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EXECUTION OF DEATH PENALTY IN INDIA: AN OVERALL VIEW

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ABSTRACT

Capital Punishment is one of the most debated matters all over the world and specifically for the Indian Judiciary. Capital Punishment is an essential part of the Indian Criminal Justice System. It exists from the ancient periods and still prevalent in many countries, and India is one of them. It is legal in India but given only in the Rarest of the rare cases, but what is the exact meaning of the term “Rarest of the rare cases” has caused a lot of controversies in different judgments. Many other developed countries have made their concerns about this issue and abolished the death penalty. Whereas India is a well-known developing country but it didn’t clear out any conclusion regarding the abolition of the death penalty. There are heaps of legislation in India to stop and control wrongdoings, despite the fact that wrongdoing rates are increasing in light of the fact that the punishments are not adequate for the crimes. Hence, this paper highlights and holds out the overall view related to capital punishment as far as India is concerned. This paper also discusses the historical background and methods of execution of the death penalty in India.

Keywords: Capital Punishment, Death Penalty, heinous crimes, Rarest of the rare cases.

INTRODUCTION –

“I cannot in all conscience agree to anyone being sent to the gallows. God alone can take a life because he alone gives it”. – Mahatma Gandhi

India is a well-developing nation, with an increasing number of crimes and criminals at the same time. The highest punishment which can be provided for the criminals for their crime is Capital Punishment. There is a lot of legislation has been made to stop and control the crime rates in India, even though crime rates are increasing because the punishment is not sufficient for the crimes. The motive behind giving the punishment is based on two beliefs, firstly, a person who has done something wrong or unlawful should suffer for it and the other one is imposing punishment on wrongdoers to discourage others from doing wrong (as this implants fear in criminals mind)¹. In India, there are different kinds of punishment based on their offense, such as the death penalty, life

¹ Shivani, Execution of Capital Punishment in India: is it a violation of Human Rights?, January 2020, <https://www.journalijar.com/article/30987/execution-of-capital-punishment-in-india--is-it-a-violation-of-human-rights/>

imprisonment with fines, imprisonment, fine, etc., but this article mainly focuses on Capital Punishment (i.e., death penalty) which is awarded by the court in the rarest of the rare cases.

Capital Punishment or Death Penalty has always been a point of contradiction not only in the Indian Judiciary but also in the other most developed countries. There are also many human rights moments in India according to which Capital Punishment is immoral because it affects one's life and right. The Indian Criminal jurisprudence is based on the combination of two theories: the first one is the Reformative theory, according to this crime seems like a disease. This theory believes in the fact that "you cannot cure anyone by Killing". The main aim of this theory is to bring change in the personality and character of the offender, to make him a useful member of society. The second theory which is followed is Preventive Theory which says 'Prevention is better than cure'. It is better to take prevention before the commitment of a crime. This theory mainly focuses on preventing the crime by imposing the death penalty on the criminal, or by confining him in prison, or by suspending his driving license as the case may be too disabling completely².

MEANING OF DEATH PENALTY –

Death Penalty, otherwise known as Capital Punishment or execution of an offender sentenced to death after conviction by a court of law for a criminal offense. Capital Punishment should be distinguished from extrajudicial executions followed out without due process of law. The term Capital Punishment have same meaning as Death penalty and it is also used interchangeably, though the imposition of the penalty is not always followed by execution (even when it is decided on appeal), because of the probability of commutation (i.e. it's a mercy that reduces the punishment for a crime) of the sentence to life imprisonment³.

The terms like "Death Penalty and Capital punishment" stand for the most serious form of punishment. This type of punishment is only executed against the most severe, heinous, and unbearable crime such as Rape, Murder, and offenses against state or country and not for petty offenses.

² Arya Mishra, Capital Punishment in India, <https://blog.iplayers.in/capital-punishment-2/>

³ Roger Hood, The Death Penalty: A Worldwide Perspective and others, Britannica <https://www.britannica.com/topic/capital-punishment>

HISTORICAL BACKGROUND AND ORIGIN OF CAPITAL PUNISHMENT –

Capital Punishment is an ancient sanction; it has its traces throughout history. There is practically no country in the world till date, where the death penalty has never existed. The history of human civilization discloses that during no period of time death sentence has been removed as a mode of punishment. Capital Punishment for aggravated murder, treason, espionage, misuse of valuable things, arson, military offenses not resulting in death and rape was widely operated in ancient Greece under the laws of Draco (7th century BCE), although Plato argued that it should be used only for the irreparable or incorrigible. The Roman also used it for a broad view of offenses, though during the republic time, citizens were exempted for a short time.

The observation made by Sir Henry Maine supports this finds which stated that “The Roman Republic did not abolish death penalty even though its non-usage was primarily directed by the practice of punishment or deport and the procedure of questions”⁴.

The period of the death penalty is divided into two types – which are the primitive period and the ancient period. The ancient period consisted of giving punishment on an unreasonable basis which was decided by the King and at that time the law was oral and not at all codified. In the primitive period of time, the death penalty was awarded for cases like rape, murder, theft, and trespass. The first-ever codified law on death was introduced by King Hammurabi of Babylon in 18th Century B.C. giving the death sentence for 25 different crimes such as murder, doing wrong at work, trespass, etc. in the history of England, and capital punishment became a common thing in the rule of William the conqueror and at the time of the rule of Henry VII, it was recorded that 2,000 people were executed for capital punishment with committing offenses of marrying a Jew, not confessing to a crime, and treason, stealing, cutting down a tree and robbing a rabbit warren⁵.

⁴ Capital Punishment and Sentencing Policies, http://164.100.47.193/Refinput/New_Reference_Notes/English/CAPITAL_PUNISHMENT_IN_INDIA.pdf

⁵ Gauri Sharma, Death Penalty in India, Legal Service India, <http://www.legalserviceindia.com/legal/article-3212-death-penalty-in-india.html>

CAPITAL PUNISHMENT IN INDIA –

Capital Punishment is one of the harsh punishments given under the Indian Penal Code which involves taking the life of the accused which is considered a wrongful act. The execution of the death sentence in India is carried out in two modes. The first one is hanging by neck till death and the Second one is being shot to death. It is provided for the heinous crime which is against mankind. It is different from country to country. But it is generally considered as against the human rights protected under Article 21 of the constitution of India. Article 21 states that “No person shall be deprived of his life or personal liberty except according to the procedure established by law”.

Only the president has the power to grant mercy in cases related to the death penalty. Once a convict has been sentenced to death in a case by the Session Court, it must be confirmed by the court. If the appeal to the Supreme Court made by the convict fails then he may submit a ‘mercy petition’ to the President of India. Later, detailed instructions on the procedure are to be followed by states to deal with petitions for mercy from or on behalf of death sentence convicts. Appeals to the Supreme Court and requests for special leave to appeal to that court by such prisoner shall be set out by the Ministry of Home Affairs. Under Article 72 of the Constitution of India, the president has the power to grant pardon, reprieves, respites, remissions of punishment or to suspend, remit or reduce the sentence of any person who has been declared guilty of an offense.

ARGUMENTS AGAINST AND IN FAVOR OF THE DEATH PENALTY:

Arguments against the death penalty:

1. Human life is considered to be a valuable thing and people presume that even the offenders in their worst cases should not be deprived of their right to life. Their right to life cannot be taken away by anyone just because of their wrong conduct. It is the obligation of the State to protect the society and punish the wrongdoers but it should be done in the least harmful way and other various alternatives can be chosen to punish the wrongdoer.
2. Capital punishment or Death Penalty is the denial of human rights from the beginning whether it is done by some criminal or by the society itself.
3. There are often no proper guidelines provided for whom to award the death sentence. In India, the death sentence has to be given in the rarest of rare cases but it is not defined

anywhere in Indian law, exactly what is “rarest of the rare”. Courts act rather arbitrarily in arriving at such a decision⁶.

4. Court verdicts are not always reliable. Even, people who are sometimes found not guilty later may be given the death penalty by the courts.
5. The death penalty leads to the execution of innocent people because of the deficiency in the system of justice. People included in the sphere of justice such as prosecutors, witnesses, and the Jurat may be at fault. It is just an act of brutality that leads to the risk of taking the lives of innocent persons.
6. The death penalty only leads to the brutalization of society as well as the state’s relation with its citizens. The way by which the political and social problems in society can be cured by killing is morally wrong and unacceptable. The current society does not endure torture and the death penalty is not the solution to deal with dreadful crimes.
7. Such punishment has failed to provide the deterrence effect as social scientist's consensus proves that it affects only a small percentage of murderers⁷.

Arguments in Favour Of Death Penalty:

1. To balance or maintain peace and order in society, it is required to have capital punishment for capital offenses. Otherwise, nobody will take it seriously and commits the crimes without any fear of the consequences. Capital Punishment is continuing in the most populous countries like China, India, USA, and Pakistan. But, it is banned in Europe.
2. The death penalty is held to be constitutionally valid by the SC.
3. The cost of maintaining a prisoner with facilities compatible with human rights for the whole of his life can be very high and the possibility of his escape from the prisoner will be increased⁸.
4. There is no proof that the death penalty has taken the lives of innocent people, even if any case appears, it is rare to happen. Discretion has always played a crucial role, each case has different circumstances and they are observed very carefully. Hence, it should not be considered discriminatory.

⁶ Supra note. 1

⁷ Supra note. 4

⁸ Supra note. 1

5. The fear impacts human psychology, therefore, capital punishment ensures that the violation of any law shall not be taken in a lighter way; mandatory actions shall be implemented to uphold the law.
6. The primary argument that supports capital punishment is that every guilty person should be punished and the punishment shall be proportional to the crime that he/she has committed. This argument supports the idea of justice.
7. The imposition of appropriate punishment is the way by which one can respond to society's cry for justice against the criminals. Justice asks for imposing punishment and befitting the crime so that it can contemplate abhorrence of the crime. Society has always utilized punishment as a mode to discourage criminals since society aims to reduce heinous crimes, therefore, the strongest punishment shall be awarded and the death penalty is appropriate for it. Offenders must be killed to disabled them from committing a crime again. It is considered good to kill a man who is dangerous to the community and execution can be treated as a remedy to safeguard the interest of society⁹.

MODES OF EXECUTION TO DEATH

There are various types of methods of execution of the death penalty which were followed by different countries in ancient times and some of them are still following in some countries. These methods are as follows:

Methods of execution through ages¹⁰ –

1. **Death by burning:** This method of burning was seen in the famous situation of Joan of Arc who was sentenced to death by burning on the ground that she was a witch. So, it was mainly used for heretics, witches, and suspicious women.
2. **Gas Chamber:** This type of execution is seen in Nazi Germany whereby the enemies of Adolf Hitler were sent to concentration camps. Then they were sent to chambers where toxic gas is to be released for killing the people.
3. **Guillotine:** This type of execution is seen in French evolution. Dr. Joseph Guillotine was the person behind who invention of this method where the criminal person's neck was

⁹ Supra note. 4

¹⁰ Srishti Chawla, Critical Analysis of Death Penalty in India, <https://blog.ipleaders.in/death-penalty/>

placed directly below the blade in a round hole on a wooden block and a blade is released cutting the person's head.

4. **The Wheel:** This type of method includes rolling a wheel full of spikes on top of a person or attaching a person to a wheel and rolls him down a hill.
5. **Headman's Axe:** It was very popular in Germany and England during the 16th and 17th Centuries, where decapitation was thought to be the kindest form of capital punishment. In this method, the head is placed on a wooden platform and the executioner cuts off the head of the convict with the help of an axe.
6. **Execution by firing:** The most common form of execution during World War II whereby the firing squad is called and then the accused person is tied to a pole and then fired upon.
7. **Crucifixion:** In this method, a person is nailed to a wooden cross and left there till his death. It was one of the popular methods of executing the death penalty during the years in B.C. Jesus Christ was crucified in the same manner.
8. **Electrocution:** An offender is strapped to a specially built wooden chair and electrocuted through electrodes placed on the body on the electric chair with the body. The electric chair has become the mark of the capital punishment.
9. **Hanging and the Garotte:** The prisoner could simply be hanged with a neck in the loop at the end of a rope which could lead to death by fracturing the neck.
10. **Lethal Injection:** It is the practice of injecting one or more drugs into the person's body for the express purpose of causing rapid death. It involves the continuous circulatory injection into the vein of the prisoner unconscious. The second chemical agent, Alcuronium Bromide is a muscle relaxer that stops the functioning of the diaphragm and lungs. Finally, Potassium Chloride is injected into the body which stops the functioning of the heart.

METHODS OF EXECUTION IN INDIA –

In India, Hanging and Shooting are the two methods of the death penalty -

Hanging – All the capital punishment in India is carried out by hanging to the neck, till death. After Independence, Nathuram Godse was the first person to be executed in India by the death penalty for the murder of Mahatma Gandhi. Later, the Supreme Court of India in a case suggested that capital punishment should be given only under the rarest of rare cases in India.

Shooting – In India, the Army Act and Air Force Act also provide capital punishment for the offenders either in the form of shooting or hanging, but shooting is mostly following in the army. In the Air Force Act, 1950, Section- 34 allows the court-martial for the unlawful act mentioned in Section- 34(a) to (o) of The Air Force Act, 1950¹¹.

THE DOCTRINE OF “RAREST OF RARE CASE” –

The Death Penalty or Capital Punishment is legally valid in India and it is given only under Rarest of the rare cases or other special cases. Here comes the controversy, because the term “Rarest of rare” is not defined anywhere by the Supreme Court or Legislation of India¹².

In 1983, the phrase “rarest of rare case” first came to light in the Supreme Court decision, **Machhi Singh v. State of Punjab**¹³. The meaning of the term “Rarest of the rare cases” as defined in this case and said that the court while adjudicating the case in a criminal trial has to see the nature and gravity of the crime to provide the proper or apt punishment. In Section- 302 of IPC, the death penalty or life imprisonment is stated as a penalty for the offense of murder as it is unreasonable and contrary to the public interest. The order of conviction of the accused is the procedure of the penal law and to give a sentence of imprisonment is purely related to the order of conviction. Therefore, Section- 302 of IPC doesn't come under the test of Article- 19(1) of the constitution.

In the Machhi Singh case, the court laid down some principles for judging the facts of a case when a crime comes under the category of the doctrine “Rarest of rare cases” and specified some guidelines which are to be adopted to point out in the rarest of the rare cases.

In **Sabina v. State of Karnataka**¹⁴, the offender was already awarded life imprisonment for a crime, when he was on parole; he later killed his wife and daughter. The Supreme Court convicted him of death punishment and stated that death punishment is mandatory for offenders who are already serving a life imprisonment sentence.

However, the Supreme Court held in **Mithu v. State of Punjab**¹⁵ already struck down Section- 303 of IPC, which stated the provision for mandatory punishment of death for offenders serving a

¹¹ Supra note. 1

¹² Supra note. 1

¹³ Machhi Singh v. State of Punjab (1983) 3 SCC 470

¹⁴ 2005

¹⁵ Mithu v. State of Punjab (1983) 2 SCC 277

life sentence. The reason behind this perspective is that if the death sentence is mandatory, then there is no point in hearing the offender's side on the question of sentence, and it becomes mandatory and supplementary to provide the reasons while awarding the sentence of death.

The Indian Judiciary while concludes the judgment in **Bacchan Singh V. State of Punjab**¹⁶ has changed their view regarding the death penalty and held that the death penalty must be surrounded to the “rarest of rare cases”, where no remedy is provided. This approach of the Supreme Court was appreciated to reduce the use of death punishment for the criminals, but this approach was confronted by the legislation by including various crimes in the penal code for which death sentence is given.

In **Jagmohan Singh v. State of U.P**¹⁷, in this case, the Supreme Court stated while adjudicating the case that whether the death penalty is constitutional and also stated that it will not only reduce the crime rates but also prevents the society from committing such crimes.” However, the Supreme Court made it clear that the death penalty would only be an exception based on the circumstances or case facts rather than judgment rules. “Later, Section- 235(2) of the Criminal Procedure Code, 1973, mentioned for the offender's pre-trial hearing and imposing an obligation on the Court to provide the reason for awarding death sentence instead of Life Imprisonment.”

In the case, **Rajendra Prasad v. State of U.P**¹⁸, Justice Krishna Iyer has held that if the criminal was dangerous to society, then the death penalty would not be justified. The learned judge empathetically stressed that the death penalty is violative of Articles 14, 19, and 21.

Test for “rarest of rare cases” –

In General, the test applied for the doctrine of “Rarest of the Rare” case while awarding the Death sentence to the accused is whether it is the demand of the society to give the death penalty to the accused of the peace and maintenance of the society and whether the failure of awarding death sentence would be considered nothing under Section- 302 of IPC.

The pre-planned, brutal, cold-blooded, and which is against mankind, which is morally wrong and displeasing nature of a crime, without giving any chance to the offender, are generally considered

¹⁶ Bachan Singh v. State of Punjab, A.I.R. 1980, 2 SCC 684

¹⁷ Jagmohan Singh v. State of Uttar Pradesh, A.I.R. 1973, S.C 947

¹⁸ Rajendra Prasad v. State of U.P, 1979 3 SCC 646

as facts of a case to decide whether a particular case is falling under the doctrine of “rarest of rare” or not¹⁹.

SUGGESTIONS –

1. There should be more methods of execution of death sentences for crimes. E.g.: lethal injection.
2. The court should provide a well-grounded definition of the term “Rarest of the rare cases”.
3. The prisoners should be educated in prison during their imprisonment period to become better people.
4. The criminals of most heinous crimes such as gang rape or terrorism should not be hanged instead they should be given so rigorous punishment for a lifetime, that would be more effective.
5. There should be no pardoning power for terrorists and rape culprits.
6. Proper inspection must be undertaken before awarding an order of death sentence to a person, such punishment is permanent in nature and irreversible and hence all relevant materials must be taken into consideration before such a decision and if there is even a smallest of doubt, such punishment should not be awarded.
7. It should not provide in haste. Before awarding the death sentence must analyze each and every aspect of law.
8. The accused shall have the right to hear. He is entitled to be presented by duly qualified and appointed lawyers.

CONCLUSION –

Capital Punishment has always been a controversial matter of social and moral aspects in the world. As we are living in an era where not only Human beings but also animal rights are considered so it will be unfair to treat the human being poor even than animals. A criminal should indeed be punished for his crime but a civilized society’s aim should be eliminating the offense, not the criminal. We need to educate and counsel them for the betterment of their life and the upcoming generation. At present, the law which is prevailing is the law laid down by the Supreme

¹⁹ Supra note.1

Court, i.e. the doctrine of Rarest of rare cases. This along with the list of aggravating and mitigating factors is used to determine whether a person should be given such a sentence or not. Even the method of execution that must be used by the state is a matter of controversy and such a method which is decided must be as per the International norms “quick and painless.

Therefore, the legislation and judiciary while executing any law should think in that way, we need to eradicate the crime and not the criminal instead we need to educate them for their good life. And for brutal offenses, there should be some severe punishment rather than the death sentence. This would be more effective as they will remember their crime every time while undergoing rigorous imprisonment²⁰.

References –

- M. Swathi, K. Roja, A critical study on capital punishment in India, <https://acadpubl.eu/hub/2018-120-5/1/98.pdf>
- Dr. Vimal R. Parmar, capital Punishment in India with recent recommendation of the Law Commission of India, https://www.worldwidejournals.com/paripex/recent_issues_pdf/2015/September/September_2015_1492180066__120.pdf
- Ganesh Ji, Capital Punishment in modern era in reference to the Indian context, volume 3; issue 2; March 2018; Page No. 1364-1367, <http://www.academicjournal.in/download/1871/3-2-355-980.pdf>
- Capital Punishment and Sentencing policies, https://www.cusb.ac.in/images/cusb-files/2020/el/law/CAPITAL%20PENALTY%20AND%20SENTENCING%20POLICIES_LLM%202nd%20Sem.pdf
- Meena Mandal, Inquestioning Capital Punishment in India in the light of Article 21 of the constitution of India, http://ijrar.com/upload_issue/ijrar_issue_20543585.pdf
- S.R Muralivasan, S T. Manasaa, Death Penalty in India: An Overall View, <https://www.ijlsi.com/wp-content/uploads/2019/07/Death-Penalty-in-India-An-Overall-View.pdf>
- Manmeet Singh, Is Capital Punishment Ethical, <http://www.legalservicesindia.com/article/1882/Is-Capital-Punishment-Ethical.html>

²⁰ Supra note.1