

THE INTRICACIES OF DEATH PENALTY UNDER CRIMINAL JUSTICE SYSTEM IN INDIA: CRITICAL STUDY

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ABSTRACT

The death penalty is one of the most contentious issues in Indian law. It dates back to ancient times and is still practiced in some major countries, including India. In India, death penalty is only applied in the rarest of circumstances, although the exact meaning of the phrase "rarest of circumstances" has sparked debate. The ultimate goal of any punishment is to minimize crime and impose some sort of consequence on the perpetrator . The execution of a wrongdoer in the name of justice is known as the death penalty. The similar phenomenon occurs in India, yet despite the fact that it is a violation of the right to life and dignity guaranteed by Art. 21 of the Indian constitution, it is constitutionally valid .

This document gives an outline of India's capital penalty system. It also goes over the history of the death penalty and the different reports issued by the Law Commission on the subject. The paper also discusses the doctrine of the rarest of rare cases, which deals with numerous situations and forms of execution of the death penalty in order to determine the study's aim. The study found that all judgments in horrific crimes are made with the public's best interests in mind, resulting in the awarding of capital penalty in the rarest of cases is just and fair. The study also points out that it violates human rights principles, hence lethal punishment should be implemented in a different fashion than the death sentence. For example, a life sentence of solitary confinement will be more effective .

INTRODUCTION

India, a rapidly developing nation, is currently mostly known for its rising crime rates and criminals. Capital punishment, commonly known as the death sentence, is the harshest punishment available to criminals for their crimes. It is a legal procedure in which the state executes a wrongdoer for his crime. Death is reserved for the most heinous and serious crimes, such as murder, rape, and crimes against the state or country, and not for minor infractions. All sanctions in every country are based on the same ideology, which states that every criminal must face a penalty for his crime .¹ Every punishment is based on two beliefs in particular. To begin with, a person who has done something wrong should be punished, and another notion is that the punishment for a crime instills dread in the minds of criminals and other people. As a result, it deters others from doing similar crimes. The goal of capital punishment, like other punishments, is to deter future crime .

For egregious crimes against humanity, the death penalty is available. It differs from one country to the next. However, it is widely regarded as a violation of Article 21 of India's constitution, which protects human rights. "No one shall be deprived of his life or personal liberty unless in accordance with the method prescribed by law," says Article 21² .

Death penalty or capital punishment is the highest degree of punishment that can be awarded to an individual under any penal law in force in any part of the world. Capital punishment is the legal procedure of the state in which it exercises its power to take an individual's life. It has been in existence since the inception of the State itself. In the British era, there have been countless instances of Indians being hanged after trial or even before it . The dawn of Independence brought about a new era in the

¹ "The introduction to death penalty", para 1, pg. 1, retrieved 7th June, 2022 available at <https://www.ukessays.com/essays/philosophy/the-introduction-to-death-penalty-philosophy-essay.php>

² Article 21 of the constitution of India

judicial system of India. It was in stark contrast to the British Judicial system in which the Indians hardly had any access to justice, or the time of empires and kingdoms before it when the ruler of a certain state or kingdom was its ultimate authority and the source of all justice wherein his or her statements verbatim, were adopted as the law of the land. The ruler, thus had the power to condemn any man to death whoever may he or she be, even on a whim.

After 1947, India became a democratic state, and the system of awarding death penalties too changed drastically. The Indian Penal Code in accordance with the provisions enshrined in the Constitution of India provided for awarding of capital punishment for certain specific offences .

Art. 21 of the Constitution, which guarantees to every citizen the fundamental right to life, also expressly states, "no person shall be deprived of his life or personal liberty except according to procedure established by law." This means that under no circumstances your right to live will be taken away from you except by the due procedure established by law, that is the state can take away your life through the given process of law if it deems fit. Not all offences are punishable by death, in fact, most of the agencies do not elicit capital punishment; instead, it is only reserved for the most heinous of crimes .

The Indian justice system is based on deterrent and reformative measures and the inherent principle of 'Innocent until proven guilty.' Thus awarding of a death sentence is an infrequent phenomenon in India and it is no wonder that when it happens it draws the eyes of not only the indigenous media houses but also international media moguls. There are no plausible statistics as to the number of executions that occurred in India after Independence, but the numbers may be on the higher side than the statistics claim .

Apart from the dispute on the number of executions, the death penalty itself has been the centre of debate for decades, with the current penal system drawing the ire of numerous human rights and civil liberties organizations not limited to one single country. Well known International human rights organizations such as Amnesty International, European Centre for Human Rights (ECHR), have constantly been striving in this regard to achieve the goal of worldwide abolition of death penalty for any offence. It is not only the International Organizations but there is a consensus within the United Nations itself to abolish the death penalty for good . Till now India has maintained a clear stance in the international arena on the question of the validity of the death penalty in spite of the ongoing discussions and debates going on both inside and outside the country. One of the major achievements of the international human rights organizations has been the passing of Juvenile Justice (Care and Protection of Children) Act, 2000. Before the passing of the Juvenile Justice Act in 2000, although never practised, the law still allowed people under the age of 18 to be hanged. In the year 2007, the UN proposed to all its member nations to put a stop on awarding death penalty in their respective states for any kind of offence. India firmly rejected the above-mentioned proposal .

"As of June 2004, a total of 118 countries (including Canada, Mexico, Australia, Russia, South American nations and most European nations) have abolished the death penalty in law or practice. Of these, 80 countries and territories have abolished the death penalty for all crimes, fifteen countries have abolished the death penalty for all but exceptional crimes (such as wartime crimes) and 23 countries can be considered abolitionist in practice, i.e., they retain the death penalty in law but have not carried out any executions for the past ten years or more and are believed to have a policy or established practice of not carrying out executions." As it can be inferred, there is a general solidarity amongst most member states of the world to do away with the death penalty. India, however, does not seem eager to jump on the boat.

The constitutional validity of the death penalty has been challenged many times. It was first challenged in *Jagmohan v. State of Uttar Pradesh* in which the Hon'ble Supreme Court upheld its validity stating that the capital punishment itself was not unreasonable per se and neither was its abolition in the public interest and hence not violative of the Art. 19 of the Constitution. It has been challenged many times since but the decision has remained same .

One of the most interesting developments that occurred with regard to the future of the death penalty in India was a report of the 20th Law Commission in 2015. The law commission under the chairmanship of Justice A. P. Shah recommended the abolition of death penalty in a swift manner except in terror related cases. It is to be noted however that the commission did not recommend this abolition immediately, but in a way that its complete abolition can be brought about in the near future . The commission in its report argued that the aim of any penal law was to act as a deterrent, and the capital punishment was unable to fulfill its role in this regard. On the point of exception in terror related cases, the commission came to the conclusion that getting rid of the death penalty as a whole in terror related cases might compromise national security .

Before giving a verdict on whether or not the death penalty should be abolished, few things need to be considered. Although India has up to now, stood firmly behind retaining the capital punishment, the judiciary saves it for the heinous of crimes and it occurs on extremely rare occasions. If we take into account, the number of people who were awarded death sentence and the number of people who were actually executed, the numbers speak for itself. In the last decade, there have been only 3 executions, and all the three were of terrorist cases. In *Bacchan Singh v. The state of Punjab*, the Hon'ble Supreme Court made it amply clear that the death penalty could only be awarded in the 'rarest of rare' cases which show the inherent intention of the court to minimize the practice of awarding capital punishment as much as possible . This judgment became a benchmark for all the courts in India on which they were to base their decisions of giving death sentences in cases where the guilty had committed a capital offence.

Thus, not only do the courts exercise their power to award capital punishment in extremely rare cases, but also many of these death sentences are commuted to lifetime imprisonment on grounds health, pregnancy, family conditions, etc. Whenever any court awards a death sentence, it mentions special reasons for giving such punishment relating to the special circumstances of the case. Is the death penalty valid in today's world? It is up to the Judiciary and legal experts to decide .

Even the United Nations (UN) has debated the question of "Abolition of the Death Penalty," deeming it a violation of human rights. The UN prioritizes the Reformatory Theory of Punishment over the Deterrent Theory. "The unique cause must relate, not to the crime, but to the offender," J. V.R. Krishna Iyer said in a case . Even if the crime is horrific, the culprit may not be deserving of the death penalty." The Indian constitution grants the president and governor³ of the country or state clemency powers to pardon or suspend death sentences, respectively. Only when the court determines that life imprisonment is insufficient for the criminal, depending on the circumstances of the case, is the death penalty imposed .

The Ancient Approach to Capital Punishment:

The death penalty, commonly known as capital punishment, has sparked debate in the courts not only in India but also in most modern countries⁴ .

³ Parliament library and reference, research, documentation and information service (larrdis), capital punishment in india, <http://164.100.47.193/intranet/capitalinindiapunishment.pdf>, para 1, pg. 1, 7th June, 2022.

⁴ "death penalty – ohchr", available at <https://www.ohchr.org/en/issues/deathpenalty/pages/dpindex.aspx>

“The death sentence has always been utilized in India by rulers of various dynasties to execute justice throughout the years. The Retributive Theory of Punishment was used during the Mauryan Dynasty, which stated that an eye for an eye, a hand for a hand, and so on. There were also a variety of death sentence punishments used by kings of such kingdoms, such as head chopping or dragging a person's body by a horse till death”.

However, from a global perspective, King Hammurabi of Babylon formalised the death penalty for the first time in his criminal laws in the 18th century. The Hammurabi code stipulates the death sentence for more than 25 crimes, including theft and perjury. The death punishment is also mentioned in the Hittite Code from the 14th century B.C., but not frequently. Only the most heinous crimes carried the death penalty. The only punishment for all offences during the era of The Draconian Code of Athens, in the 7th century B.C., was death. As a result, silence penalty is referred to as Draconian .

During the 10th century, even in Britain, hanging became a common method of carrying out death sentences. Capital crimes were on the rise in Britain during the period, with roughly 200 offences punishable by death in the 1700s .

In the United States, during the colonial period, officers of the Virginia government executed the death penalty for the first time in 1608, for alleged conspiracy to betray the British to the Spanish. Even minor offences were subjected to the death penalty in 1612. In the death penalty trial in 1655, the New York colony directed the death sentence on the grounds that it did not believe in the name of real God, killed individuals without defence, committed sodomy, buggery, kidnapping, perjury, and other crimes .

Doctrine of Rarest of the Rare Cases: In India, the death sentence is permissible and is only applied in the rarest of cases or other exceptional circumstances. Here's the rub: neither the Act nor the Supreme Court define the term "rarest of rare cases."⁵

*Machhi Singh v. State of Punjab*⁶, a Supreme Court ruling from 1983, coined the expression "rarest of rare cases." The meaning of the expression "rarest of the rare cases" is that the court must consider the type and gravity of the offence while deciding on the appropriate sentence in a criminal trial . The death sentence or life imprisonment is specified as a penalty for the crime of murder in Section 302 of the Indian Penal Code. It is inconceivable to believe that the death penalty may be used as a substitute for the death penalty since it is irrational and against the public interest. The method of the penal law is the order of conviction of the accused, and the sentence or imprisonment is only tied to the order of conviction. As a result, S. 302 of the IPC does not pass the A. 19(1) constitutional test .

The court in the *Machhi Singh case*⁷ established some criteria for determining the facts of a case where a crime falls under the "Rarest of rare instances formula," as well as some recommendations for identifying the rarest of rare situations .

In *Sabiana v. State of Karnataka*, the defendant had already been sentenced to life in prison for a crime. When he was released on parole, he killed his wife and daughter. The Supreme Court sentenced him to death and stated that for those who have already been sentenced to life in prison, the death penalty is mandatory .

However, in *Mithu v. State of Punjab*⁸, the Supreme Court had already thrown down Section 303 of the IPC, which stipulated that convicts serving a life sentence must be sentenced to death. The reason for

⁵M. Swathi, k. Roja, “a critical study on capital punishment in india”, international journal of pure and applied mathematics, volume 120 no. 5 2018, 911-922, issn: 1314-3395 (on-line version), para 1, pg. 912, 7th June, 2022 available at <https://acadpubl.eu/hub/2018-120-5/1/98.pdf>.

⁶1983 AIR 957, 1983 SCR (3) 413

⁷ Ibid.

⁸1983 AIR 473, 1983 SCR (2) 690

this viewpoint is that if the death penalty is required, there is no sense in hearing the offender's side of the story on the issue of sentence, and it becomes supplemental to explain

CONCLUSION & SUGGESTION

Capital punishment has long been a divisive social and moral issue around the world. Because the death penalty is the process of executing a person guilty of a heinous crime in the name of justice, it is more than a punishment because it is unjust and shows a disregard for human life, according to human rights norms. Furthermore, just because someone opposes the death penalty does not mean they support the offender. Democracies all over the world prefer the reformatory theory of punishment to the deterrent theory of punishment because the death penalty decreases the chance for improvement that could have improved a person's life. True, a criminal should be punished, but the purpose of a civilized society is to live in peace and it should eliminate the offence rather than the criminal. We must educate and counsel them in order to improve their lives and the lives of future generations. This is the most significant distinction between humans and animals.

As a result, legislators and judges should consider, when establishing any law, that we need to eliminate crime rather than offenders, and instead educate them for a better life. Furthermore, rather of the death penalty, some type of severe punishment for serious crimes should be implemented. This would be more effective since they would be reminded of their crime whenever they were sentenced to prison.

Suggestions

1. A wider range of mechanisms for carrying out capital punishment sentences should be available. Consider the case of a lethal injection.
2. The court should provide a plausible definition of the term "rarest of the rare cases."
3. Inmates should be educated during their time in prison in order to become better persons.
4. Rather than being hanged, the most heinous acts, such as gang rape or terrorism, should be punished with a life sentence. It would be more effective if we did it this way.
5. No pardons should be issued to terrorists or rape offenders.

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