

LEGAL LOCK JOURNAL

VOLUME 3 || ISSUE 1

2023

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CAPITAL PUNISHMENT IN INDIA FOR ENSURING JUSTICE

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ABSTRACT

Despite India's rapid development, Crimes and other wrongdoings remain on the rise. There are lot of laws in India which aimed at reducing and controlling crime, but unfortunately the number of crimes is still rising. Since the penalties are not fair enough for the offence, the offender has no fear of any loss. Any serious offence should have a harsh penalty to lower the crime rate. Every punishment is designed to punish the culprit. In India, there are many different forms of penalties, including the capital punishment, life imprisonment, fines, etc. Capital Punishment is the highest penalty awardable to any accused person. In generic sense, extremely in 'rarest of rare cases' which includes brutal, ridiculous and revolting circumstances. Since the ancient Romans and Greek era, it was mainly in a wide range of offences like treason, murder etc. therefore, many civilised countries have already abolished the death penalty from their judicial system namely Australia, France, Italy, Norway, Portugal and U.K. due to inconsistent with the human rights requirement. Therefore, Capital punishment is an integral part of the Indian criminal justice system and its existence is always questioned immoral. This paper sheds light on the alternative methods of capital punishment. This paper will conclude with the observations of various cases and will endeavour to resolve the question that ' Is Capital Punishment a cruel and inefficacious exercise?'

KEYWORDS : Capital Punishment, Alternative resources, Human rights, Death Penalty, wrongdoing, deterrence

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INTRODUCTION

India is one of the largest country in the world which has numerous crimes. Criminal justice system includes capital punishment, which is very rarely given in India. It is awarded for most heinousness and grievous crimes.

The debate on capital punishment has been running over the past so many decades but yet nothing concrete is coming up. Many may be satisfied with the present legislation on not giving of capital punishment but for too many people, it's still not serving the purpose that is deemed to serve.

The offenses which are punishable with death sentence under the Indian penal code include war waging war against the state section 121, abatement of mutiny section 132, giving all fabricating false evidence leading to procure once conviction for capital offence section 194, murder, section 302, abetment of suicide committed by a child or in same section 305, attempt to murder by life convict, if hot is caused section 307, kidnapping for ransom, section 364 – A, and equality with murder section 396.

Judicial authorities all over the world have been struggling hard to establish a set of principles for judicial sentencing but the fundamental question is as to which of the four, namely, deterrence, retribution, prevention or reformation, should take precedence in the process of sentencing. It is on this point that the judges, the lawyers, the magistrates and the people in general disagree.

The crucial problem in context with judicial sentencing is whether it is the protection of society or the prevention of crime, which should gain privacy in awarding the sentence.

Sentencing by Judge largely depends on the way and manner in which the case is presented before him by the police or the prosecutor. Therefore, conviction or acquittal shall inevitably depend on the evidence put forth by these personnel.

EMERGENCE OF ALTERNATIVE PUNISHMENT TO CAPITAL PUNISHMENT

Capital punishment, being the harshest form of punishment, should be avoided, but a criminal still needs to be punished for the crime he commits. Diving right into some alternatives, one of them could be life imprisonment without parole, that is, the criminal should be put behind the bars for his entire life, without any parole.

The prisoners can also be sentenced to an indeterminate period of sentence where in the prisoner is sentenced to jail for a period of time, but the release is guaranteed only on the basis of a review of the prisoner which may include its good behaviour too. Another alternative include direct those rehabilitation programs which can be a support for the victims as well as the prisoners.

But, since death penalties are sanctioned in the rarest of the rare cases, with heinous crimes committed, the punishment should also be equally harsh, but not take someone's life. In that case, the prisoners could be employed for menial jobs, so that productivity can be increased and the economy is also supported in one way.

These jobs can include cleaning drive, construction sites, clerical work, and many more. But should not be paid. This could be helpful for the economy as good as the government as they would get free labour, fulfilling two objectives, that is making it a harsher punishment for the criminals, has been a saving these funds to allocate it elsewhere in improving infrastructure. Be it the health or education sector.

To bring these alternatives into effect, it will take time as relevant laws regarding the same will be have to be passed, taking into consideration, debates and deliberations about the implementation of these alternatives.

INDIA'S TRIBULATION WITH CAPITAL PUNISHMENT

(A) Statutory Provisions of Death Penalty

Indian Criminal jurisprudence is based on a mixture of dissuasive and reformist theories of punishment. While penalties need to be enforced in order to dissuade the perpetrator, the perpetrator must also be given the opportunity to reform. The courts, when imposing a death penalty, must document their specific reasoning as to why the court came to a decision. Capital punishment is laid down as a penalty in several legislative act such as: Indian Penal Code 1880: Eleven convictions are punishable by death under the IPC. For example - Murder, abettement of suicide by a minor or insane person, dacoity with murder, etc.

- Army Act 1950, Air Force Act 1950 & Navy Act 1956: A death penalty can also be levied for a variety of crimes committed by members of the armed forces.
- The Commission of Sati (Prevention) Act 1987: Prescribes death penalty for any person who is either directly or indirectly subject to the commission of sati (immolation of a widow).
- The Narcotics, Drugs and Psychotropic Substances Act, 1988: Narcotics, Drugs and Psychotropic Substances (Amendment) Act, 1988 introduced death penalty as a punishment for funding or participating in the manufacturing, manufacturing or selling of narcotics or psychotropic substances of a specified quantity (e.g. opium 10 kg, cocaine 500 grams) on the basis of previous convictions.

- The Scheduled Castes And Scheduled Tribes (Prevention of Atrocities Act, 1989: Death penalty has been imposed for fabricating false evidence that results in the conviction and execution of an innocent member of a scheduled caste or tribe

(B) Constitutional Validity and Landmark Cases

Article 21 of the Indian Constitution guarantees the basic right of all persons to life and liberty. It adds that no person shall be deprived of his life or personal liberty except in compliance with the procedure laid down by law. This was legally understood to mean if there is a reasonable and legitimate process, then the state may deprive a person of his or her life by passing a rule.

In Article 72 of the Constitution, it states:
Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases-

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence;

(a) In all cases where the punishment or sentence is by a Court Martial;

(b) In all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) In all cases where the sentence is a sentence of death;

(2) Nothing in subclause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.”

Likewise, the Governor of a State's pardoning powers are stated in Article 161. These regulations indicate the perpetrator is only condemned to death after there is no space left for misconduct. The accused gets various opportunities to appeal and now life imprisonment has become the norm while the exception is death penalty.

The case which first dealt with the constitutionality of capital punishment was in *Jagmohan Singh v. State of Uttar Pradesh 1973*, in which the Constitutional bench of Supreme Court said the awarding the death sentence could not obliterate the purpose of all freedoms guaranteed under Article 19(1)(g), Article 14 and Article 21 of the Constitution and upheld the validity of the death penalty.

In *Ediga Anamma v. State of Andhra Pradesh 1974*, Justice Krishna Iyer said that the death penalty can be commuted to life imprisonment, citing factors such as the accused's age, gender, socio-

economic background and psychological compulsions. In this case it was reported that apart from reviewing the facts of the crime and determining on the nature of the atrocities caused, the judges could also analyze the convict and his vulnerability or obliviousness when committing the offence. The court said the question of life and death cannot be left to "ad hoc mood or individual predilection".

Section 354(3) was also added to the 1973 Code of Criminal Procedure, which explicitly states that, in prosecution of cases convicted either with death or life imprisonment, the judgment will specify the grounds for the execution of the penalty and, in the event of a death sentence, describe the specific reasons for that decision. India ratified also the International Convention on Civil and Political Rights (ICCPR) in 1979. Article 6(2) of the ICCPR states: 'In countries which have not abolished the death penalty, the death penalty can only be applied for the most serious offences in accordance with the law in effect at the time of the crime and not in contravention of the provisions of the present Covenant to the Convention on the Prevention and Punishment of the Crime of Genocide.

An important advancement was the Maneka Gandhi case, which held that any law of punitive detention must pass the reasonableness test obtained from the "**Golden Triangle**" joint 2360 International Journal of Law Management & Humanities interpretation, these include Articles 14, 19 and 21.

Thus the Supreme Court in **Rajendra Prasad v. State of Uttar Pradesh 1979**, Sen held that the special reasons for granting the death penalty must not depend upon the crime but the criminal. And it would only be awarded after the security of the state and society, public order and interests of the general public are kept in mind. Justice Sen stated his concern about the broad scope of interpretation left to the judiciary by Section 302 of the IPC and Section 354 of the CrPC. He said in this case "There is no need for this Court to try to examine the factual merits of the murder cases for and against the death penalty. It is, in my opinion, a matter for the Parliament to decide and not for this Court to decide.

(C) Doctrine of 'Rarest of Rare '

In India determining the death penalty case is based on the theory of "the rarest of the rare test" which was stated in the case of Bachan Singh v. State of Punjab. That means that only in the rarest of rare cases can death penalty be enforced. A bench of five judges said "A true and persevering respect for human life's integrity postulates opposition to taking a life through the instrumentality of law. That should not be done except in the most extreme of situations where the alternative opinion is certainly foreclosed."

In this case, it was challenged not only the statutory validity of the death penalty but also the validity of Section 354(3), on the grounds that it gives the Court unguided power and permits arbitrary awarding of the death sentence. The majority is of the opinion that capital punishment violates neither Article 19 nor 21. It is proved by the existence of provisions for appeal (Article 134) and the President's pardoning power (Article 72) that our Constitution makers were well aware of the fact that death penalty can be imposed in such serious crimes. To challenge the validity of Section 302 of IPC it was argued that:

1. Death penalty is irreversible and the failure of law could injure innocent persons.
2. There is no evidence that it serves as a means of deterrence and that reformation and rehabilitation of the criminal is the main purpose of this kind of punishment.
3. The execution of this penalty by whatever mode is horrid and inhumane. It was also stipulated that in order to determine the presence or absence of "special circumstances"

In Mithu v. State of Punjab, the death penalty under Section 303 IPC was declared as unconstitutional as it infringes the guarantee mentioned in Article 14 & 21 of the Constitution. It was thus deleted from the Indian Penal Code.

In the later decisions of *T.V. Vatheeswaram v. Tamil Nadu* and *Sher Singh v. State of Punjab* the Supreme Court was challenged with the dilemma of delay in the execution of the death sentence and whether a substantial delay was reasonable basis to commute the death sentence to life imprisonment.

In *Macchi Singh v. State of Punjab*, the court was forced to elucidate the rarest of rare doctrine as it was rarely enforced.

In the case of *Santosh Kumar Bariyar v. State of Maharashtra 2006*, the Supreme Court further clarified that the rarest of rare dictum serves only as a guideline for the implementation of the provisions referred to in Section 354(3) of the CrPC and provides an exception of death penalty to the policy that life imprisonment is the law.

CONCLUSION

Capital punishment has always been a controversial matter of social and moral aspects in the world. Even though we have capital punishment for like these heinous offences still, it is not helpful for eliminating the crime. Instead, the crime rates are rapidly increasing yearly.

In a country like India, with a constitution protecting the human rights of more than a billion people, a sanction like capital punishment should be replaced with new alternatives to ensure that the rights of the victims are upheld in such a way that each day and night, the offender should feel for his offense. Therefore, it is the moral right of the convict to seek the help of society.

Therefore, the legislation and judiciary, while implementing any law should think in that way; we need to eliminate the crimes and not the criminal.