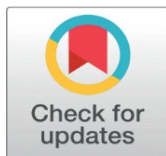


THE DEATH PENALTY AND ETHICS

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ABSTRACT

The execution of a person who has been found guilty of a crime by the state is known as the capital penalty. The usefulness of this punishment is hotly contested in today's culture. The moral perspective of abolitionists holds that the death sentence is unethical because it violates human rights and can lead to biased sentencing. The "eye-to-eye approach" and the "deterrent theory" are the main arguments used by proponents of the death penalty to support their position. However, some Indian court rulings have emphasized the "rarest of the rare" situations for which this type of punishment ought to be applied.

Keywords: Deterrent Theory, Ethics, Abolitionists, Bias

1. INTRODUCTION

"The law must be stable, but it must not be still," said Roscoe Pound¹. Form and severity of the concept of 'Punishment' have evolved over time. The law is the culmination of sanctioned legal norms of acceptable human conduct. It is comparable to the definition of ethics, with the exception of the potential for legal repercussions. Two perspectives emerge from ethics: right and wrong. Societies have been organized since the inception of law in order to safeguard moral allegiance and established norms of acceptable conduct via the implementation of punitive measures. The definition of punishment is "any pain, penalty, suffering, or confinement imposed on an individual in accordance with the judgment and sentence of a court, in retribution for a crime or offense committed by that individual, or for failing to fulfill a duty imposed by law." It is therefore indisputable that individuals who violate the societal established code of conduct are subject to punishment. It constitutes an essential component of criminal law. As a legal instrument, punishment is employed to deter criminal behavior, rehabilitate the offender, or expels the offender entirely from social circles. The definition of capital punishment is "crimes punishable by death."

¹ Roscoe Pound: 1870-1964 (Pound, legal-dictionary.com)

2. RESEARCH OBJECTIVE

- To find out whether the death sentence has a deterrent effect on criminals?
- To find out whether it made any contribution in the society to stop crime?
- To find out if India should similarly abolish the death penalty in accordance with human rights.

3. HYPOTHESIS

Death Penalty is the most inhumane type of punishment. It does not deter the Crime, more effectively than other type of Punishments.

The Supreme Court of India's award of the capital punishment the restraint of exceptional cases does not contravene Article 21 of the Indian Constitution.

4. RESEARCH METHODOLOGY

The methodology used in this research paper is purely doctrinal in nature. It is a hypothetical procedure that looks for answers to legal concerns by examining court records and other sources. Finding and describing the overarching theme or legal system, as well as the connections between the many legal sources, is the aim of doctrinal study. It is purely based on secondary sources. This study made use of several Law Commission findings, Supreme Court rulings, as well as High Court rulings. For this study, statutes and textbooks were also consulted.

HISTORICAL ASPECT OF CAPITAL PUNISHMENT Since antiquity, the death penalty has been seen as the most basic form of punishment for offenders; the only difference is that, while it was once applied to small transgressions, it is now only used in situations of extreme severity. The history of human existence shows that the death penalty has never been abandoned as a form of punishment. Under the rules of Draco² the death penalty was frequently applied for murder, treason, arson, and rape in ancient Greece, despite Plato's contention that it should only be applied to the irredeemably guilty. Although people were spared from it for a brief period of time under the republic, the Romans also utilized it for a variety of misdeeds.³

When one of the Bihar members, Shri Gaya Prasad Singh, attempted to introduce a bill to remove the death penalty for offenses covered by the Indian Penal Code in 1931, the matter of the death penalty was not brought up in the Legislative Assembly of British India. But once the then-Home Minister responded to the proposal, it was rejected. Sir John Thorne, the Home Minister at the time, made the government's position on the death penalty in British India before to independence quite evident twice in 1946 during Legislative Assembly discussions. "The government believes it is not prudent to remove the death penalty for any kind of offence to which it is now applied.

The death sentence was a part of India's Penal Code when the country gained independence in 1947. This code has been in effect since 1861. In 1947–1949, when the Indian Constitution was developing, some members of the Constituent Assembly advocated for the abolition of the death sentence. The bills that were individual legislation were formed in the Lok Sabha and Rajya Sabha throughout the course of the following 20 years, but neither chamber ever passed them. Prithviraj Kapoor's 1958 Rajya Sabha resolution, Mukund Lal Agrawal's 1956 bill, M.A. Cazmi's 1952 and 1954 bills to alter Section 302 IPC, and Savitri Devi Nigam's 1961 resolution were all attempts to remove the death sentence since independence⁴. After the Lok Sabha debated Shri Raghunath Singh's proposal to abolish the death sentence in 1962, the issue was brought to the Law Commission, which produced the 35th Commission Report.⁵

² c. 7th century BCE; Draco's laws were so harsh that the word "draconian" is now used to describe repressive legal measures. The laws were intended to reduce arbitrary punishment and blood feuds, but they ultimately helped the aristocracy consolidate their power and control over the land and poor. In 594 BCE, Solon replaced Draco's laws

³ Hood, R. (2024). capital punishment. In *Encyclopedia Britannica*.

⁴ *The 35th Report of the Law Commission*. (n.d.). Advocatekhaj.com.

<https://www.advocatekhaj.com/library/lawreports/deathpenalty/15.php?Title=Death%20Penalty&STitle=The%2035th%20Report%20of%20the%20Law%20Commission>

⁵ See Law Commission of India, 35th Report, 1967, at para 1, available at <http://lawcommissionofindia.nic.in/1-50/Report35Vol1and3.pdf>

5. POSITION IN INDIA

The severest criminal penalty in India is this. This punishment is reserved for the gravest transgressions. The "right to life" of every Indian citizen is protected by Article 21⁶. Murder, disloyalty to the government, criminal conspiracy, dacoity with murder, assistance for a mutiny, and anti-terrorism are all punishable by the death penalty under the Indian Penal Code, 1860.⁷ A matter of discretion, the President may pardon a death sentence. In the State of Punjab v. Bachan Singh⁸, it was held that, in the rarest of uncommon circumstances will capital punishment be imposed, the Court ruled. Commutation of sentences carrying the death penalty is exclusively the prerogative of the president. Each instance in which a Sessions Court imposes the death penalty requires the High Court to review and grant approval to the case. An individual who has been found guilty of a criminal offense in India may submit a "mercy plea" with the president of the country if his appeal does not reach the Supreme Court. Mercy petitions from individuals sentenced to death must be handled in strict adherence to the procedure specified in the state-mandated guidelines. The Ministry of Home Affairs is responsible for determining the procedures that inmates must follow in order to petition the Supreme Court for further authorization to appeal. As stated in Article 72 of the Indian Constitution, the President of India possesses the authority to commute, suspend, revoke, or pardon the sentence of an individual who has been found guilty of a criminal offense.

6. METHODS OF EXECUTION EMPLOYED IN INDIA

In India, two distinct techniques of execution are recognized:

THE ACT OF HANGING

Within the Indian context, the method of execution for individuals sentenced to death is invariably the hanging. Godse was the initial individual to face capital punishment in India subsequent to the country's independence, on account of his involvement in the assassination of Mahatma Gandhi. He was sentenced to death after being proven guilty of the offense. The supreme court of India rendered the verdict that the implementation of capital punishment ought to be restricted to exceedingly uncommon circumstances.

DEATH PENALTY BY SHOOTING

The Army Act⁹ and the Air Force Act¹⁰ also provide for the application of the death penalty. In accordance with Provision 34 of the Air Force Act of 1950¹¹, a court martial may impose the death penalty for the offenses detailed in subsections (a) through (o) of that section. Section 163 of the Act delineates the structure of a death sentence as follows: "When administering a death sentence, a court-martial possesses the authority to determine whether an offender shall be executed by hanging until death or by shooting to death." The determination of whether the condemned individual would be executed by hanging or firing squad would then be left to the Court Martial. A considerable number of provisions from the Navy Act of 1957¹² and the Army Act of 1950¹³ bear resemblance to those found in the Air Force Act of 1950¹⁴.

LEGISLATIONS WHERE DEATH PENALTY IS PROVIDED

The death penalty is a potential penalty under the Indian Penal Code of 1860¹⁵, the Arms Act of 1959¹⁶, the Narcotic Drugs and Psychotropic Substances Act of 1985¹⁷, the Commission of Sati (Prevention) Act of 1987, the Air Force Act of 1950, the Army Act of 1950, and the Navy Act of 1957. An individual who deliberately causes the demise of another individual by means of an explosive device (e.g., dynamite, bomb, or similar device) with the purpose of undermining the

⁶ Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁷ Act No 45 of 1860

⁸ (1982)3SCC24,

⁹ Act No. 46 OF 1950

¹⁰ Act No. 45 OF 1950

¹¹ *ibid*

¹² Act No. 62 OF 1957

¹³ Act No. 46 OF 1950

¹⁴ *Supra note 3*

¹⁵ *Supra note 7*

¹⁶ Act No. 54 OF 1959

¹⁷ Act No. 61 OF 1985

unity and integrity of India or instilling fear among the populace faces capital punishment, as stipulated in the "Prevention of Terrorism Act of 2002." It is also noteworthy to mention that in imposing punishment, judicial discretion is entirely eliminated, as "the Arms Act, the NDPS Act, and the Scheduled Caste and Scheduled Tribe Act" permit only the death penalty. In light of the *Mithu v. State of Punjab* decision, the constitutionality of these clauses is indeterminate. A fatality was caused through an unfair, unjust, and irrational process, as the punishment for the offense under "Section 303 of the Indian Penal Code" was the execution of its instruction. It was determined that this action contravened Articles 21 and 14 of the Constitution of India.

EXCLUDED FROM CAPITAL PUNISHMENT

- Minor Offender Category: In India, no one under the age of 18 who is convicted of an offense may be executed.
- Female Pregnant: A pregnant woman facing the death penalty must be given clemency under a law that went into effect in 2009.
- Having a cognitive impairment: In situations where a perpetrator was mentally incapacitated or incapable of comprehending the nature of the action or its immorality at the time of commission, the Indian Penal Code permits the imposition of the death penalty.

CONSTITUTIONAL VALIDITY OF DEATH PENALTY IN INDIA

Article 21 of the Constitution guarantees all individuals the fundamental rights to life and liberty, which includes the dignity of living. In order to maintain order and harmony, the government may even impose limitations on an individual's life support. This, however, must be "due process," as established in the Indian case *Maneka Gandhi v. Union*.¹⁸ The act of terminating a human life ought to adhere to principles of justice, fairness, and reason, as each life is invaluable. In essence, the fundamental tenet of our Constitution is as follows:

The application of capital punishment ought to be limited to the most heinous offenses. It is imperative that the death penalty be applied with restraint and exclusively in the most abhorrent cases. It is imperative that the accused be afforded the opportunity to articulate their perspective. The sentence ought to be modified in accordance with the particular circumstances of every instance. Implement the execution of a High Court death sentence. In accordance with Section 379¹⁹ of the Criminal Procedure Code²⁰ and Article 136²¹ of the Constitution, an individual may file an appeal with the Supreme Court.

Implement a death sentence from the High Court. Article 136 of the Constitution and Section 379 of the Criminal Procedure Code each provide for an individual to file an appeal with the Supreme Court. An inmate may petition the President or Governors for clemency, commute their sentence, or reduce their sentence in accordance with Sections

¹⁸ AIR 1978 SC 597

¹⁹ Appeal against conviction by High Court in certain cases. Where the High Court has, on appeal reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term often years or more, he may appeal to the Supreme Court

²⁰ The Code of Criminal Procedure, 1973

²¹ (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces

433²² and 434²³ of the Criminal Procedure Code and Articles 72²⁴ and 161²⁵. President and governor discretionary authority based on merit is granted by Articles 72 and 161. The presidency or governor must obtain all necessary documents and evidence, as guaranteed by judicial bodies. Religion, politics, race, or social standing should not influence the governor's power.

JUSTIFICATIONS FOR ABOLISHING THE DEATH PENALTY

Those convicted of the gravest offenses, including child rape and homicide, are frequently given the death penalty. In India, this penalty is customarily administered through "handing by the neck" until the perpetrator passes away. Diverse techniques, including the electric chair and gunfire, are employed in various countries. Increasing numbers of individuals have demonstrated against the death penalty in recent years, despite the fact that it is customary for offenders to face such punishment. Some argue that the death penalty is as inhumane as the proverbs "tooth for tooth" and "an eye for an eye." In a civilized nation, it has no place. An error by the magistrate could result in the demise of a blameless individual. When an innocent life is taken away, the death penalty is frequently equated to judicial homicide, according to one line of reasoning. Furthermore, in contrast to prevailing opinion, the death penalty fails to function as a deterrent. Murders and other atrocities have continued to occur despite this. As a consequence of these convictions, Western nations have witnessed an upward trend in recent years toward life sentences as opposed to the death penalty. Overall, Muslim countries continue to exhibit dominance in this aspect.

Despite the considerable public outcry for its abolition, the death penalty continues to be an authorized sanction in India. Even so, the implementation of such severe measures has declined in India. At present, it is granted exclusively to the most resolute perpetrators, and then only upon proof that the homicide was intentional and calculated, as opposed to an act of impulse or in response to minor provocation. These threats to society are purportedly exterminable solely through the implementation of the death penalty, which is deemed just and appropriate in order to attain these objectives of justice. It is imperative that individuals who partake in antisocial conduct face the most severe penalties possible, especially if they have a history of such misconduct. It is therefore reasonable that India has exercised greater restraint in its application of the death penalty rather than having completely abolished it. According to sociologists, the implementation of capital punishment lacks any legitimate social purpose. The perpetrator eliminates the primary provider for the family of the victim. Seeing the murderers hanged does the families of the victims more harm than good; it only increases their anguish. Conversely, we sever the primary economic resource of an opposing household. Therefore, the murderer should receive a life sentence and be required to provide for both his own family and the

²²Power to Commute Sentence: The appropriate Government may, without the consent of the person sentenced commute (1)a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);(2)a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine; (3)a sentence of rigorous imprisonment for simple imprisonment for any term to which that person might have been sentenced, or for fine; (4) a sentence of simple imprisonment, for fine

²³Concurrent Power of Central Government in Certain cases: The powers conferred by sections 432 and 433 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government

²⁴ 72. 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 sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed forces of the Union to suspend, remit or commute a sentence by a court martial.(3)Nothing in sub-clause (c) 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

²⁵ Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

The Governor of a State 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 against any law relating to a matter to which the executive power of the State extends

victim's, according to the sociologists. This would spare defenseless women and children an incalculable amount of suffering, starvation, and famine. Moreover, the offender would be afforded an opportunity to reform his behavior should these measures be implemented. His conduct would be subject to rigorous scrutiny, and contingent upon its amelioration, he might be permitted to reintegrate into society as a contributing member. Such viewpoints contain a substantial amount of validity and ought to be considered prior to deciding whether to abolish or maintain capital punishment. However, individuals responsible for the most heinous of crimes-including child rape, gang rape, terrorism, and so forth-ought to face capital punishment.

7. LAWS OF CASES

The Supreme Court ruled in *Jagmohan v. State of U.P.*²⁶ that "Articles 14, 19, and 21 did not violate the death penalty." As per reports, the court rendered a verdict between life imprisonment and capital punishment, contingent upon the particulars of the case that was presented during the trial. The execution decision was carried out in accordance with all legal obligations outlined in Article 21. However, the judge stated in *Rajendra Prasad v. State of U.P.*²⁷, "It is difficult to justify the death penalty in the absence of substantial evidence that the defendant presented a grave danger to society." Capital punishment ought to be abolished, with the exception of white-collar crimes, according to the eminent jurist. Furthermore, it was determined that the implementation of I.P.C. 302 with regard to a homicide conviction did not violate the most fundamental protections of the Constitution. However, *Bachan Singh v. State of Punjab*²⁸ "Article 21 of the Constitution grants the authority of the State to terminate an individual's life in adherence to the legal due process criteria." The constitutional division of the Supreme Court has affirmed this provision. Additionally, the death penalty for homicide as stipulated in Section 302 I.P.C. does not contradict the fundamental essence of the Constitution.

8. RETENTION

The death penalty functions as an effective deterrent. Certain assailants' mental feast would vanish if they were not executed for their transgressions. "Do we want more murders or fewer murders in our country?" For the greater benefit of the safety and preservation of society as a whole, all sentences are imposed, so that all individuals may coexist harmoniously. In order to ensure this level of security, the death penalty is indispensable subsequently, the elimination of offenders. Certain very dangerous crimes that endanger public safety are only deterrents that are effective to the point of mortality. Thirdly, the recurrence of the murders is not implausible. Precautions must be taken to protect the public from the risk that an unpunished criminal will be released and commit additional homicides after regaining their liberty.

9. CONCLUSION

The concept of capital punishment has consistently perplexed the human psyche. Capital punishment in India is subject to scrutiny by the Criminal Justice Administration to ensure adherence to all international human rights norms. The execution of Md. Afzal in 2006 and Dhananjay Chatterjee in 2004, subsequent to his fourteen-year confinement in a death cell, reignited the discourse between proponents and opponents of the death penalty regarding matters such as the necessity for expeditious justice, equitable trials, safeguarding the human rights of individuals facing capital punishment, and upholding the dignity of convicted criminals. The court judgments on the subject are devoid of any consistent approach, as stated by P.N. Bhagwati, J. in *Bachan Singh v. state of Punjab*²⁹. The composition of the court or tribunal thus significantly influences the imposition of life or death sentences. As demonstrated by a number of prior rulings, there are no hard and fast rules for calculating delay and other factors in identical circumstances concerning assassination and the commutement of death sentences to life imprisonment. The fourteen-year postponement of Dhananjay Chatterjee's execution, in contrast to the two-year, two-and-a-half-year, three-year, and nine-year delays that resulted in the commuted sentences to life imprisonment, was not deemed a breach of human rights or fair procedure. Does this not contradict Article 21 of the Constitution, which guarantees the right to freedom of religion, and Article 14, which protects the right to life and liberty?

²⁶ 1973 1 SCC 20

²⁷ 1979 3 SCC 646

²⁸ 1980 2 SCC 684

²⁹ *Supra note 10*

Figures indicate that among 3,000 and 4,000 individuals died within 1950 and 1980. It is more difficult to estimate the overall amount of individuals who received death sentences and were executed between 1980 and the mid-1990s. Apparently, two to three individuals were executed by hanging annually on normal. In the Bachan Singh decision of 1980, the Supreme Court ruled that capital sentencing ought to be implemented. It is more difficult to estimate the total number of individuals who received death sentences and were executed between 1980 and the mid-1990s. According to reports, two to three individuals were executed by hanging annually on normal. In the 1980 Bachan Singh decision, the Supreme Court ruled that capital punishment ought to be reserved for the "rarest of rare" situations; however, the standards by which cases are deemed "rarest of rare" continue to be ambiguous

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