



INTERNATIONAL
JOURNAL OF CRIMINAL
JURISPRUDENCE

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION





International Journal of Criminal Jurisprudence

(Free Publication and Open Access Journal)

Journal's Home Page – <https://ijcj.iledu.in/>

Journal's Editorial Page – <https://ijcj.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://ijcj.iledu.in/category/p-volume-1-and-issue-1-of-2023/>)

Publisher

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Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

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A Study of Capital Punishment in India

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Best Citation - Sifat Aasiya Ajmeri, A Study of Capital Punishment in India, INTERNATIONAL JOURNAL OF CRIMINAL JURISPRUDENCE, 1 (1) of 2023, Pg. 55-59, ISBN (P) - 978-81-960702-2-9.

Abstract

India is a developing country making excellent progress in the world rapidly in all aspects, but it is also facing a great crisis, an increased crime rate. There are many pieces of legislation in India to stop and control crimes though crime increases because there are no penalties sufficient for crimes. The punishment should be severe to reduce the crime rate. All punishments have the same motive to fine a wrongdoer. There are different types of punishment in India, like the death penalty, life imprisonment, imprisonment, etc. Capital punishment is known as the most severe form of punishment. This document talks about the status of the death penalty in India. It also defines the term capital crime. It also explains methods of capital punishment in India. This article explains two major theories related to the death penalty, specifically reformatory theory and prevention theory. In this research, the researcher has also explained the rarest of rare cases. This article mentions the use of capital punishment since the ancient period. This article has a detailed view of the death penalty in India and also the methods of execution in India

Keywords: capital punishment, death penalty, legislation, capital offense, crimes.

Introduction

All punishments have the same motive as they are based on the same principle, that the wrongdoers must be punished or the crime must result in a penalty. There are two main

reasons for the punishment to be levied on a person. First is that every act has its consequences and bad deeds result in bad consequences and bad doer deserves penalty or punishment, second punishment is a way to set an example that would discourage others from doing wrong. Capital the penalty also rests on the same proposition as the other punishments. Punishment does not change a person's behavior instantly, but it works slowly as the overdue time reduces the likelihood of the behavior occurring as often. As we have seen that capital punishment is a most important tool in Indian judiciary system it is of the utmost importance which is used as a way to prevent chaos in society and maintain peace and order. Capital punishment is essential for smooth sailing of justice, it creates fear in the hearts of cold and hardened criminals who are beast in human skin and only fear of death can make them fall in line. The definition of punishment is defined as some form of pain or penalty put on by some authority which seeks validity from the law, on a person for committing a wrong or illegal act, by judgment or order.

Capital punishment is a way or form in which the killing of a person can be done and it can't be considered illegal in fact it is legal in nature. It is also commonly used as the death penalty.

India is a nation that upholds the rule of law that an accused person is innocent unless proven guilty. The death penalty is the harshest type of punishment a condemned person can receive. Thus, inflicting the death penalty is not a frequent occurrence in India. In India, 144 death sentences were issued in total in 2021.

For the most extreme or horrific crimes in India, such as the Nirbhaya Rape Case, the court has ordered the death penalty, as this case was among the rarest of the rare. Hanging is the method used to carry out such executions. Nonetheless, it is important to remember that it is a rarely controlled phenomena in India. The death penalty is outlined in the Indian Penal



Code and Penal Code. The death sentence has been applied in India ever since it was established, though less frequently now.

The term "capital punishment" originates from "capitals" which is a Latin word it means "regarding the head". Capital punishment is a process carried out by a person they are put to death by the state for their crime. Capital punishment or the death penalty means an offender of which he has been sentenced to death by trial for a crime. Capital punishment was given for the most severe crimes against humanity. Every nation has their own method for measuring the extent in which case the capital punishment should be given, consequences of the death penalty were reliably death sentences. By regular use in jurisprudence, criminology, and penology, capital punishment implies the punishment of death. Capital punishment, also known as death penalty is to be treated separately and should be isolated from the authority and should be only given in most extremely rare cases with its separate procedure and the person should be given a chance to change his sentence.

Historical Background of Capital Punishment

The death penalty was present in all parts of the world from the oldest conditions. In the primary states of society, death savagery was a normal wonder. Clan or group struggles were often just states of presence. In such a state life extremely sleazy/individual retribution drowned out the theme penalty. Death and the outcast were the two main tools that dispense with risky components from the assembly.

Then the death sentence was the smartest method of retribution at the time plus prevention. The most extreme was the death penalty. Guilt, when in doubt, all things considered, depends on the degree of culpability and dangerousness of the crime presents to the general public and the additional impairment of the offender. The danger of punishment is the price illegal act that the offender expects. At the moment when

these costs (suffering) are high enough given the advantage that the iniquity is relied upon to bring will stop to an impressive number of people. This also applies in concerning violations caused by death. This reality is similar undoubtedly recognized that the death penalty is justified by the just in outrageous cases where there is a high degree of culpability including creating a danger to society.

The beginning of the death penalty has been said to be officially originated from Babylonian code, 18th century BC. King Hammurabi codified the code and it contained 25 different crimes which could result in death. The death penalty can also be outlined in the Draconic Code of Athens, which made the death penalty mandatory for all types of crimes committed. Inflicting punishment on offenders included burning alive, drowning, beating to death, impaling, and burning alive. Hanging was the most common method of execution in Britain by the tenth century AD. People may only be executed in times of war in the following century, under William the Conqueror's rule. Even in Britain, death sentences started to be postponed over time.

The death penalty has a long and illustrious history dating back to the dawn of civilization as we know it. Indeed, many people who have studied the death penalty's history have found that until the mid- nineteenth century, when penitentiaries were established, there was no alternative to the death penalty. The authorities had no method of keeping criminals out of society and no idea how else to prevent them from committing a similar acts in the future. As a result, they concluded that the only realistic option was to assassinate the perpetrator. The history of capital punishment includes some gruesome practices such as drawing and quartering, burning at the stake, and cooking people alive. Skinning, impaling and of course hanging were



used. Lethal injection, the firing squad, and the electric chair are still used in prisons today. According to most historical documents, the death penalty was a cornerstone of the justice system's development in virtually every community.

Death penalty in India

Death penalty in India is a form of punishment that is used to punish those who commit serious crimes such as murder, terrorism, and waging war against the state. It is also known as capital punishment and is the most severe form of punishment in India. According to the Death Penalty in India Report, there were 488 prisoners on death row in India as of the end of 2021, the highest in 17 years. In India, the death penalty is awarded for the truest and most horrific crimes (rarest of rare case). The death sentence is imposed when the court concludes that, given the circumstances of the case, life imprisonment is not enough or adequate. The constitutionality of the death penalty has been challenged by the Indian judiciary on various occasions and this article will focus on these cases. The President of India has the power to grant pardons in death penalty cases

A) Criteria for Rarest of Rare Cases

Macchi Singh laid down certain criteria for assessing when a case might be considered as rarest of rare.

- Manner in which murder is committed – if the murder has been committed in an extremely brutal, disgusting, torturous, inhumane or in any way which will repulse and creep any normal human being. For example if a victim is tortured before death for any reason, if the victim is burned alive or if a victim is cut in pieces.
- Motive behind the murder – If the motives for murder are sadistic pleasure or leisure or for pure entertainment; for example, any murder done only for

monetary reward or benefit such as assassination or for any insurance or inheritance.

- Repugnant crime – Crime done due to backward mentality or murder because of racism or any social hierarchical nature.
- Magnitude of the crime – A massacre of multiple people or serial killing
- Murdered Victims personality – When an innocent child is murdered or any woman who is helpless or pregnant or any old or disabled person, then deserve any sympathy. Account?

Recent Capital Punishment Cases

A. The Vinay Sharma vs. Union of India (2020)

This case is famous by the name the Nirbhaya gang rape case, this case has outraged the entire country. The unfortunate and brutal incident took place in the cold weather of Delhi on a bus on the night of 16th December 2012. The victim was Jyoti Singh, who was a 23-year-old physiotherapy intern who along with her friend was returning after watching a movie life of a pie in Saket. They boarded a bus at Munirka to reach Dwarka, in Delhi. At that time only the victims and 6 others were present on the bus including the driver. The male friend of Jyoti was beaten to unconsciousness by the accused and the girl was dragged by the accused to the rear of the bus and was brutally raped by the six accused while the bus driver continued driving the bus. They also inserted an iron rod into her private parts and threw her naked on the road. the victim was not just sexually violated, her body went through inhuman treatment, and her body was mutilated beyond human imagination. All the physical and mental abuse led to her death. When the case came to trial, the convicts crime was of such nature it did not deserve any type of sympathy. One of the accused. It was deemed as the rarest of Rare case. For most brutal, attacks on the 23-year-



old paramedic student, Jyoti Singh, the four accused were also hanged in 2020. This sentence was concluded after an analysis of aggravating and mitigating circumstances

B. Hyderabad Veterinary Case (2019)

In the case of a veterinarian in Hyderabad (2019), the doctor was alone on a scooter, which she parked in Shamdabad Square, and from there she took a taxi to the office where she went to work. These accused came from their hiding spot and these four accused started forcing and raping her, and after that, they burned her body. The case was a clear case for the death penalty but the police had stifle with these convicts which led to their encounter which raised questions about our Indian criminal justice system.

C. Shabnam v. Union of India (2015)

In Shabnam v. Union of India (2015), in this case a woman murdered her whole family in cold blood the execution of the crime was in a brutalizing manner, this was the first case in which a woman was given capital punishment. The reason for death was that the family did not allow her to marry with her lover so both planned a cold blooded murder in a brutalizing manner. This was deemed as a rarest of the rare case. The case was a clear case for the death penalty.

I. Arguments against Capital Punishment

A. Human life Every human life has value, every life is precious even criminals life has some value and hence it should not be easily taken. Humans are sentient creatures with emotions and their life which had been gifted to them can't be taken away from them easily. We don't have any right to take away others life, it is inseparable from them.

B. The right to live Every human life has value, every life is precious even criminals life has some value and hence it should not be easily taken. Humans are sentient creatures with emotions and their life which had been gifted

to them can't be taken away from them easily. We don't have any right to take away others life, it is inseparable from them.

C. Execution of the innocent The most common and persuasive argument against the death penalty is that sooner or later innocent people will be killed as justice system is made of humans make mistake and it could result in his death so death punishment should be avoided. The justice system is made up of humans and humans aren't perfect and the risk of executing the innocent will always remain.

D. The uniqueness of the death penalty Only in death penalty retribution principle is applied not in any other crime, eg if a crime of sexual harassment is done the punishment will not be of sexually harassing the convict. The death penalty is not sufficient retribution. Death is an easy way but a person should suffer more and think on what he did wrong. It may even help him in redeeming himself.

E. Brutalizing the law Death penalty creates fear and expresses justice in its very barbaric way which is not how civilization should work. It makes the law brutal and violent. Civilized people should not behave in such a way. It is a very primal and barbaric way to exert justice to people.

Conclusion

The death penalty has been practiced in India since then ancient times. Many countries have abolished the death penalty. When we look at our national crime statistics, the death penalty has not proven to be a crime deterrent, crime rates are only growing. We need to reform our laws, especially for death punishment in India. Our laws should be reformed and punished he should be so strict and he should be an example to the people around him about his illegal conduct. There is a punishment worse than the death penalty. Make sure the offender keeps the discussion going. Capital punishment and strict life in prison are worse than the death penalty. Every day and night the offender



should feel for his transgression. The death penalty is not effective in reducing crimes in society. When the death penalty is imposed accused of being more than just a punishment, in the name we end or kill a person justice and law. Killing a person is immoral and it shows a lack of respect toward human life. And resisting the death penalty is not mean someone is supporting criminals. When the death penalty is imposed, it ceases the extent of improvement it could have changed an individual's life, that's the reason why there are democracies all over the world that support a reformatory theory of punishment and the abolition of the deterrent theory of punishment. "Even the most heinous criminal remains human have common human dignity" as a result one should weigh each one and all individuals.

We are nobody to decide who gets life and who dies based on the rules and regulations that we have created ourselves. It is a fact that the criminal must be punished for the crimes he committed, but we as a civilization need in the direction of removing the offense no illegal. We are humans different from animals blessed with logic, emotions, empathy, etc. We are given a rare gift of humanity and killing another human being falsifies the mere purpose to be a human being. We are supposed to be a civilized society but we kill each other in the name of justice. The principle of capital punishment is based on deterrence a theory that generally gives an example of instilling fear in the minds of others, but there exist some other ways, such as reformatory theory which can be a leading example. The concept of capital punishment is primal and barbaric and it should be abolished as it involves killing an immoral human being because life is precious and death irrevocable. Democracies should prosper more from a reformation theory rather than a deterrent theory as it provides a chance for redemption to the convicts, it helps them to reform. The reformatory theory has its advantage over the deterrent theory as it gives individuals a chance to go back into society.

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