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SHOULD CAPITAL PUNISHMENT BE **ABOLISHED OR NOT?**

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INTRODUCTION

Changing times demand change with time. Reformative measure as a corrective institution to reform the inmates is undoubtedly a great step in the field of penology. It is a topic of great concern between penologists that modern time requires inmates to be reformed on one hand while on another capital punishment imposed by the state to the offender is creating obstruction as capital punishment closed each and every door of reformation. It is due to the reason that only a living human can be reformed.

In this article an attempt has been made to understand that “should capital be abolished or not”. To be in a position to critically analyze, we should consider both sides of the coin.

Types of punishment (section 4 of Bharatiya Nyaya Sanhita 2023)

1. Death penalty
2. Life imprisonment
3. Imprisonment (rigorous and simple)

4. Forfeiture of property
5. Fine
6. Community service

Who can award capital punishment in India ?

In India a session court (including court of Additional Session judge), High court And Supreme court has power to award capital punishment to convict, provided Where a sentence of death is awarded by Court of Session (including court of Additional session judge) then such sentence is subject to confirmation by High Court of concerned state.

Mode of Execution

1. Hanging
2. Lethal injections
3. Firing squad
4. Gas chamber
5. Electrocution
6. shooting

Capital punishment should be abolished (Arguments against)

1. An individual who ends somebody's life does not allowed to live in the society. This assertion underscores the belief that those who commit such grave offenses should face commensurate consequences, including the ultimate penalty.
2. The one who had committed such inhumane crime, forfeits his right to life that is those who are responsible for such a serious offense must bead the corresponding consequence, including the loss of their own life.

3. Hanging the convict of death penalty is one the best method to effectively eliminate murderers from the society. Some consider this procedure as the only way to guarantee that people who have committed horrible crimes like murder can never again threaten the public. It acts as a strong deterrent to future potential criminals.
4. It is economical and less expensive to execute a convict than to give them shelter in prison further it will be injustice to the victim and his family if such convict who has killed someone does not get equal pain and sufferings but allowed to get free shelter and food in the same country.
5. Capital punishment prevents overcrowding in the jails that means capital punishment serves to alleviate overcrowding in the prisons. It is a common argument that the death penalty helps reduce jail overpopulation. A decrease in the number of prisoners may result in better living circumstances for those behind the bars.
6. If a convict who had taken ones life is given life imprisonment , it will create danger for other criminals and such convict can take lives of other in jails too.
7. If death penalty is abolished it will encourage the other offenders and there will be nothing to deter the potential criminal from committing the graver offence.
8. The principle of “an eye for an eye” is often invoked in discussions surrounding capital punishment. This concept suggests that punishment for a crime should be proportional to the offense committed. In the context of capital punishment, penologist argues that executing individuals who have taken the life of another is a just and fitting to their actions.

Capital punishment should be abolished (Argument in favor)

1. Only the divine power (God) has right to give birth to someone and hence to take away it . human does not possess any right to take away anybody's life.
2. Capital punishment ends all possible way of transformation and reformation because only the life can be reform and not the death. By putting someone to death, society eliminates any opportunities for them to change for the better or grow personally and atone for their crimes. This punishment guarantees that there are no more opportunities for future atonement, improvement or positive development . thus , the death sentence neglects the basic possibility of human rehabilitation by eliminating any chance that offender will ever make a positive contribution to society.
3. Capital punishment is a killing of human being and all killings are considered wrong hence death sentence is also wrong. The capital punishment is ntrinsically incompatible with the norms that forbid killing . since the death sentences is an example of state sanctioned killing, it follows that it is morally repugnant if we agree with the premise that killing is intrinsically immoral in all circumstances .
4. It may result in Grave injustice to the person wrongly sentenced to death. The irreversible nature of death penalty means that any miscarriage of justice resulting in the wrongful execution of an innocent person represents an egregious violation of the sanctity of life. From this point of view , abolishing death penalty is not only a matter of moral integrity but also a practical necessity to prevent the irrevocable loss of innocent lives.
5. Capital punishment leads to feeling of vengeance which brutalize the society. The act of executing individuals as punishment for their crimes can evoke strong emotions of anger, resentment, and desire for revenge within society.

6. Capital punishment is unjust and often discriminatory to people having weak financial means who cannot afford to properly defend themselves in the court of law .
7. Giving life sentence with maximum security and solitary confinement is far better idea than to execute to death. Imposing a life sentence with the highest levels of security and solitary confinement is a significantly more humane and ethically preferable alternative to carrying out an execution . by adopting for lifelong incarceration under strict conditions, society retains the opportunity to maintain control over the individual, ensuring public safety without resorting to the irreversible act of taking ones life. This strategy not only protects the inalienable right to life but also gives the perpetrator the chance to rehabilitate .
8. Capital punishment is violative of basic human right i.e. right to life and also morally and ethically wrong. An individual's inherent right is directly violated when they are put to death, depriving them of their right to life.

GLOBAL PERSPECTIVE (IN BRIEF)

Death penalty as a punishment has been there in almost every Nation in the globe however with change in time many states either discontinued or abolished the practice. According to a report by Amnesty international (latest and updated – may 2022) worlds leading executioner countries are china, Iran, Egypt, Saudi Arabia and Syria.

There are 112 countries all over the globe that have abolished the death penalty in their respective laws.

As per the death penalty information center, about 70% of the world have abolished the death penalty in law or in practice. While 54 nations still have capital punishment and India is one of them.

The global perspective on the abolition of capital punishment reflects a complex interplay of moral, legal, and practical considerations. While there is a growing consensus towards abolition, challenges persists in addressing concerns about crime rates and justice systems and

navigating cultural and political sensitivities surrounding capital punishment. Ultimately, the pursuit of abolition requires on going dialogue, advocacy, and concerted efforts to uphold principles of human rights, justice and dignity for individuals.

INDIAN PERSPECTIVE

Capital punishment is the highest penalty given to convicts in India, it is awarded in extremely severe cases of Murders , rapes etc. In India life sentence is a rule whereas the death penalty an exception in capital offences. we follow 'rarest of the rare' doctrine while awarding capital punishment as introduced in "Bachchan singh vs state of Punjab 1980" case by the constitution bench of Supreme court, in this case the death penalty is also held constitutionally valid . moreover in the case of "Machhi singh vs state of Punjab 1983" the apex court laid down certain considerations to determine whether a case falls under the category or not.

CONCLUSION

Abolition of Capital punishment remains a debatable and controversial topic globally including in India .there is strong arguments both for and against its implementation, it requires careful considerations of legal, ethical and social implications. In a country like India where deterrence theory of punishment is given too much preference still somehow lacking in deterring potential criminals , it may motivates the potential criminal and there will be nothing to deter such potential criminal from committing graver offence if capital punishment is abolished completely. The law commission of India in its 262 report recommended abolition of death penalty for all crimes except for terrorism and waging war against the government. As per the contemporary time India is not in a position to put complete ban on death penalty and it will be a great decision to maintain status quo and should continue with 'rarest of rare' principle laid down in the landmark supreme court judgment which provides that the death penalty should only be given in a rarest and rare case where the crime is brutal, heinous and shocking to the collective conscience of society , furthermore capital punishment should only be given where alternative punishments are unquestionably inadequate and cause grave injustice to the victim.

REFERENCES

- N.V Pranjape book
- Bharatiya nagrik suraksha sanhita 2023
- Bharatiya nyaya sanhita 2023
- Amnesty international death penalty report
- www.ohchr.org

