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RESEARCH ARTICLE

EXECUTION OF CAPITAL PUNISHMENT IN INDIA : IS IT A VIOLATION OF HUMAN RIGHTS?

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Abstract

The Death penalty is one of the most controversial topics of the Indian judiciary. It exists from the ancient periods and still prevailing in some major countries, India is one of them. In India, death punishment is given only in Rarest of the rare cases but what is the exact meaning of the phrase 'Rarest of the rare cases' has caused much controversy. The ultimate aim to give punishment anywhere is to reduce the crime and to impose some penalty on the offender. The Death sentence is the killing of an offender in the name of justice. India follows the same phenomenon but as per the Indian constitution, it is the violation of the provisions of right to life and dignity provided in Art. 21, still it is constitutionally valid. This paper provides an overview of capital punishment in India. It also explains the history and various reports of Law commission on the death penalty. The paper also says about the Doctrine of rarest of rare case deal with various cases and modes of execution of the death punishment so to find out the object of the study. The study observed that all the Judgements pronounced in heinous offences while keeping in mind the public at large which eventually settle that the awarding capital punishment on rarest of the rare case is just and fair. The study also marks that it is against the human rights principles, so the legislation should implement capital punishment in that way other than the death penalty. For example, rigorous imprisonment for life will be more effective.

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Introduction:-

India, a well developing country, nowadays is mostly famous for its increasing crime rates and criminals. The highest punishment provided for the criminals for their crime is called capital punishment, also known as the death penalty. It is a legal exercise in which a wrongdoer put to death for his crime by the state. The Death sentence is only executed against a heinous and serious crime like Murder, Rape and offence against state or country and not for petty offences. In any country, all punishments are based on the same manifesto, that is, every criminal must be harged with a penalty for his crime. Every punishment is mainly imposed on two beliefs. Firstly, a person who has done something unlawful should suffer for it and the other belief is that the punishment for a crime implants fear in the mind of criminals and other persons for such crime. Therefore, it stops others from doing such crimes. Capital punishment like other punishments follows the same manifesto to prevent further crime.

The Death sentence is provided for the heinous crimes against mankind. It is different from country to country. But it is generally considered as against the human rights protected under Article 21 of the constitution of India. Article

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21 states that “No person shall be deprived of his life or personal liberty except according to the procedure established by law.”

Even the United Nation (UN) widely discussed the topics related to ‘Abolition of Death Penalty’ and considered it as a violation of Human rights. UN gives more importance to the Reformatory Theory of Punishment than Deterrent Theory. In a case, J. V.R. Krishna Iyer remarked that- “The special reason must relate, not to the crime but to the criminal. The crime may be shocking and yet the criminal may not deserve the Death Penalty”. The constitution of India gives clemency powers to pardon or suspend death sentence to president and governor for the country or state respectively. The death sentence is awarded only when the court concludes that life imprisonment is not enough to the wrongdoer, based on the situation of the case.

Approach of Capital Punishment in Ancient Time:

The capital punishment or death penalty has been the subject of controversy in the judiciary, not only in India but also in most developed countries.

In India, the Death penalty has always been used to administer justice by the rulers of various dynasties through the centuries. In Mauryan Dynasty, the Retributive theory of punishment was followed which is an eye for an eye, a hand for a hand, etc. there were also so many punishments in the form of death penalty by the rulers of such dynasties such as cutting for head or dragging the body by the horse until the death of a person.

But as per the world prospective, the punishment of Death sentence has been for the first time codified in the criminal laws by king Hammurabi of Babylon in the 18th century. The Hammurabi code prescribes the death penalty for over 25 offences, some of them are theft and perjury. The Hittite Code in the 14th century B.C. also signifies the death penalty but not widely. Only the most serious offences were punishable by death. Death punishment in the era of The Draconian Code of Athens, in 7th century B.C., was the only punishment for all the crimes. Therefore, the word Draconian is used to describe hush punishment.

Even in Britain, during the 10th century, hanging became a normal process for the execution of the death sentence. Capital crimes were constantly increasing in Britain at that time, during the 1700s, around 200 crimes were punishable by death.

In the United States, during the colonies period, in 1608, the execution of the death penalty was recorded for the first time by the officers of Virginia government for alleged conspiracy to betray the British to the Spanish. In 1612, the death penalty had been used for even the minor offences. In 1655, The New York colony also directed the punishment of death penalty on the grounds that it did not believe in the name of true God, killed people without defence, sodomy, buggery, kidnapping, perjury etc. in the death penalty trial.

Doctrine of Rarest of The Rare Cases:

The Death penalty is legally valid in India and is given in only Rarest of the rare cases or other special cases. Here comes the controversy, the term Rarest of the rare case is not defined by the legislation or the Supreme court.

In 1983, The phrase "rarest of rare case" first appeared in the Supreme Court’s decision, Machhi Singh v. State of Punjab. The meaning of the phrase “Rarest of the Rare cases” is the court while deciding the case in a criminal trial has to see the nature and gravity of the crime to provide the appropriate punishment. In Section 302 of IPC, death penalty or life imprisonment are stated as a penalty for the offence of murder. It is impossible to hold the view that the death penalty can be used as an alternative punishment for murder as it is unreasonable and contrary to the public interest. The order of conviction of the accused is the procedure of the penal law and to give sentence or imprisonment is purely related to the order of conviction. Therefore, S. 302 of IPC doesn’t come under the test of A. 19(1) of the constitution.

In Machhi Singh case, the court laid down some principles for judging the facts of a case when a crime comes under the category of “Rarest of rare cases formula” and some guidelines to be adopted to identify the rarest of rare cases.

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

However, the Supreme Court had in *Mithu v. State of Punjab* already struck down Section 303 of the IPC, which stated the provision for mandatory punishment of death for offenders serving a life sentence. The reason behind this view is that if the death sentence is mandatory, then there is no point of hearing the offender's side on the question of sentence, and it becomes supplementary to give the reasons for awarding the sentence of death.

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

"Till 1973, Courts had to mentioned the reason for awarding the alternate punishment of life Imprisonment instead of Death Sentence in capital offences." In *Jagmohan Singh v. State of U.P.*, "the Supreme Court while deciding whether the death penalty is constitutional, stated that it will not only reduce the crime but also prevents the society from committing such crimes." However, the supreme court mad it clear that the death penalty would only be an exception based on the circumstances or case facts rather than judgement rules. "Subsequently, the new Code of Criminal Procedure, 1973, U/S 235(2) provided for the defendant's pre-trial hearing and obligated the Court to mention the reason for awarding death sentence instead of Life Imprisonment."

Test for "rarest of rare cases"

Generally, the test applied for the doctrine of "Rarest of the Rare" case while awarding the Death sentence to the convict is whether it is the demand of the society to give the death penalty to the accused of the peace and maintenance of the society and whether failure of awarding death sentence would be considered nothing under section 302 of IPC.

Pre-planned, brutal, cold-blooded and sordid nature of a crime, without giving any chance to the victim, are generally considered as facts to decide whether a particular case falls under the doctrine of "rarest of rare".

Law Commission of India Report on Death Penalty:

The 35th Report of the Law Commission

In 1967, The Law Commission issued its 35th Report on "Capital Punishment", "recommends the retention of the death penalty". The Commission also commented on the discretionary powers of the courts in order to impose the death sentence or life imprisonment, found that "the vesting of such discretion is necessary and the provisions conferring such discretion are working acceptably". The commission also said that in the present scenario, "India could not take a risk by abolishing the death penalty that would put the lives of citizens in danger". The report also states that "People who do not have sufficient financial capacity or other reasons cannot sue in court, the law seems to be unfair to them, and their focus is on legal aid rather than substantive criminal law." The Commission also made recommendations on the question of a right to appeal to the Supreme Court in cases where the High Court affirms or imposes a death penalty, finding that this is not necessary. The 35th Report also recommended for retaining section 303 of the IPC, which provides for a mandatory death sentence. However, the Supreme Court struck down this section in 1987 in *Mithu v. State of Punjab*.

The 187th Report of the Law Commission

In 2003, the Law Commission issued report no. 187th on the "Mode of Execution of Death and Incidental Matters". This Report addressed the three issues: (a) the method of execution of death sentence, (b) the process of eliminating differences in judicial opinions among Judges of the Apex Court in passing the death sentence, and (c) It is necessary to provide the defendant with the right of appeal in a death sentence. After taking the public opinion and studying the practice on these issues in India and in other countries, the Commission recommended the amendment of Section 354(5) of the CrPC to allow for the lethal injection as a method of execution, in addition to hanging.

The 262nd report of the law commission

In August 2015, The Law Commission of India in its 262nd Report on the death penalty recommends the abolition of the death sentence for all crimes except offences related to terrorism and waging war.

Arguments against and in favour of death penalty:**Arguments against death penalty:**

1. Capital punishment or Death Penalty is the denial of human rights from the beginning whether it is done by some criminal or by the society itself.
2. There are often no proper guidelines provided for whom to award death sentence. In India, death sentence has to be given in rarest of rare cases but it is not defined anywhere in Indian law, exactly what is "rarest of the rare". Courts act rather arbitrarily in arriving at such decision.
3. Court verdicts are not always reliable. Even, people who sometimes found not guilty later may be given the death penalty by the courts.

Arguments in Favour Of Death Penalty:

1. To balance or maintain the peace and order in the society, it is required to have capital punishment for capital offences. Otherwise, nobody will take it seriously and commits the crimes without any fear of consequences of it. The Death penalty is continuing in the most populous countries like China, India, USA and Pakistan. But, it is banned in Europe.
2. Death penalty held to be constitutionally valid by the SC.
3. The cost of maintaining a prisoner with facilities compatible with human rights for the whole of his life can be very high and the possibility of his escape from the prisoner will be increased.

Execution of Capital Punishment:**Methods of Execution Through Ages:**

There are various methods of execution of the death Penalty which were followed in different countries in ancient times and some of them are still following in some countries. These methods are-

1. Crucifixion- It is a process in which a person is nailed to a wooden cross and left there till his death. It was one of the popular methods of executing the death penalty during the years in B.C. Jesus Christ was crucified in the same manner.
2. Burning At The Stake- The method of Burning at the stake was mainly used for heretics, witches, and suspicious women.
3. The Wheel- In this method a person was attached to the outer edge of the wheel and then rolled over a sharp point or slides down the mountain until death.
4. Guillotine- The guillotine was a popular method of execution in France during the French revolution when Dr. Joseph Guillotine suggested that a decapitation machine be built. Later, the decapitation machine was named after him. The machine was initially tested on sheep and calves and then on humans. Finally, the first execution by guillotine took place in the year 1792.
5. Hanging And The Garotte- The prisoner could simply be hanged with a neck in the loop at the end of a rope which could lead to death by fracturing the neck.
6. Headman's Axe- It was very popular in Germany and England during the 16th and 17th centuries, where decapitation was thought to be the kindest form of capital punishment. In this method, an executioner would cut the person's head with the help of an axe or sword.
7. Firing Squad- Usually, in this method, the inmate is tied to the pole or a chair, with hands and is blindfolded and a team of executioners is used to aim at the inmate's heart.
8. Gas Chamber- The prisoner is restrained in an airtight compartment. When given the signal, the executioner opens a valve of lethal gas to flow into that compartment. It destroys the flow of blood into the body and occurs unconsciousness within a few seconds and death usually occurs within six to fifteen minutes.
9. Electrocution- A prisoner is strapped on the electric chair and his head and body shaved for better connection of moistened copper electrodes with the body that the executioner attaches.
10. Lethal Injection- Death by lethal injection involves the continuous circulatory injection into the vein of the prisoner of a lethal quantity of three different drugs. Firstly, Sodium Thiopental is injected which causes the prisoner unconscious. The second chemical agent, Alcuronium Bromide is a muscle relaxer which stops the functioning of the diaphragm and lungs. Finally, Potassium Chloride is injected into the body which stops the functioning of the heart.

Methods Of Execution In India:-

In India the capital punishment is executed in two ways, that is, hanging or shooting. Hanging- In India, all capital punishment is imposed by hanging to the neck, till death. After independence, Nathuram Godse was the first person

to be executed by a death sentence in India for the murder of Mahatma Gandhi. Later, SC of India in a case suggested that capital punishment should be given only in the rarest of rare cases in India.

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

Suggestions :-

1. There should be more methods of execution of capital punishment crimes. For e.g.: lethal injection.
2. The court should provide a reliable definition of the term “Rarest of the rare cases”.
3. The prisoners should be educated in prison during their imprisonment period to become a better person.
4. The offenders of most heinous crimes such as gang rape or terrorism shouldn't be hanged instead they should be given so rigorous punishment for a lifetime, that would be more effective.
5. There should no pardoning power for terrorists and rape offenders.

Conclusion:-

Capital punishment has always been a controversial matter of social and moral aspect in the world. Since, death punishment is the process of killing a person, who is accused of a heinous offence in the name of justice, it is not just a punishment but more than that as According to the principles of the Human rights it is immoral and determines the lack of respect for the human life. Also, if someone opposing the death punishment, it doesn't mean he or she is supporting the criminal. Whenever a death penalty is given it decreases the scope of improvement which could have changed the life of an individual, that's why democracies around the world are mostly in favour of the reformatory theory of punishment instead of the deterrent theory of punishment. It is true that a criminal should be punished for his crime but a civilized society's aim should be eliminating the offence, not the criminal. We need to educate and counsel them for the betterment of their life and the upcoming generation. This is the main difference between humans and animals.

As per Indian constitution or some other countries, death punishment is valid and the same constitution provides the provisions of right to life and human dignity too. United Nations supporting the abolition of the death penalty and India is an active member of the United Nations, still, capital punishment is there in our statute book. This is because in today's world, the conditions and circumstances of crime is brutal a few of them are Delhi gang rape case, Hyderabad gang rape case, Unnao rape case are known to be the most brutal cases as of now. Because of this society demands justice which must be as harsh as the crime committed. That's why the death penalty is still exercised in India. But we need to understand, even though we have the death penalty as capital punishment for like these heinous offences still it is not helpful for eliminating the crime instead the crime rates are rapidly increasing yearly. Therefore, the Legislation and judiciary while implementing any law should think in that way, we need to eliminate the crime and not the criminal instead we need to educate them for their good life. And for brutal offences, there should be some rigorous punishment rather than the death penalty. This would be more effective as they will remember their crime every time while facing rigorous imprisonment.

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