

CAPITAL PUNISHMENT: A CRITICAL STUDY

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Abstract

“The death penalty is not about whether people deserve to die for the crimes they commit. The real question of capital punishment in any country is, do we deserve to kill?”

— **B. Stevensonⁱ**

Execution or Capital Punishment may be defined as ‘the punitive action for committing certain crimes, wherein the offender is put to death by the state’. It is the most extreme form of penalty which may be awarded in any society for the preservation of law and order and is based on the rationale that inflicting punishment on criminals shall effectively discourage others from committing such crimes. It is awarded for crimes which are detrimental to humankind.

Capital punishment is the most controversial penal practise debated highly all over the world. A common notion is that the focus of the law must not be on eliminating the criminal but on the elimination of the crime. The killing of an accused in order to serve justice is equivalent to murdering that being. The Indian Legal system has struggled with the constitutionality of such punishment and circumstances in which it may be awarded. Capital Punishment has retained its validity in around 84 nations even after several movements were launched for the abolition of it.ⁱⁱ Not only that, countries even went ahead to intensify the scope of it.

A country where capital punishment is practiced at its peak is China, with more than 1000 executions each year. The possession of illegal drugs has a mandatory death sentence in countries like Iran, Malaysia, the Philippines and Singapore. Few Countries impose capital punishment for economic crimes such as corruption of public officials, embezzlement of public funds, bribery etc. Sexual offences too attract this form of punishment in certain Islamic states. United States of America also allows such punishment and 75 people are put to death every year there, on an average.

Introduction

In India, execution sentence is based on the 'rarest of rare cases' doctrine which often results in the reduction of such sentences to life imprisonment through the exercise of clemency powers by President or Governor. India is the second most populous country with a population of over 130 crores, which makes it natural for the rate of crime to be high and ever increasing.ⁱⁱⁱ Severe punishments such as the capital punishment may be necessary to lower the rate of crime. Death penalty continues to be an indispensable part of the criminal justice system of India even after opposition from human rights advocates calling it 'immoral' in essence.

Theories of Punishment

The four main theories of punishment have been discussed as follows:

- *Reformative Theory*

The reformative theory supports the principle that '*a criminal does not cease to be a human even if he commits an offence*'. According to this theory of punishment, the method of individualisation must be used to reform the offender. This must be the main objective of any sort of punishment. It may be possible that he/she committed the crime only under a particular circumstance and the chances of it to reoccur are low or nil. Therefore, it is necessary to make an effort to reform the offender during the period of incarceration.

According to the advocates of the theory, in order to bring about a revolutionary difference in the character or thought process of criminals, they must be treated sympathetically, tactfully and lovingly. Severe punishment may further damage his sentiments and tenderness. The hanging of an offender, being the last resort, clarifies that human beings failed to reform him.

- *Preventive Theory*

As suggested by the name, the motive of this theory of punishment is to prevent prospective crimes by disabling the offender.^{iv} Deterrent theory of punishment is based on a similar idea, which is to prevent crimes. This theory provides a useful inhibitory measure and proves to be an effective deterrent, as stated by the Preventive Philosophy. Disabling the criminal permanently or temporarily, reforming, re-educating and instilling the fear of punishment may be regarded as classifications of the preventive form of punishment.

Thus, it can be said that the preventive theory of punishment is similar to deterrent and rehabilitation theories of punishment.

- *Deterrent Theory*

This theory of punishment refers to the situation where punishment is awarded in order to stop further crimes. Fear is considered to be the key factor of the deterrent theory. The main object of this theory is to punish the criminals in order to set an example for other individuals.^v Creating fear in the minds of the people, in order to deter crimes, is the ultimate goal of the states. The duty of the concerned government is to punish the wrongdoer when any offence is committed against the society.

There are three main components of the deterrent theory of punishment are severity, certainty and celerity. Severity refers to the degree of punishment. Certainty refers to the fact that punishment should exist whenever a crime is committed. Celerity means that the punishment must be awarded in a smooth and swift manner, implying that faster the punishment is awarded; the more excessively it affects the deterrence of crime.

- *Retributive Theory*

Retributive theory of punishment believes in punishing the criminals in proportion to the crime committed. It stands for restoration of proper balance. The manner in which criminals are punished by the society is important and helps set an example for other individuals about the severity of the punishment for a particular crime.

Desert and proportionality are the two main principles of the retributive theory of punishment. As per this theory, a criminal must not be punished for a crime that he/she might commit. The convict must be punished for the crimes that he/she has already committed and the penalty must be in proportion to it. Punishment under this theory may be considered as a payback for the crimes that a person has committed.

Position of India

Punishment of death is granted to convicts of serious offences in India. While awarding it, the Court must be convinced that such crime falls under the purview of doctrine of 'rarest of rare'. Art. 21 aims to protect life and personal freedom of individual and none can be deprived of it except in extraordinary cases. This right is specifically against the state. Unlawful

encroachment of such rights can only be prevented if courts are vigilant about their interpretation of 'rarest of rare' doctrine, otherwise it shall be considered a violation of the aforementioned article.^{vi}

Certain offences under I.P.C. 1860, for which the offenders are sentenced to punishment of death, have been named as follows:

- Murder (Section 302),
- Criminal Conspiracy (Section 120B),
- Waging war against the GOI or attempting to do so (section 121),
- Dacoity with murder (Section 396)
- Abatement of mutiny (Section 132) and others.

Other than these crimes, provisions for such penalty are present in several legislations like the NDPS Act and other anti-terrorism laws.^{vii} The death sentence may be awarded by the Sessions court to a convict in a particular case. However, it is subject to confirmation by the High Court. The offender is provided an opportunity to appeal to the Apex Court which might further uphold the death penalty. In such case, he/she can opt to submitting a petition for 'mercy' to the President or the Governor.

There is also a provision for 'clemency' or reduction of execution punishment by the honourable President or the Governor of state. 'Clemency' of capital punishment refers to a process by which the sentence of the convict may be reduced or pardoned. This is the last resort for any wrongdoer. Art.72 of the Indian Constitution discusses the clemency powers of the Head of Indian Union or President, exercising which he can considerably reduce or pardon the sentence of convict. Art.161 talks about the pardoning powers of Governor who is the head of a state. In the UNGA also, India voted against the abolition of capital punishment.

Types of Punishment

The Indian Penal Code, 1860 awards various kinds of punishments to the offenders. Sections 53 to 75 of the Code enumerate different kinds of punishments that may be awarded for a variety of offences.^{viii} Basically, there are 5 types of punishments awarded under Section 53:-

- Simple or Rigorous Imprisonment
- Life Imprisonment
- Fine

- Forfeiture of Property
- Death

Imprisonment

Imprisonment may be defined as ‘the punishment wherein the offender is confined within four walls’. The freedom and liberty of the offender is restrained. Imprisonment was not prevalent in the earlier times. Only in the 19th century, imprisonment came to be introduced as a mode of punishment. It went on to become a very popular mode of punishment and is practiced by mostly all the countries of the world even now. There are basically three types of imprisonment, namely, rigorous, simple and life imprisonment.

Fine

The levying of fine as a method of imposing punishment was prevalent even in the ancient systems. It may be considered as the oldest and the most commonly used mode of punishment. Fine may be levied in itself or it may be affixed with some other punishment too. The Judges have been provided the authority to impose reasonable fines according to the graveness of the crime committed. A fine may vary from a small amount to a large amount.

Forfeiture of Property

Forfeiture of Property has been prevalent since olden times and the Indian Penal Code, too, provided it as a mode of punishment. A property may be anything, may it be a house, a car or any other sort of movable or immovable property that the offender owns.

Capital Punishment

Capital Punishment is that type of punishment where an offender is executed after he is found guilty of a specific type of offence, after a legal trial has been conducted. It is necessary for the sentence to be approved by the Government and cannot be carried out by a Non-Governmental Organisation. An offender may be sentenced to death if the crime committed by him touches the ‘rarest of rare’ threshold. The sentence shall be carried out accordingly.

Methods of Execution in India

Hanging

Hanging the offender is the main mode of execution of death penalty, ever since our nation gained independence. In India, death sentences are followed out by hanging the offender by rope till death.^{ix} The rope is tied to the neck to suffocate the convict to death. However, with time, people are becoming aware of the rights they possess and thus, there is a large section of the society that does not favour Capital Punishment as a type of punishment.

Shooting

Shooting is another method of execution in India. A convict who has been awarded the Death Penalty may be shot dead by a member of the firing squad. Only organisations that can carry out this method of execution of capital punishment are army, air force and navy. It is through a Court Martial or a Judicial Court, that a person may be sentenced to death. It is in this judicial proceeding that the decision is taken whether the offender should be shot or hanged to death.

Death sentence, in other countries, is carried out through various methods other than hanging and shooting.

Category of Offenders Excluded from Capital Punishment

Minor

According to the laws in India, capital punishment cannot be given to an individual who has committed the crime as a minor, i.e. before the age of 18. Minors have been included in the category of offenders excluded from capital punishment because the law makers felt that any person who hasn't become an adult has some scope for improvement and by providing the person the right environment and education, the person may be able to learn from his mistakes and evolve into a better human being.^x Also, our laws provide for a separate act known as the Juvenile Justice Act which is enacted solely for cases brought up against minors. This is beneficial as it gives the offenders a chance to reform themselves.

Pregnant Woman

An alteration in the law in 2009 saw pregnant woman being added to the category of offenders who shall be excluded from the death penalty. The reason behind this amendment is that by hanging a pregnant woman, the system is killing both, the pregnant woman as well as the child in her womb. The child in the womb of the woman has committed no crime and does not

deserve to die for the actions of the woman. Thus, any woman who is pregnant may be included in the category of offenders excluded from the capital punishment.

Intellectually Disabled

According to the law, any person who is intellectually challenged or disabled may be included in the category of offenders excluded from the death penalty. Intellectual disability may refer to the inability of a person carrying out a serious crime to fully understand the nature and outcome of the crime being committed by that person. It is possible for a person to be unaware of the nature of the crime that the person committed due to intellectual disability. Therefore, the law makers included people who are intellectually disabled in the category of offenders excluded from capital punishment.

Law Commission Report on Capital Punishment^{xi}

The Law Commission of India, on 31st August 2015, in its 262nd Report addressed the issue of capital punishment in India. Justice A P Shah was the Chairman of Commission during that time. Prior to this, in its 35th Report, the recommendation of the Law Commission was to retain death penalty as punishment in India. Capital punishment was upheld by the Apex Court in *Bachan Singh vs U.O.I.*, confining it to the cases falling under 'rarest of rare' theory. However, the Indian scenario has changed since the publishing of last report addressing capital punishment. Therefore, the Law Commission decided to get to the depth of the issue and study it extensively.

The abolishment of the execution punishment for all crimes, except offences related to terrorism and offences related to waging war, was recommended by the 262nd Report of the Indian Law Commission. The Commission further went on to recommend various measures to bring reforms towards this aspect of law. It suggested the government to introduce various Witness Protection Schemes and Police Reforms. According to the Law Commission, our legislations were slowly moving towards the abolishment of capital punishment.

In 1955, the requirement, to communicate the special reason for commuting a sentence of execution to life imprisonment, was done away with. In 1973, a clause was added wherein a special reason was made necessary for the imposition of death penalty. Further, in 1980, the sentence of execution was restricted to the 'rarest of rare' cases by the Indian top court. These reforms were suggestive of the fact that the Indian legislation has slowly but gradually been

drifting towards the abolition of the extreme penalty. The reason, why terrorism related offences and waging war were not seen in the same light, was that they are crucial for national security and any leniency in this aspect might threaten the peace and security of the country. Thus, the recommendation of the Law Commission of India was leaning towards ending the practise of death penalty.

Statistical and Analytical Data

India is seeing a decline in the rate of death penalty executions. From 2001 to 2019, i.e. in a span of 19 years, only 3 convicts have been subjected to execution. The period of 2005-2011 is known as the execution-free period because of zero number of judicial murders.^{xii} The data shows a major gap between number of capital punishments pronounced and number of them actually carried out. The latest execution has been of four men convicted in the infamous Nirbhaya gang rape case. The Law Commission has clearly been favouring the abolishment of death penalty. National Crime Records Bureau (NCRB) and American Convention on Human Rights (ACHR) Statistical Report Year 2001-2020 depicted as follows:

<i>Year(s)</i>	<i>Sentences passed</i>	<i>Sentences commuted to life</i>	<i>Executed</i>	<i>Offenders</i>	<i>President</i>
2001-06	792	1323	1	Dhananjay Chatterjee	APJ Abdul Kalam
2007-11	663	1135	0		PratibhaPatil
2012-19	873	567	3	Ajmal Kasab, Afzal Guru, Yakub Memon	Pranab Mukherjee
2020	-	-	4	Akshay Thakur, Mukesh Singh, Pawan Gupta and Vinay Sharma	Ram NathKovind

Table 1: Capital Punishment statistics in India^{xiii}

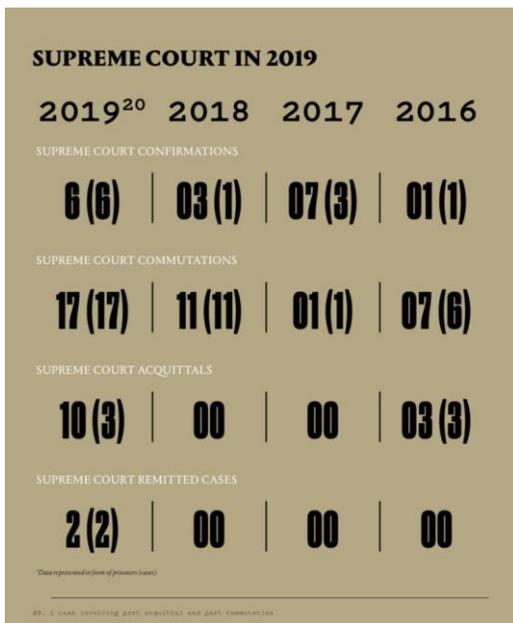


Figure 1: Supreme Court in 2019



Figure 2: Death Sentences imposed by High Courts in 2019



Figure 3: No. of Death Sentences imposed by Sessions Court in 2019

Clemency Powers

The Indian Constitution, under Art.72, grants certain pardoning powers to the President of the country. It states that the President either forgive the offender for the offence, grant rest for a short period, cancel the punishment or postpone it, remit the punishment or commute the sentence of death to life imprisonment. Likewise, Art.161 of the Constitution of India grants similar powers to the Governor of the concerned state^{xiv}. It gives all those powers to the Governor that Art.72 gives to the President. However, such powers can be exercised only on proper consultation with the Council of Ministers, and not personally by the President or Governor.

Clemency Powers are extremely important because of them being the last resort of protection against any type of miscarriage of justice or any judicial error. These powers have a very wide scope of consideration as all the cases wherein capital punishment is awarded may, at some point, reach the stage where the office holder has to exercise this power. Therefore, it is extremely important for the office bearers to use these powers with utmost caution.

If the execution sentence is upheld or the appeal against such sentence is turned down by the Apex Court, the offender has the right to submit, to either the President of the country or the Governor

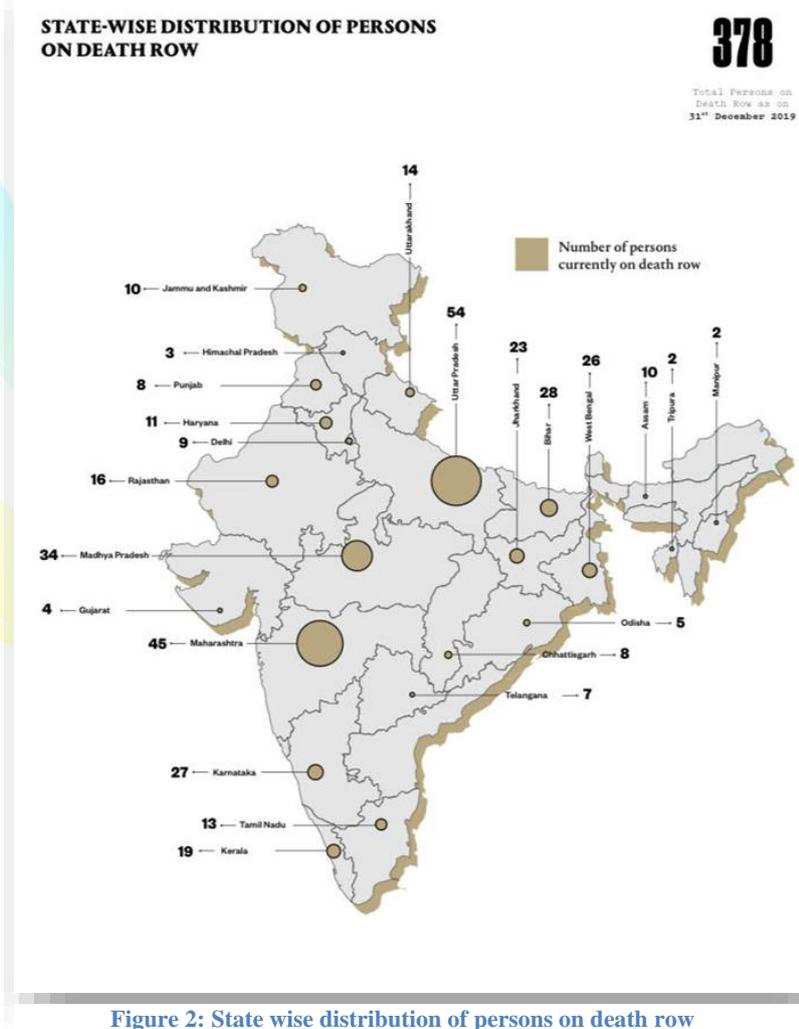


Figure 2: State wise distribution of persons on death row

of the state, a mercy petition.

There are various factors that must be considered by the Home Ministry while taking a stand on a mercy petition. The circumstances of the case along with the character of the accused must be taken into account. Certain cases, wherein the reliability of evidence was under doubt but still the court had convicted the accused, must be critically examined. Certain cases, wherein the Appellate Court has either enhanced the sentence or reversed it, must be examined. Matters where the investigation and trial were delayed must also be studied closely. Apart from these, there are few other factors that must also be considered by the Ministry of Home Affairs.

Crimes Associated with Death Penalty^{xv}

There are various crimes that have been associated with Capital Punishment. They are discussed as follows:

(i) *Criminal Conspiracy* is a crime which has been associated with Capital Punishment. Section 120B of the Indian Penal Code talks about an offender who is a party to a conspiracy, criminal in nature, to commit a crime which may be punishable by the death sentence. Any person who commits such a crime may be awarded the death penalty.

(ii) *Waging or attempting to wage war against India* is another crime which has been associated with capital punishment. Section 121 of the I.P.C. defines the crime of waging of war against the country. Therefore, any person who tries to or successfully wages war against India may be awarded the death Penalty.

(iii) *Abatement of mutiny* has also been associated with capital punishment. Section 132 of the I.P.C. discusses abatement of armed rebellion, by an officer or soldier of the army, navy or air force. Therefore, if the armed rebellion is successful as a result of the abatement by the officers, they may be awarded the death penalty for the same.

(iv) Section 194 of the Indian Penal Code has been included in the list of crimes associated with capital punishment. Section 194 talks about *forging of false evidence* with the purpose of acquiring a conviction for a crime which may be punishable with the death penalty. A person who engages in such a crime may be awarded the death sentence.

(v) *Murder* is a crime which has been closely associated with punishment of execution. Section 302 and 303 of the Indian Penal Code describe murder and punishment for murder to an

offender who has already been sentenced to life imprisonment. Thus, an offender may be awarded the death penalty if he or she murders someone. Also, if a convict who has already been sentenced to life imprisonment commits a murder then that person must be awarded the death penalty.

(vi) *Assisting or supporting the suicide of a minor* has been associated with Capital Punishment. Section 305 of the Indian Penal Code discusses the assisting or supporting the commission of suicide by a person below 18 years of age or an intellectually disabled person. Thus, any person who commits this crime may be awarded the death penalty.

(vii) *Assisting or supporting Sati* has also been associated with capital punishment. Part II of Section 4 of the Sati Act talks about assisting or supporting the commission of Sati. Any person who assists or supports the commission of Sati may be awarded the death penalty.

(viii) *Kidnapping* for ransom or other purposes is a crime which is associated with Capital Punishment. Section 364A of the I.P.C. discusses the kidnapping of a person and threatening to cause harm or death or actually causing such harm. Any individual who commits this crime may be awarded capital punishment.

(ix) Section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985 has also been associated with the capital punishment. According to this section, any person who has been recurrently convicted for the *trafficking of drugs* may be awarded the Death Penalty.

(x) *Rape or gang rape* of a girl less than 12 years of age is a crime which is associated with capital punishment. According to Section 376AB of the Indian Penal Code, anyone who rapes or is a part of a gang rape of a girl who is less than 12 years of age, may be awarded the death penalty. Rape is a heinous crime and it is extremely necessary for it to be included in the list of crimes punishable with capital punishment.

(xi) Section 376A of the Indian Penal Code is also linked with capital punishment. It talks about those situations wherein the an offender *rapes* a woman causing death or such bodily injuries that leave the victim in a vegetative state or when the accused is a repeat offender, which means that he has committed the same crime before. When such a crime is committed, the offender may be awarded the death penalty.

(xii) *Murder while committing dacoity* has also been included in the list of crimes associated with capital punishment. Section 396 of the I.P.C. states that if any one person of the group of 5 or more people committing dacoity, murders someone while the commencement of the crime,

then all the people committing such crime may be sentenced to death. Therefore, it is necessary for only one party to the dacoity to commit murder in order for all the people involved in the dacoity to be punished with the death penalty.

(xiii) The Gujarat Amendment of the Bombay Prohibition Act has also been associated with Capital Punishment. According to this amendment if any individual *manufactures or sells poisoned alcohol* which kills the person who consumed the poisoned alcohol may be awarded the death penalty.

Rarest of Rare Doctrine

This principle was established on the Gandhian theory which states that *crime must be hated and not the criminal*. It was only after the judgement of *Bachan Singh v. State of Punjab* that judiciary found it necessary to devise such a doctrine which shall be applicable in exceptional circumstances. According to it, execution of an offender may be allowed only if it is extremely necessary for the society to function in an orderly manner.

The phrase "rarest of rare" does not have a fixed or exhaustive statutory definition.^{xvi} The manner, motive and seriousness of the crime must be taken into account through the criminal trial in order to determine a suitable punishment. For the invocation of death penalty, it is mandatory for such extraordinary grounds to exist which compel the court to give effect to the execution. It must be the last resort for any court to sentence a person to death.

The principle of rarest of rare has two bifurcations, namely, aggravating and mitigating circumstances. The main point of difference between the two lies in the fact that in the former case, the judge is free to inflict the death sentence by his will, whereas in the latter, such sentence cannot be awarded by the bench even by application of the doctrine.

Constitutional Validity of Capital Punishment

Death Penalty, since the ancient times, has been considered as a type of punishment for serious crimes and also a means to eliminate criminals. Death Penalty is awarded for various types of crimes in India. Some of these crimes are murder, abatement of suicide of minor or an intoxicated person, rape or gang rape, dacoity leading to murder and few other heinous crimes. Capital Punishment is one topic which has been debated and discussed for the longest time by

our law makers. However, years of discussions and debates on this issue have still not helped the Indian law makers to reach a conclusive decision on whether the Death Penalty must be retained or abolished. When it comes to crime, mostly all countries have a varied view towards it and have different ways with which they punish the criminals. However, India like many other countries has a reformative approach towards punishment meaning that they believe in reforming the criminal and his attitude towards the society. India is amongst several countries that have retained the capital punishment. 'Rarest of Rare' and 'Special Reasons' are the two grounds put forward by India for awarding the death sentence.

The case of *Jagmohan Singh* was one of the most prominent, in which the constitutionality of the death penalty was challenged. The SC held that the capital punishment was not a violation of the "Right to Life", which the most important fundamental right is guaranteed to the citizens of the country by the Constitution of India, through Article 21^{xvii}. Apart from this, numerous other cases have challenged the constitutionality of capital punishment. For instance, in *R. Prasad vs. State of U.P.*, the presiding judge clearly stated that Art. 14, 19 and 21 of the Indian Constitution were being violated by the Death Penalty.^{xviii}

However, the most landmark case in deciding the Constitutional validity of the execution punishment was *Bachan Singh vs. State of Punjab*^{xix} where SC pointed out that the Death Penalty, as an alternative punishment for heinous crimes, was not unreasonable, but the Court at the same time made it clear that it must be awarded only in cases which touch the 'rarest of rare' doctrine. The circumstances wherein the Death Penalty may be awarded were laid down in *Machi Singh vs. St. of Punjab*.^{xx}

In India, the capital punishment has been subject to varied views from the society and the law makers. Certain people favour the fact that such penalty should be retained as it is awarded only in the 'rarest of rare' scenarios and only for heinous crimes. However, there is another group of people which are in favour of its abolishment, as they feel that the punishment is inhumane and that people have no right to decide whether a person should die or stay alive. This latter group is also supportive of the view that the death penalty is a violation of Art.21 of the Indian Constitution.

Around 160 countries have abolished capital punishment as they felt that it is unconstitutional, inhumane and against the basic right that a human possesses. These countries replaced the Death Penalty with an alternative punishment.

Case Laws

JAGMOHAN SINGH VS. ST. OF U.P.^{xxi}

This was the first ever case where the question of the constitutionality of execution punishment came before the judiciary. The 5-judge bench of Apex Court passed the judgement declaring the death penalty as constitutionally valid and not violative any of the Articles provided in the Constitution. According to the Judges, the death sentence was awarded in compliance to the procedure laid down by law and not otherwise. Also, sentence of execution must be awarded only for heinous crimes which no other punishment can justify.

RAJENDRA PRASAD VS. ST. OF U.P.^{xxii}

In this case, Justice Krishna Iyer, a Judge of the Kerala HC and later of Supreme Court, who was also a member of the Law Commission, stated that the '*Death Penalty was a clear violation of certain Articles provided by our Constitution*'. It was only in this case that two conditions were underlined for awarding the Death Penalty to any offender. First, the recording of the special reason or condition due to which such punishment was being awarded to the offender and second, it must be imposing only in exceptional cases or the rarest cases.

BACHAN SINGH VS. ST. OF PUNJAB^{xxiii}

The 'rarest of rare' doctrine came up as a result of this case. Once again, the constitutional validity of judicial murder was challenged in the Apex Court. However, out of the 5 judges presiding over the case, 4 clearly were of view that judicial murder as a punishment for heinous crimes was not unconstitutional not violative of the Constitution. The only dissenting judge who opposed the other judges thought that death penalty was unconstitutional and undesirable from various aspects.

MITHU VS. ST. OF PUNJAB^{xxiv}

Section 303 of the IPC states that if any person who had already been sentenced to life imprisonment, commits murder, he/she should mandatorily be awarded capital punishment. This Section was based upon the idea that an offender, who has already committed a crime heinous enough to be imprisoned for life, commits murder, cannot be changed and is a constant threat to the society and that is why he must necessarily be accorded the death penalty. The Court declared the compulsory awarding of death sentence, with regard to Section 303 of the IPC, was not fundamentally correct. Hence, it was scrapped from the IPC.

MACCHI SINGH VS. ST. OF PUNJAB ^{xxv}

This case gave rise to the expansion of the 'rarest of the rare' doctrine. It basically listed various criteria to be essentially considered before imposing of death sentence. According to the observation of the judge, the magnitude of the crime, the manner in which it was committed, the character of the victim and offender, and the motive behind the commission of the crime were various standards, other than brutality, that must be considered before awarding the Death Penalty to an offender.

ALLAUDIN VS. ST. OF BIHAR ^{xxvi}

This case brought forth the concept that a Judge, while imposing death penalty, must compulsorily state the basis or circumstances which forced him to impose the severest punishment. There must be reasons strong enough to justify the punishment being granted for the crime. If the Judge is not able to state reasons strong enough to justify the infliction of execution punishment, then the punishment is not justified and should not be imposed.

KEHAR SINGH VS. UNION OF INDIA ^{xxvii}

Kehar Singh was one of the main conspirators of the assassination of the then Indian PM, Indira Gandhi. Death sentence was granted to all convicted assassins. However, the court felt the need to award the same punishment to the conspirers too, as it was an extremely rare scenario. Thus, the defendant was also awarded the execution sentence for plotting the assassination of Indira Gandhi.

LAXMAN NAIK VS. ST. OF ORISSA ^{xxviii}

In this case, the accused named Laxman Naik, was awarded death penalty for raping and later murdering his own niece. The rape and murder were committed with extreme brutality which was clearly indicated by the evidence gathered and the injuries that the victim had suffered. The court felt that such brutality was unacceptable and extremely rare. For the same reason, it awarded punishment of death to the defendant.

PANCHHI VS. ST. OF U.P. ^{xxix}

This was the case where it was clarified that there are criteria, other than the brutality with which the murder or any other crime was committed, which must be considered while awarding

the death sentence. Thus, it was held that any court which is considering death penalty as an option for a crime, must consider criterias other than brutality also, to judge the case.

SANTOSH K. BARIYAR VS. ST. OF MAHARASHTRA^{xxx}

This case is considered as a major milestone towards the elimination of capital punishment in India. In this case, the four accused kidnapped a person and demanded a ransom of certain amount from the victim's family. They later murdered the victim by cutting his body into several pieces. Even after such brutality, the court did not impose death sentence as the Judge felt that the crime was committed with the purpose of earning some money and the accused can still be reformed. Thus, the 4 people accused of the crime were sentenced to imprisonment for life and were not awarded death penalty.

Conclusion

Capital Punishment is an inhuman and barbarous instrument in the hands of judiciary. It is argued to be a stain on the society which is built on humanitarian values. Several members of the Constituent Assembly, too, were opposed to the idea of incorporating death penalty in the Constitution. As regards the statistics, even death sentence could not deter the commitment of offences, hence the ever increasing crime rate.

Indian judiciary has been laying greater emphasis on alternative modes of punishments in light of international legal developments which stand against the extreme form of penalty. Global trend is to restrict the number of offences for which death sentence may be awarded. According to a UN Report, about 160 countries have abandoned capital punishment in law or practice while 98 nations have abolished it altogether. The issue of abolition of such punishment is considered more a moral issue than a legal one. The recent executions of Ajmal Kasab and Nirbhaya rape case convicts have once again opened the debate about how it is time for India to put an end to the practise of death penalty. The constitutionality of such sentence shall continue to be challenged and, sooner or later, the Apex Court will have to answer whether absence of political will is sufficient ground to override the right to life. The practise of death penalty does not serve the purpose of deterring crimes. It is inequitable in practise and uncivilised in theory. Hence, capital punishment must be discontinued in lieu of the fact that it violates elementary human dignity and is unfit to serve the ends of justice.

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- ^{xvi} “No uniformity on rarest of rare doctrine in awarding death” See at: <http://www.newindianexpress.com/pti-news/2017/dec/08/no-uniformity-on-rarest-of-rare-doctrine-in-awarding-death-1722365.html>
- ^{xvii} JAGMOHAN SINGH VS. ST. OF U.P AIR 1973 SC 947
- ^{xviii} 1979 AIR 916
- ^{xix} (1980) 2 SCC 684
- ^{xx} AIR 1983 SC 1957
- ^{xxi} AIR 1973 SC 947
- ^{xxii} 1979 AIR 916
- ^{xxiii} (1980) 2 SCC 684
- ^{xxiv} 1983 SCC (2) 277
- ^{xxv} AIR 1983 SC 1957
- ^{xxvi} 1989 SCR (2) 498
- ^{xxvii} [1983] 3 S.C.R. 413
- ^{xxviii} (1994) 3 SCC 381
- ^{xxix} AIR 1998 SC 2726
- ^{xxx} (2009) 6 SCC 498