



ANALYTICAL EVALUATION ON CAPITAL PUNISHMENT: DEATH PENALTY

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Best Citation - Aniruddh Atul Garg, ANALYTICAL EVALUATION ON CAPITAL PUNISHMENT: DEATH PENALTY, ILE Monthly Review, 1 (3) of 2023, Pg. 01-04, ISBN - 978-81-961828-8-5

ABSTRACT

There is a system of awarding punishment in reaction to every offense committed by the offender. However, Capital Punishment in the form of the Death Penalty is the excessive punishment that may award to any offender in response to his crime for the sake of maintaining Law and Order. In India, the doctrine of "Rarest of Rare" is executed as far as Death Penalty is Concerned. The commutation of the Death Penalty into Life Imprisonment also takes place in India. Whereas, in China, Capital Punishment is still in the practice. According to the data, 1000 implementations of Death sentences are recorded each year in China. UN says, punishing someone by ending his life is not an option. Moreover, it also states that we do not have any authority to judge whether to end their life or not. Instead, it states that there must be a reformatory way that gives the chance for improvement. This paper is aimed to give a deep study based on Death Penalty ranging from its meaning to the provisions based on Death Penalty, which are currently under practice. Furthermore, the take of the Indian Constitution regarding the legitimacy of the Death Penalty, and the community of people who can skip capital punishment are also discussed in the paper.

Keywords. punishment, commutation, death penalty, life imprisonment

I. Introduction

The presence of crime these days is rising so rapidly in the form of serious murders, rapes,

child molestation, etc. Thus, there is an urgent emergence for the application of punishments that may be able to construct prevention in the number of various crimes. The provision of punishments has been introduced to create fear in the mind of people to stop the commencement of the crimes. Its primary objective is to uphold the rule of law. There are various kinds of punishments in the form of fines, and imprisonment. The strict degree of punishment lies with 'Capital Punishment'. Therefore, is applied in the rarest of the rarest circumstances where the crime is extremely heinous which comprises rape, murder, or rape with murder and similar like these. The word 'Capital' emerged from the origin of the Latin word 'Capitalis'. This means concerning the head. Capital Punishment is non-other than the 'Death Penalty'. Whenever the court mentions the Death Penalty in its judgment, it means it is awarding Capital Punishment to the offender in opposition to the crime which has proved to be very heinous against humanity or society as a whole. The origin of the Death Penalty is as older as the advent of the Hindu Community. There is a mention of the Death penalty in the sacred books of Hindus. The application of capital punishment has been used by the Kalidasa in a way that is necessary to introduce to ensure public peace. It is additionally accompanied by mentions of the historical epics that is the Ramayana and Mahabharata. These epics state that it can be exercised by the action of the King to safeguard the interest of the society. Ashoka, in the Buddha period, used to believe that the nature of capital punishment is not



illegitimate. During the tenure of the Mughals, Akbar believed that the allotment of the Death Penalty must be given after a proper and detailed review in reaction to only very serious crimes with no brutality.

II. Provisions regarding the Death Penalty

A. The Indian Penal Code, 1860¹ mandates several noes. of crimes that eventually account for the Death Penalty which are enlisted below.

1. According to Section 121² of the Indian Penal Code, if anyone becomes the reason for waging the war or attempting to do the same in opposition to India would successfully amount to capital punishment of the Death Penalty.

2. If we reach the following Section 302³ of the Indian Penal Code then anyone who is found guilty of committing murder may be subject to the death sentence.

3. Section 305⁴ of the Indian Penal Code talks about the seen in which someone who supported the suicide of an intellectually disabled person or a person possessing the age of fewer than 18 years may grant the Death Penalty as far as punishment is concerned.

4. Cases that relate to the Kidnapping of someone behind any particular purpose mayor to cause death may amount to capital punishment according to the Section 364A⁵ of the Indian Penal Code.

5. The Criminal Law (Amendment) Act of 2013 has inserted several new provisions under the IPC that are linked with the capital punishment of Death Penalty which is as follows.

- According to Section 376A⁶ of the Indian Penal Code, 1860, the death sentence can be exercised in the case if the rape

has resulted in the death or vegetative condition of the victim.

- Section 376E⁷ of the Indian Penal Code of 1860 speaks about repeat rape criminals who may amounts grant capital punishment.
- According to Section 396⁸ of the IPC capital punishment can get exercised if there is a murder followed by dacoity.

B. Under The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989⁹, any of the forging evidence which amounted to the conviction of an innocent person who belongs to the background of a scheduled caste or scheduled tribe would be subjected to the death sentence.

C. Any military official committing offenses under certain military laws such as the Air Force Act, of 1950¹⁰, Navy Act, 1957¹¹, etc may also lead them to the suffering of the Death Penalty.

D. According to The Commission of Sati (Prevention) Act, 1987¹², anyone who is founded to be exercising the illegal practice of Sati through direct or indirect means may immediately get punishment in the form of the Death Penalty.

E. Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985¹³ in Section 31A¹⁴ states that anyone who is found engaged in the practice of manufacturing or selling narcotics or psychoactive substances will strike with the capital punishment of death.

III. What Indian Constitution talks about Capital Punishment?

⁷ Section 376E in The Indian Penal Code

⁸ Section 396 in The Indian Penal Code

⁹ INDIA CODE,

<https://www.indiacode.nic.in/bitstream/123456789/1920/1/a1989-33.pdf> (last visited April 9).

¹⁰ INDIA CODE,

<https://www.indiacode.nic.in/bitstream/123456789/1819/1/AAA195045.pdf> (last visited April 9).

¹¹ INDIA CODE,

<https://www.indiacode.nic.in/bitstream/123456789/1400/1/AAA195762.pdf> (last visited April 9).

¹² INDIA CODE,

<https://www.indiacode.nic.in/bitstream/123456789/1814/2/A1988-03.pdf> (last visited April 9)

¹³ INDIA CODE,

<https://www.indiacode.nic.in/bitstream/123456789/1791/1/A1985-61.pdf> (last visited April 9)

¹⁴ Section 32A in The Narcotic Drugs and Psychotropic Substances Act, 1985

¹ INDIA CODE, <https://www.indiacode.nic.in/bitstream/123456789/2263/1/A1860-45.pdf> (last visited April 9).

² Section 121 in The Indian Penal Code

³ Section 302 in The Indian Penal Code

⁴ Section 305 in The Indian Penal Code

⁵ Section 364A in The Indian Penal Code

⁶ Section 376A in The Indian Penal Code



According to Article 21¹⁵ of the Indian Constitution, none's personal life or liberty would be infringed. But it can't be the strict or absolute right. The state is obliged to exercise even this right for sake of upholding law and order.

In the case of *Maneka Gandhi v. Union Of India*¹⁶, the procedure was not fair and reasonable as the person's liberty was violated by the government with the biasness. Likewise, Capital Punishment by the way of Death Penalty does not impose on all kinds of offenses but on the ones which are extremely dangerous and heinous.

In *Jagmohan Singh v. State of Uttar Pradesh (1973)*¹⁷, the concept of capital punishment was questioned in opposition to Article 21 of the Indian Constitution. Therefore, the five-judge bench of the apex court was held to resolve this and came up with the conclusion that the presence of the death penalty is constitutionally legitimate and does not account for the hindrance of Article 21 of the Indian Constitution. The punishment of Capital Punishment or the death penalty with life imprisonment can only be applicable after a thorough examination of the concerned facts and the degree of crime committed.

In *Rajendra Prasad v. State of Uttar Pradesh*¹⁸, it was disclosed that the death penalty was revealed to infringe on Article 14¹⁹, 19²⁰, 21²¹. Eventually, it was finalized that there would be two basic parameters on the ground on which capital punishment would be granted. Firstly, the particular cause or reason would get recorded whose result is the Death Penalty. The second factor is the extraordinary scene in which the offender would be sentenced to Capital Punishment.

In *Deen Dayal v. Union of India, 1983*²², the procedure of giving the Death Penalty was

challenged as it was viewed as violative of Article 21 due to its cruel color. Gradually, it was concluded that it is the pure fair, and reasonable method for executing the punishment and it does not over limit the boundary of Article 21.

In *Mukesh and Anr. v. State (NCT of Delhi) (2017)*²³, the four offenders who committed the rarest and most heinous crime, and it was found to be very critical for humanity or society. Subsequently, the request was also drawn for the sake of review for the same but it was successfully declined by the Supreme Court.

The case of *Bacchan Singh v. State of Punjab (1980)*²⁴, the doctrine of 'Rarest of the Rare' has emerged. According to the Supreme Court, the death penalty would be awarded on the circumstance which would to revealed to be extraordinary.

IV. Class of Offenders who can be discharged from Capital Punishment

A. The provision of the Death Penalty would not be operative in the case of **Minors**. It means that any person (below 18 years) who has committed any offense which may account for the award of Capital Punishment would not be subject to any such punishment. As the court of law believes that a person below the age of 18 years is immature and can learn to correct the mistakes committed by him earlier by providing him with a nice and healthy environment and quality education. Moreover, there is a particular independent law that is devoted to Minors which is Juvenile Justice Act (2015)²⁵. This act is meant the protection minors and gives them the opportunity for the sake of improvement.

B. The provision of the Death Penalty is also remaining inapplicable in case a **Pregnant woman** founds to be an offender. Section 416²⁶

¹⁵ Article 21 in The Constitution Of India 1949

¹⁶ 1978 AIR 597, 1978 SCR (2) 621

¹⁷ 1973 AIR 947, 1973 SCR (2) 541

¹⁸ *Rajendra Singh vs State Of U.P. & Anr* on 6 August, 2007

¹⁹ Article 14 in The Constitution Of India 1949

²⁰ Article 19 in The Constitution Of India 1949

²¹ Article 21 in The Constitution Of India 1949

²² 1983 AIR 1155, 1984 SCR (1) 1

²³ *Mukesh & Anr vs State For Nct Of Delhi & Ors* on 5 May 2017

²⁴ (1982) 3 SCC 24, 1983 1 SCR 145 a

²⁵ INDIA CODE,

<https://www.indiacode.nic.in/bitstream/123456789/2148/1/a2016-2.pdf> (last visited April 10).

²⁶ Section 416 in The Code Of Criminal Procedure, 1973



of the CRPC states that if this is the knowledge of the High Court that a Pregnant Woman is subjected to the capital punishment of the Death Sentence then such punishment either got transformed into Life Imprisonment or got postponed to some other date. This is done to protect the life of a child who is within the womb of a woman. It's obvious that a child has not committed any offense, so he has full freedom to live his life with dignity.

C. The third category of offenders who gets protection from capital punishment is the class of **Intellectually Disabled** people. The Court believes that the death penalty can't get imposed on such a community of people as they are unaware of the laws. They do not know that they have committed any offense which has subjected them to the suffering of the death sentence. They have lost their intellectual capacity which is the cause of their safeguard from Capital Punishment. As a result, these people are out of the list who are not supposed to suffer the death penalty.

V. Conclusion

Due to the vastness prevailing in India, the frequency of Crime has been rising very rapidly. To decline such gain, the provision of the punishment allotment is introduced in India. This means that in response to any offense committed by any offender, its respective punishment according to its degree would be awarded to him. The Death Penalty is one of the Capital punishments which is sentenced in extremely rare cases or crimes. It is awarded in the case there is any heinous crime is there in the picture observed by the court. There are several issues or questions raised regarding the validity of Capital Punishment. Many people residing in different parts also have talked about the same. There are very few countries that believe in the legality of capital punishment. Whereas, the maximum countries do not apply this in their punishments. The favor of capital punishment speaks that it is rational in its legitimacy as it provides justice to the victims and their families. But the defense says

that the concept of the death penalty is found to be very biased and accounts for the hindrance of the human rights. It can be stated that the provision of the death penalty is a large controversial issue and a matter of moral and political debate.

VI. Reference

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