

## **SHOULD INDIA ABOLISH DEATH PENALTY?**

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### **ABSTRACT**

The focus of this research paper is upon a particular problem that is death penalty in India. Death penalty has provoked hot topic of debate across the world. Here below the research paper represents the discussion about the everlasting debatable topic that is- should India abolish death penalty just like the other countries where the death penalty has been abolished. The argument against or for the death penalty have not changed much over the year. The crime and punishment are the two sides of the crime that have emerged from the society. It has always bothered the human mind from the very long time. Here, the research paper deals with both pros and cons of death penalty, which neither proves or disapproves the establishment of death penalty in India but it gives chance to the reader, decide for themselves what they feel about the death penalty.

## **INTRODUCTION**

Each society has its own way to control the laws and also the sanctions with them. These sanctions are nothing but are punishment. The kinds of punishment given are surely influenced by the kind of society one lives. But with passage of time the punishment drastically changed with the change in the society.

Theories of punishment contain policies regarding the theories of punishment, which are as follows: Deterrent, retributive, reformative, and reformative.

The public dislike criminals and this dislike is expressed in the form of punishment.

The punishment has been very well described by the Manu, who was the great Hindu law giver, in the following words:

“Punishment governs all mankind, punishment alone preserves them, punishment wakes while their guards are asleep, and the wise considers the punishment (danda) as the perfection of justice.”

The protection of society is sought to be achieved by the application of the principles of deterrent, retributive, reformative and preventive. Out of these theories deterrence is considered as main function of punishment.

If we look reformative theory it can be fair and may provide some advantages, when we look in India the prisoners in jails are involved with some kind of activity for example: prisoners in tihar jail makes essence sticks which are sold throughout the countries.

Capital punishment means death penalty it is used today and was also practiced during the ancient period.

When the death penalty is used it may be deterrence on one side while the other side may say, you may execute an innocent man.

Today one of the most debated topic in the society is the criminal justice system is the issue of capital punishment or death penalty.

Here the researcher tries to establish whether the execution of human life is necessary for the protection of state or not?

## **DEATH PENALTY IN INDIA**

“The State is not God. It has not the right to take away what it cannot restore when it wants to.” — Anton Chekhov

The first established death penalty law was made by the king Hammurabi of Babylon which codified death penalty for 25 different crimes. The death penalty was also the part of the 14<sup>th</sup> century B.C.’s Hittite code. In 7<sup>th</sup> century B.C.’s Draconian code of Athens, this made death the only punishment for all the crimes. In Roman law 12 tablets. Death penalty was carried out by different means such as crucifixion, drowning, beating to death, burning alive and impalement. In 10<sup>th</sup> century hanging became common method in Britain.

Death penalty in India was brought by the Britishers during the British period. Since then the death penalty is been followed, but with the passage of time there were certain changes regarding the position of death penalty in India.

After the Independence, 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.

## **TYPES OF EXECUTION IN INDIA**

In India there are two methods of executions which are as follow:

### **HANGING**

The code of criminal procedure 1898 called for the method of execution to be hanging. The same method was adopted after the amendment in 1973.

Section 354(5) of code of criminal procedure states that when any person is sentenced to death, the sentence shall direct that the person be hanged by the neck till the person is dead.

The last execution by hanging took place on 30<sup>th</sup> July, 2015 by hanging Yakub Menon, who was convicted of Mumbai blast case in 1993.

## SHOOTING

Under Army Act 1950, hanging as well as shooting both listed as the method of execution in military court-martial.

## OFFENCES AGAINST WHOM DEATH PENALTY IS AWARDED

Article 21 of the of the constitution which guarantees fundamental right to every citizen may take the life of its citizen under the following sections of Indian Penal Code along with other acts eleven offences committed within the territory of India which are as follows:

OFFENCES	SECTIONS UNDER INDIAN PENAL CODE
Being a party to criminal conspiracy to commit a capital offence	120 B
Waging or attempting to wage war or abetting waging of war, against the government of India	121
Abetting a mutiny in the armed forces (if a mutiny occurs as a result), engaging in mutiny	132
Giving or fabricating false evidence with intent to procure a conviction of a capital offence	194
Murder	302,303
Abetting the suicide of a minor	305
Kidnapping in the course of which the victim was held for ransom or other coercive purposes	364A
Rape if the perpetrator inflicts injuries that result in the victim was held for ransom or other coercive purposes	376 A
Banditry with murder- in case where a group of five or more individuals commit banditry and one of them commits murder in the course of that crime, all members of the group will be liable for the death penalty.	396

Aiding or abetting an act of sati	Part II, section 4 of prevention of sati act
Drug trafficking in case of repeat offence	31 A of the Narcotic Drugs and psychotropic substances Act

The Indian Judiciary is based on deterrent and reformatory theory and death punishment is not awarded until the person is proven guilty.

India in deciding case for death penalty follows the 'rarest of the rarest case' which was coined in *Bachan Singh v. State of Punjab* the Supreme Court made clear that the death penalty should be minimized as much as possible. It was held as a benchmark judgment of the Supreme Court.

The constitutionality of death penalty has been questioned many times, but in the leading case of *Jagmohan v. State of Uttar Pradesh* in which the Supreme Court upheld the constitutional validity of death penalty and stated that death penalty is not a violation of article 19 of the Indian Constitution.

In the case of *Macchi Singh v. State of Punjab* the court while confirming with the ratio of *Bachan Singh*, laid down certain guidelines to decide cases of rarest of the rarest case.

The cases which come under the rarest of the rarest case are as follows:

- When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
- When the murder is committed for a motive, which evinces total depravity and meanness.
- Other crimes which fall under this category are bride burning and dowry death, a child victim, the assassination of a public figure for political reasons, or killing a defenseless person because of old age or infirmity.

There is some confusion that remains about what constitutes a rarest of rare case, such confusion can be seen in the nirbhaya Delhi gang rape case. The question of death penalty or commutation by this court depends on the personal prediction of judges sitting on the bench.

Further, in the case of Panchhi v. state of U.P. the court stated that:

“in rarest of rare cases when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power Centre to inflict death penalty”

Now the word ‘shock to conscience’ is open to interpretation as such in cases when the murder is committed in an extremely brutal, grotesque and diabolic manner, or, when the murder is committed for an motive or when the crime is enormous in proportion, or, when the deceased is an innocent child, or a helpless women where the murderer is generally in dominating position.

In Deena v. union of India, the constitutionality of section 354(5) of Indian Penal code was challenged on the ground that hanging by the rope is barbarous, inhuman and cruel act and therefore it violates the article 21 of the Indian constitution. The court held that hanging by the rope as prescribed under article 354(5) does not violates the article 21 of the Indian constitution. The court further held that according to the forensic report hanging by the rope is the best and least painful way to execute a person than any other method.

According to U.N. General Assembly adopted resolution on December 2012 calling for moratorium on death penalty with the ultimate objective of its universal abolition. This was adopted by 111 member states, a feat that once again reiterates growing international consensus relating to the abolition of the death penalty.

Before discussing the argument against or for the motion on the death penalty in India, the writer would like to discuss about the facts around the world regarding death penalty. According to the Human Rights Group Amnesty International who has been opposing the death penalty since 1977, 141 countries have abolished the capital punishment in law or in practice and 57 states still follow the capital punishment. According to the report of Human Rights Group Amnesty International several methods of execution are practiced such as hanging, shooting, beheading and lethal injections.

Amnesty International found that at least 3117 execution took place in 2016 across the 55 countries. Nearly 90% of the execution has been happened in just 4 countries – Iran, Iraq, Pakistan and Saudi Arabia. But these figures have excluded the China and North Korea, where the number of executions remain secret.

According to the Amnesty international China as the world top executioner but the true practice of the execution is unknown.

### **WHY INDIA SHOULD ABOLISH DEATH PENALTY**

The proposal to abolish the death penalty was first started by the Bentham and Beccaria in England who were the utilitarian philosophers. They said that death penalty should be there in society but should not be given in that condition when lesser penalties are available.

There are endless debates on whether the death penalty should be abolished or not, no matter whatever the conclusion is death penalty is the brutest form of punishment and it also violates the principle of human rights. Death penalty does not necessarily show the deterrent example in the society. Even the international court of justice voted against the death penalty.

Death penalty has been failed to reduce the crime rate in India.

Another argument in favor of abolition of death penalty is awarding death penalty is not always just or right. Awarding death penalty to a convict depend upon the conscience of the judge, judge can give wrong decision as every human being is not perfect and so that the judge.

Abolition of death penalty gives second chance to the convict to realize his wrongful act and it may be possible that he wants to change his character and will not commit any crime in future.

There are instances in our country where an innocent person is convicted who has never committed any crime. It may possible that an innocent person can also be charged for death penalty.

Another argument in the favor of abolition of death penalty is that execution of human being is against the human rights. The basic right for human is the right to life therefore no one has right to take away life of another person.

## **WHY INDIA SHOULD NOT ABOLISH DEATH PENALTY**

Article 21 of the India constitution provides fundamental right to right of life, but in some cases state can take life of people in the rarest of the rarest case, therefore the will give reason on taking such decision.

Most of the countries have abolished the death penalty, but the countries that have abolished the death penalty are mostly developed and have less rate of crime. Sometime life imprisonment is not enough in some cases for example Nirbhaya gang rape and Nithari case. A mother whose daughter has been victim in cases like Nithari and Nirbhaya case will have some peace in their mind after the death penalty.

The reformative punishment is not seen in positive conditions like Nirbhaya and Nithari case. Some people are beyond the level to be reformed as they have certain kind of mentality which cannot be changed. For example, the statement of the Nirbhaya rapist "When being raped, she shouldn't fight back. She should just be silent and allow the rape. Then they'd have dropped her off after 'doing her', and only hit the boy." Instead of wasting money on those we should tightened our police system.

Preeti Rathi case 2013 death penalty was awarded to the convict in the acid attack.

Court said that "without a shadow of doubt, this crime falls in the category of the rarest of the rarest case. Therefore deterrent punishment is needed of the hour."

It was further noted that "the height of the brutality in the acid case was more than that of rape case. Rape destroys the soul of the victim, but she can be kept in the isolation, without disclosing the identity of the victim and can be rehabilitated but for an acid attack victim she has to move around with destroyed body."

Another point in favor of death penalty is that imprisoning someone is far more expensive than executing them. However, it will be not justifiable to execute every person in the prison but for those who have repeated the crime or have committed heinous crime. Instead of spending money on such type convicts, that money can be channelized in different fruitful manner such as in education or providing water facility in those areas who are suffering from drought.



Another argument in favor of death penalty is giving life imprisonment according to the supreme court is whole life of the convict but in certain cases state government can commute the death penalty of the convict and he may be released without facing the full trial of the punishment. So, it may be possible that he may commit same or any other heinous crime again. Therefore, to prevent the happening of any such crime death penalty must be awarded.

Another argument in favor of death penalty is death penalty sometimes seen as revenge for pain and suffering that victim had been suffered. The family of the victim senses the feeling of justice.

At the end the researcher would like to conclude that death penalty is very highly debatable topic around the world. It is very difficult to be deciding the conclusion. Therefore, let the jurists of the country should decide the question whether the capital punishment in India should be abolished or not.