's what the Court pronounced assuming the wrongdoing were carried out in very fierce and malicious habits so it stirs the extraordinary shock of the general public, it'd fall under the most uncommon of the uncommon case. A few occurrences were provided like when with the place of the casualty is set to fire with the goal to consume him alive, or the casualty is exposed to barbaric remorselessness and torment, or when the body of the casualty is hacked and damaged, it'll be considered a most extraordinary of intriguing case.

2. Rationale in Commission of the Wrongdoing:

at the point when the wrongdoing is carried out in facilitation to double-cross the country, or professional killers are utilized to kill the person in question, or any conscious plan is made to kill the casualty in a merciless way, it'll likewise fall under the expressed class of most uncommon of the uncommon.

3. Size of the Wrongdoing:

at the point when the wrongdoing is huge in extent, for instance, killing every one of the individuals from the family or a territory is finished.

4. Socially profane Nature of Wrongdoing:

at the point when the wrongdoing is such it's socially hated, such as killing somebody having a place with the regressive classes of the local area or consuming of a lady of the hour in the event that endowment wishes aren't met or killing a lady to remarry once more.

5. Survivor of the Wrongdoing:

In the event that the survivor of the wrongdoing is a little youngster, who could never have given any motivation to the charged to perpetrate the wrongdoing, or the wrongdoing is carried out against a powerless lady, or an old individual, and assuming the casualty was simple-minded, or the casualty was a person of note who was cherished by the general public, the wrongdoing will fall under most extraordinary of the uncommon case.

Doctrine of 'rarest of the rare' cases

The death penalty in India depends on the teaching of the most extraordinary cases. The precept suggests that to sentence an individual for death the wrongdoing check ought to be completely cheerful and it shouldn't incline toward the denounced in any conditions.

³ Aditi Agrawal, Death Penalty An Overview of Indian Cases, LawOctopus.com (Sep. 4th, 2014)<https://www.lawctopus.com/academike/death-penalty-an-overview-of-indian-cases/#:~:text=The%20Indian%20Penal%20Code%2C%201860,a%20punishment%20for%20various%20offenses.&text=Apart%20from%20this%2C%20there%20are,capital%20punishment%20by%20the%20President.>

This way of thinking relies on the discernment that society takes and the court ought to consider various variables like society's scorn, the character of the lawbreaker, thought process and way of the commission of the wrongdoing, outrageous resentments and antagonism to sure violations like assault of minor young ladies and so on.

The courts grant capital punishment since the circumstance requests it because of established impulse that mirrors the desire of the general public and not the appointed authority driven approach of the general public. Notwithstanding, the death penalty must be granted in unique conditions and there ought to be a harmony between relieving as well as disturbing elements.

“The validity of this notion is unclear since it violates the basic rights protected by Articles 14 and 21 of the Indian Constitution when an offender's life is determined by the court. The *Bacchan Singh v. State of Punjab* decision created the idea of the rarest of the rare cases”⁴. The court outlined the following rules and criteria that should be taken into account before passing the death penalty:

- If the murder was carried out with extraordinary cruelty and after prior preparation, a judge can impose the death penalty.
- If an individual performing a public duty was murdered, or if the murder included extraordinary depravity.
- The use of the death penalty should be based on the degree of responsibility in each case, not in every instance. Consider the facts surrounding the perpetrator and the offence before imposing such a punishment.
- Only when life in prison would not adequately punish the perpetrator for their offence will the penalty be handed out.
- It is important to maintain balance between the aggravating and mitigating elements while making a decision.

The majority of judges concluded that because the judges' discretion in imposing the death penalty is employed in conformity with the widely acknowledged norms codified by precedents, it is not unguided. As a result, neither Article 14 nor Article 21 of the Constitution are violated by the judges' discretion. The death penalty being awarded as an alternative to life imprisonment, according to Justice Bagawati's minority judgement, is unconstitutional since it gives judges unrestricted power to select between the two punishments.

ARGUMENTS AGAINST CAPITAL PUNISHMENT

Individuals accept that human existence is valuable and that even the people who perpetrate the most exceedingly terrible wrongdoings ought not be denied the right to life. Their right to life can't be removed exclusively for their ill-advised conduct. The State has an obligation to safeguard society and rebuff wrongdoers, yet this obligation should be done at all negative way conceivable, with other accessible choices being considered too.

On account of blemishes in the overall set of laws, the death penalty brings about the execution of blameless people. Those engaged with the overall set of laws, like the jury, witnesses, and examiners, may commit errors. It is only a violent act that raises the possibility of killing the lives of innocent people. “People contend that the death penalty, which is reliant on retaliation to serve as justice, is ethically wrong and is only an evolution of revenge. Killing itself cannot be said to be bad”⁵. Given that only a small proportion of murderers are really affected by such punishment, it has failed to have a deterrent impact. The brutalization of society and the relationship between the state and its inhabitants is the only result of the death penalty. The idea that death would be used to address societal problems such as politics and social concerns is ethically repugnant and unethical. Torture is not tolerated in today's culture, and the use of the death penalty is not an effective deterrent.

⁴ Raj, R., 2016. Rarest of the Rare Doctrine-An Analysis. *Law Mantra Online*, 4(5).

⁵ Steiker, C.S., 2005. No, capital punishment is not morally required: Deterrence, deontology and the death penalty. *Stan. L. Rev.*, 58, p.751.

ARGUMENTS FOR CAPITAL PUNISHMENT

The essential contention that upholds the death penalty is that each blameworthy individual ought to be rebuffed and the discipline will be relative to the wrongdoing that he/she has perpetrated. This contention upholds the possibility of equity. J. Anand and J. N.P. Singh in one of their decisions expressed that Inconvenience of suitable discipline is the way by which one can answer society's sob this way, that it can mull over scorn of the wrongdoing.

Society has consistently used discipline as a mode to deter hoodlums since society plans to lessen offensive violations, subsequently, the most grounded discipline will be granted and the death penalty is able for it. Wrongdoers ought to be killed to keep them from perpetrating a wrongdoing once more. An individual who poses a threat to the community should be put to death, and the death penalty is regarded as a suitable option to protect the interests of society.

There is no evidence that the death penalty has claimed the lives of innocent individuals, and even if it has, it is extremely unlikely. "Discretion has always been important; every case has unique circumstances that are carefully considered"⁶. As a result, it shouldn't be viewed as discriminatory. The death penalty assures that any law infringement will not be treated lightly and that necessary measures will be done to maintain the law since terror undoubtedly affects human psychology.

WHAT IS THE FUTURE OF CAPITAL PUNISHMENT IN INDIA?

In *Chhannul Verma v. the Province of Chattisgarh*, Joseph as he would see it communicated his different worries over the conflicting use of the standards set down in Bachan Singh. For this situation, he believed that the sacred guideline of capital punishment endeavored in Bachan Singh has neglected to forestall death penalties from being "randomly and outlandishly forced" and that capital punishment has neglected to accomplish any naturally substantial penological objectives.

There is still no clear response to the query. The legitimacy of the death penalty need not stem from the legal system or the constitution. India is more democratic and forward-thinking. India has an impoverished and illiterate population, yet it has the best growth worldwide. According to analysts, India will become a global superpower soon and would have a knowledge-based economy with educated and competent young people. Only the democratic USA permits the death penalty, and only after extensive review. Even in the USA, the first federal execution took place in 2020 after a 20-year absence. Remembering the above information and the huge populace of India and its kin have a moderate and liberal demeanor, the death penalty doesn't have a future in India. In spite of the fact that, ought to stay as most uncommon of the intriguing so that when legitimized could be utilized by the legal executive.

CONCLUSION

India is a majority rule country and the introduction makes reference to, we individuals of India where the benefit of individuals in general wins. The Constitution of India ensures individuals to live in an honorable way, for this, the State can rebuff anybody against the wrongdoing that is finished against it. Taking into account the disciplines, capital punishment is the most noteworthy discipline that one can get regardless of one's (blamed) right and respect. India being an individual from the All inclusive Statement of Basic freedoms didn't cancel capital punishment anyway confined the extent of such practice by laying out the way of thinking of the most uncommon of intriguing cases.

The death penalty is viewed as the most barbaric and savage discipline on the planet. A few nations have canceled anyway India being a functioning individual from the Unified Countries and various different commissions of Basic liberties has not nullified it yet. "As per our legal executive, just carried out in uncommon conditions are most extraordinary of uncommon"⁷. India is a different nation and in light of rich culture. It's not the way that violations are started in present day times and hence, such

⁶ Bedau, H.A., 1987. *Death is different: Studies in the morality, law, and politics of capital punishment*. Upne.

⁷ Sarat, A. ed., 2001. *The killing state: Capital punishment in law, politics, and culture*. Oxford University Press.

discipline ought to be given. The death penalty in most extraordinary of most extraordinary cases doesn't influence the standards of Common liberties as expressed by ICCPR (The Worldwide Agreement on Common and Political Privileges) for those nations that have still not canceled it anyway for certain limitations forced on it. The Courts have, in different cases, pronounced that death penalty ought not be proclaimed unlawful, because of the composers of the Constitution hasn't seen it proper to do this, and that the assembly additionally hasn't found a way a ways to nullify the death penalty.