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DEATH PENALTY IN INDIA: REDUNDANT OR NECESSARY IN THE 21ST CENTURY?

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ABSTRACT

Capital Punishment has long been a subject of debate among academicians, jurists, theoreticians and legal experts. The question of abolition of the death penalty has been discussed significantly and progress has been achieved in different nations. In India, capital punishment continues to be practiced, though it is imposed only in exceptional cases. The death penalty has remained a constant part of the legal system in India. However, recently it has invoked serious humanitarian and ethical concerns and scrutiny from activist groups. This paper examines the historical evolution of capital punishment and its position in the 21st Century. Furthermore, this paper explores the arguments that have been put forward for the abolition of death penalty and those supporting its existence. The Judiciary has rendered landmark judgments addressing the question of existence of the death penalty in the Indian legal system. Therefore, significant case laws shading light on capital punishment have been discussed in this paper. In the international perspective, approximately 170 member states of the United Nations have abolished the death penalty either legally or by practice. Hence, the international progress on the death penalty has been examined and recommendations have been provided for dealing with this contemporary issue effectively. By analyzing these varying dimensions, this paper is not only to be seen as an academic research paper, but also as directed towards drawing attention to the urgent need to arrive at a proper conclusion on this pressing issue. Rather than addressing this as a binary argument, it should be approached as a global problem that requires an alternative solution.

Keywords: punishment, death, humanitarian and atrocities.

INTRODUCTION

“But what then is capital punishment but the most premeditated of murders, to which no criminal's deed, however calculated it may be, can be compared?”

– Albert Camus

Since the ancient times, capital punishment has been inflicted on criminals all across the world. It is the most severe form of punishment awarded by any legal system. Crimes of grievous nature have been considered to be appropriately punishable by death penalty to the perpetrator. Capital punishment, which is also known as the death penalty, is a form of criminal punishment that lets the state take the defendant's life as the punishment for the crime committed.¹ In the contemporary world, several human right activists and organizations have continuously advocated for the abolition of the death penalty citing its inhumane nature and contradiction to basic human rights. Capital punishment is viewed as an extreme measure and inconsistent with democratic values that are strongly advocated in the 21st century. The constitutional validity of death penalty as a form of punishment was first challenged in the United States of America. In India, the number of death penalty prisoners have continued to increase in the last two decades. The Bharatiya Nyaya Sanhita (BNS) as well as some other laws such as the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, the Commission of Sati (Prevention) Act, 1987 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, continue to inflict the death penalty as punishment under certain circumstances. Although many activists' groups have mentioned about the abolition of death penalty, however, India continues to uphold capital punishment in its legal system.

HISTORICAL OVERVIEW

Every country has employed the death penalty as a mode of punishment since ancient times. The King could freely award capital punishment to those convicted of crimes. Beheading, stoning, hanging, crucifixion and impalement are some of the ways in which death penalty has been executed. In the United States, the use of the death penalty faced significant judicial scrutiny from 1972 with the landmark case of *Furman v. Georgia*. The Supreme Court in this case, invalidated existing death penalty statutes, citing serious constitutional concerns with the arbitrariness and racial discrimination in the process of imposing the death sentences. In the Death Penalty Information Centre 2023 Year End Report, it was stated that 29 states of the

¹ Legal Information Institute, Capital Punishment, https://www.law.cornell.edu/wex/capital_punishment.

United States of America have now either abolished the death penalty or paused such executions through executive action.²

By the ninth century A.D., hanging was the predominant method used for execution. During the reign of Henry VIII in the sixteenth century, it is believed as many as 72,000 persons are thought to have been put to death in a dramatic shift.³

Death penalty has a long history in India. In British India, the Indian Penal Code, 1872 enacted awarded death penalty for certain offences. However, the nature of death penalty changed significantly after India gained independence in 1947. The issue of the death penalty was not subjected to legislative discourse in British India until 1931, when Shri Gaya Prasad Singh, proposed to introduce a bill to abolish the death penalty awarded to certain crimes. However, the motion was defeated after response from the then Home Minister.⁴ The Supreme Court held in *Rajendra Prashad v. State of Uttar Pradesh*⁵, the death penalty shall be awarded when there is a threat to the security of the state and society, public order and public interest. However, in *Bachan Singh vs. State of Punjab*⁶, the Court held death sentence as a punishment for the offence of murder is not unreasonable and does not violate Articles 14, 19, and 21 of the Indian Constitution. Furthermore, it was advanced that it shall only be reserved for the 'rarest of rare situations.' However, the specific grounds on which the situation is to be evaluated has not been specified anywhere yet. In *Machi Singh v. State of Punjab*⁷, the court tried to explain the category and stated that "the rarest of rare dictum serves as a guideline in enforcing Section 354(3) and establishes the policy that life imprisonment is the rule and death punishment is an exception". The death penalty has a long-standing history in India and remains in practice, despite ongoing controversies surrounding its ethical implications and permanency.

² The Death Penalty in 2023: Year End Report, Death Penalty Information Centre (Dec. 1, 2023), <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2023-year-end-report>.

³ Capital Punishment in India: History, Debate and Its Future, <https://www.legalserviceindia.com/legal/article-12549-capital-punishment-in-india-history-debate-and-its-future.html>.

⁴ Sneha Mahawar, Capital punishment in India - iPleaders, IPleaders (Dec. 5, 2022), <https://blog.ipleaders.in/capital-punishment-in-india-2/>.

⁵ *Rajendra Prashad v. State of Uttar Pradesh*, AIR 1979 3 SCC 646

⁶ *Bachan Singh vs. State of Punjab*, AIR 1980 3 SCC 24

⁷ *Machi Singh v. State of Punjab*, AIR 1983 SC 957

ARGUMENTS IN FAVOR OF DEATH PENALTY

Certain crimes are so egregious and heinous in nature, the death penalty is considered an appropriate form of punishment. Historically, serious offenses like murder, treason, rape and espionage have been punished with capital punishment. The death penalty has been universally justified to be applicable in certain extreme cases, though in the past few decades, there has been a significant increase in calls for its abolition. Nevertheless, there remains a substantial group of advocating and supporting its continued existence.

The proponents of death penalty argue that the fear of death penalty shall have a reducing effect on the number of serious crimes committed in a particular country. It will serve as a deterrent to serious offenses. The brutality of the punishment may serve as warning to the perpetrators. If the punishment provided fails to act as a deterrent, then its effectiveness in reducing the crime rates gets compromised.

Critics, however, argue that due to the permanent nature of the punishment, many non-deserving people may receive the death penalty by wrongful conviction and due to its nature, it cannot be reversed. Charles Stimson of the Heritage Foundation has contended, “Acknowledging that mistakes can occasionally occur in capital cases does not render the death penalty unjust any more than imposing a sentence of incarceration for a term of years is not rendered unjust simply because mistakes occasionally occur in non-capital cases.”⁸ The fear of wrongful punishment cannot be justified enough to abolish the death penalty.

In the case of *Vinay Sharma v. the Union of India*⁹, also known as the Nirbhaya rape case, four of the accused were sentenced to death penalty and were hanged in the year 2020. The Court examining the circumstances of the case considered life imprisonment to be an inadequate punishment for the brutal rape and torture committed on the victim. Similarly, in *Surendra Koli v. the State of Uttar Pradesh*¹⁰, the accused who had committed several atrocious crimes including raping, killing and eating the bodies of fifteen girls was initially awarded the death penalty, although later the punishment was commuted to life imprisonment. Thus, it can be deduced that death penalty is awarded in extraordinary situations that occur rarely in the

⁸ Charles Stimson, The Death Penalty Is Appropriate, The Heritage Foundation <https://www.heritage.org/crime-and-justice/commentary/the-death-penalty-appropriate>.

⁹ *Vinay Sharma v. the Union of India*, AIR 2020 SC 1451

¹⁰ *Surendra Koli v. the State of Uttar Pradesh*, AIR 2011 SC 970

society. However, when they occur, the distress created is so profound in nature that capital punishment is considered justified.

It is important to note that death sentence is awarded to the “rarest of the rare cases”. Therefore, only after thorough examination of the facts and circumstances of the case, death sentence is pronounced. Even after death sentence is passed, the convict can file for a mercy petition, which may result in the death sentence to be commuted to life imprisonment.¹¹ Under Article 72 of the Indian Constitution the President exercises the authority to commute sentences in certain cases.

Ultimately, moral and ethical considerations should not be the driving force behind protection of criminals from the death sentence. The societal impact of heinous crimes necessitates a commensurate punishment to uphold the principles of justice.

ARGUMENTS AGAINST DEATH PENALTY

The Universal Declaration of Human Rights asserts that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This principle underscores the global commitment to prevent any form of inhumane treatment towards people. For this purpose, the United Nations and various humanitarian organizations advocate the abolition of the capital punishment. Death Penalty has been strongly condemned as it violates the right to life of an individual. The United Nations is committed to eliminate capital punishment worldwide.

Historically, varying atrocities have been witnessed in the name of death penalty all across the world. Several questions have been raised challenging its validity in the contemporary world. Could the continued existence of the death penalty in the 21st century challenge the democratic ideals promoted worldwide?

The main argument against death penalty is the brutality and permanency of the punishment. Once executed, the death penalty is irrevocable. If an innocent person gets wrongfully punished, it cannot be reversed. Moreover, the taking away of a person’s life is considered an extreme measure in a democratic society. Article 21 of the Indian Constitution states ‘No person shall be deprived of his life or personal liberty except as according to procedure

¹¹ Apurva Prabhakar, Why Must Death Penalty Continue to Exist?, 2 International Journal of Humanities and Social Science Invention 32-36 (2013).

established by law'. Therefore, the protection of the right to life of citizens is a fundamental duty of the State, which is arguably compromised by the imposition of the death penalty. Justice P.N. Bhagwati, who stood as a notable opponent of the death penalty, voicing his dissenting opinion in the Bachan Singh case, highlighted the heightened risk of judicial error. For instance, in 1996, Ravji Rao was hanged after he was found guilty of the murder of his pregnant wife by the Rajasthan court. However, in 2009, the Supreme Court noted error in the judgment and declared it was based on per incuriam¹² When there is such possibility of judicial error existing, the imposition of death penalty has to be strictly avoided.

Additionally, the mental agony suffered by the prisoner awaiting the day of execution of the sentence has also been severely criticized. At times, this waiting period extends to several years. In *T.V. Vatheeswaran v. State of Tamil Nadu*¹³, the Supreme Court acknowledged the pain and suffering inflicted upon the convict on death row and declared it unfair, unreasonable and arbitrary in nature.

It has been observed that individuals from socio-economically disadvantaged backgrounds suffer the severe consequences under the criminal justice system, including the imposition of death penalty. According to the National Law University Delhi's Death Penalty India Report 2016 (DPIR), approximately 75% of all convicts facing capital punishment in India are from socio-economically underprivileged categories, such as Dalits, Other Backward Classes (OBCs), and religious minorities.¹⁴ Various factors including inadequate means to challenge the decisions and financial burden on the convict contribute to wrongful imposition of the death penalty. In a diverse nation like India, with different religions, castes and ethnicity, this becomes a pressing issue that needs immediate attention. In the case of *Jagmohan Singh v. State of Uttar Pradesh*¹⁵, the court discussed the validity of the death penalty for the first time in India where argument was raised on how it violates Article 14 of the Indian Constitution which guarantees "equality before law" to the citizens. The death penalty cannot be imposed in a manner that targets specific disadvantaged groups, leading to unequal and unfair treatment. Based on the reason that death penalty receives public support does not necessarily validate its continued existence. Historically, there have been many instances where public opinion has

¹² Contours of Justice: Human Rights and Constitutionality of Capital Punishment in India, SPRF (Feb. 8, 2024), <https://sprf.in/constitutionality-of-capital-punishment-in-india/>.

¹³ *T.V. Vatheeswaran v. State of Tamil Nadu*, AIR 1983 2 SCC 68

¹⁴ Project 39A — Death Penalty India Report, (Mar. 9, 2013), <https://www.project39a.com/dpir>.

¹⁵ *Jagmohan Singh v. State of U.P.*, AIR 1973 SC 947

denied justice to the innocent.¹⁶

The primary objective should be to prevent future crimes rather than seeking retribution against the accused persons. One of the most important steps that can be taken is rehabilitation of the criminals. This will not only help in reducing crimes but also safeguard the principles of justice and human dignity.

THE INTERNATIONAL SCENARIO

In recent decades, the UN has actively pursued the abolition of death penalty or putting a moratorium on its application. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides that the provisions of the article should not be used to delay or prevent the abolition of capital punishment by any State Party to the Covenant.¹⁷ Currently, more than 70% of the world's countries have abolished capital punishment through legislation or practice. However, the death penalty continues to exist in several regions of the world.¹⁸

Many countries have resorted to imposing the death penalty only in extreme cases. In recent years, majority of executions have occurred in countries such as China, Egypt, Iran, Iraq and Saudi Arabia. According to the data presented by Amnesty International, approximately 40% of the documented executions have been for drug-related offences. Notably, people from disadvantaged backgrounds all over the world are disproportionately impacted.¹⁹

When the United Nations was established in 1945, only eight states had abolished the death penalty for all crimes. By 1977, this number had increased to sixteen, and today, approximately 170 of the UN member states have abolished capital punishment either legally or in practice, according to the Office of the High Commissioner for Human Rights.²⁰ "Evidence strongly suggests that the death penalty has little or no effect on reducing crime," remarked UN Human

¹⁶ Why the Death Penalty should be abolished – International Commission against the Death Penalty, (Mar. 6, 2021), <https://icomdp.org/why-the-death-penalty-should-be-abolished/>.

¹⁷ Death penalty: The International Framework, United Nations, (Last Visited: Sept. 6, 2024), <https://www.ohchr.org/en/topic/death-penalty/international-framework>

¹⁸ International Death Penalty Information Centre (June 23, 2016), <https://deathpenaltyinfo.org/policy-issues/international>.

¹⁹ Amnesty International Global Death Penalty Report: Death Sentences and Executions 2022, Amnesty International, (May 13, 2023), <https://www.amnesty.org.au/amnesty-international-global-death-penalty-report-death-sentences-and-executions-2022/>

²⁰ International efforts to abolish the death penalty, Regjeringen.No (Jan. 24, 2024), https://www.regjeringen.no/en/topics/foreign-affairs/human-rights/ny-struktur/combatt_death_penalty/id2008678/.

Rights Chief, Volker Türk, “in fact, a number of studies have revealed that nations that have abolished the death penalty have seen their murder rates unchanged and, in some cases, decline.”²¹ Therefore, the major argument in support of the death penalty has been challenged and worldwide the disastrous nature of the death penalty is being understood and steps are being taken to completely abolish it and pursue more humane alternatives.

SUGGESTIONS

Although the debate regarding whether death penalty should be completely abolished or exist in a restrictive manner continues to exist even today. The best possible solution to this burning issue shall be to find out a better alternative.

1. The Indian Justice system must strive to improve its methods for ensuring accurate judgments so that a lapse in judgment does not result in wrongful conviction and loss of an innocent's life.
2. Instead of focusing on retributive justice and punishing the criminals based on the severity of the crime, efforts should be made to focus on the rehabilitation and counseling of the convicts. This will not only help in understanding the root cause of such criminal behavior but also help in the reintegration of the criminals into the society.
3. If death penalty is ultimately abolished, other forms of punishments including life imprisonment and rigorous imprisonment can be improved and imposed on convicts who have committed serious offences. These measures can serve as effective alternatives, ensuring that justice is served while avoiding the extreme punishment of capital punishment.
4. Should the death penalty continue to exist, considerable changes should be made in nature of confinement or the reduction of the prolonged waiting period till the execution date without depriving the convict from appealing for mercy petition for a just and fair legal process.

²¹Death penalty incompatible with right to life, United Nations, (Jan. 31, 2024), <https://www.ohchr.org/en/stories/2024/01/death-penalty-incompatible-right-life>

CONCLUSION

UN Human Rights Chief, Volker Türk mentioned “The use of the death penalty is egregious against any human being.” As we advance human rights in the 21st Century, the ongoing debate on the abolition of death penalty has to be brought to a definite resolution. The arguments in favor of maintaining the death penalty include the delivery of justice to the victim’s families and creation of a deterrent effect. However, these are insufficient reasons to excuse the taking away of the life of a human being. The risks of judicial error, creation of financial hardship for the convict’s family or the potential violation of the right to life of the accused state the concerns associated with capital punishment.

When viewed from a broader perspective, it is not mandatory to answer the question whether death penalty should be abolished or not as the primary objective is to punish the perpetrator and ensure justice. It does not necessarily have to be through violent means. In conclusion, the longstanding debate over the abolition or retention of the death penalty can be set aside to address the more pressing concern about finding a suitable alternative punishment that ensures justice while keeping humanitarian and ethical considerations in check.

