

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

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A Study of Constitutional Validity of Capital Punishment in India

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ABSTRACT

The same premise—that wrongdoing must be punished—underlies all punishments. The majority of religious and moral systems preach that bad actions have bad results. To stop others from committing wrongdoing is the primary goal of punishment for offenders. Its severity and irreversibility make its justice, appropriateness, and effectiveness more debatable than those of other penalties. Supporters of the death penalty regard it as a potent deterrent to crime. They emphasise the use of the death penalty as a deterrent or as a tool to prevent or punish crime. They think it provides the most justice for those who were victims of horrific atrocities. In India, the execution of death row inmates has altered over time. When it came to the offences for which it was used, the death penalty was more frequently and harshly enforced in the past. For instance, in the 1950s and 1960s, the death penalty was applied to a variety of crimes, such as rape, attempted murder, and drug-related offences. However, since the 1990s, the death penalty has been reserved for the most heinous crimes and is no longer applied as regularly. For instance, in India there were only 8 executions in 2010 compared to 151 in 1995. Conflict has long surrounded the death penalty, not just in India but also in a number of developed nations. In its Charter of Rights, the United Nations proclaims the death penalty to be a crime against humanity and urges all of its member states to do away with it.

Keywords: Justice, Death Penalty, Punishment.

I. INTRODUCTION

An act or omission that the state believes necessary to suppress in the public interest if its repetition would be damaging is referred to as a crime. Different human civilizations have responded to crimes in different ways, and at this time, different cultures are responding in diverse ways. One of the oldest methods for controlling crime is Punishment, there have been various forms of Punishment which has evolved from time to time, in some societies it may be severe and swift while in others it may be not but it is widely accepted by people without any opposition. In the past, there was no formal law or order governing crimes, and the King had a great deal of control over the severity of the punishment. Modern notions of punishment evolved

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over time, and we voluntarily submitted our rights and powers to the state. In the modern period, punishment options include the death penalty, life in jail, solitary confinement, severe confinement, and confiscation of fines and property. Capital Punishment, also known as the death penalty, is the harshest type of punishment. A person who has committed a specific offence that is against the law is subject to the capital punishment, which involves their legal execution. There are basically five theories of Punishment on the basis court awards the punishment and Criminals are punished these are called as theories Of Punishment and are basically of five types such as,

- Deterrent theory
- Reformatory theory
- Preventive theory
- Retributive theory
- Expiration theory

Since the death penalty is often regarded as a violation of human rights, it is one of the topics that receives the most discussion at the UN. In the case of *Rajendra Prasad v. State of U.P.*, Justice V.R. Krishna Iyer further said that “the special reason must relate, not to the crime But to the criminal.” Despite the horrible nature of the act, the perpetrator may not be deserving of the death penalty. The death penalty for all crimes has been abolished in a number of countries. However, the death penalty is still used in India, the United States, Saudi Arabia, and the United Kingdom. China is the nation where executions are carried out the majority of the time (about 60%), whereas in India they are only carried out in extremely rare circumstances. In present time there are two sections of people some of them think that awarding death penalty is justified whereas another section believes that killing someone in the name of law does not amount to justice

(A) Research Methodology

This paper is of descriptive nature and research is based on secondary sources for deep analysis on constitutionality of capital Punishment. Secondary sources include newspaper, journals, and websites.

(B) Review Of Literature

“We are all the creation of God. I am not sure A human system created by a human being

Competent to take away a life based on artificial And created evidence”. ~A.P.J. Abdul Kalam²

A close examination of the debates in the Legislative Assembly of British India reveals that until 1931, when one of the members from Bihar, Shri Gaya Prasad Singh, attempted to introduce a Bill to abolish the Punishment of death for offences under the Indian Penal Code, no topic regarding the death penalty was brought up in the Assembly. The motion was, however, rejected after the then-Home Minister responded. Prior to India’s independence, the government’s position on the death penalty was made clear twice in 1946 during Legislative Assembly debates by the then-Home Minister, Sir John Thorne: “The Government does not think it wise To abolish capital punishment for any type of crime for which that punishment is currently in place.” At Independence, India retained several laws put in place by the British Colonial Government which include the Code Of Criminal Procedure 1898 and The Indian Penal Code 1860³

1. Waging war against the state (Sec 121)
2. Abetment of mutiny (Sec 132)
3. Giving or fabricating false evidence leading to procure one’s conviction (Sec 194)
4. Murder (Sec 302)
5. Abetment of suicide committed by a child or insane (Sec 305)
6. Attempt to murder by life-convict, if hurt is caused (Sec 307)
7. Kidnapping for ransom etc. (Sec 364A)
8. Dacoity with murder (Sec 396)

Although these offences are subject to the death penalty, there are also other possible punishments, such as harsh imprisonment, thus the court is not required to impose the death penalty. Also in India, the decision to execute a person is made using the “rarest of rare test” theory, which was established in the case of *Bacchan Singh v. State of Punjab*. Additionally, in *Macchi Singh & Others V. State of Punjab*, a three-judge court confirmed the judgement in *Bacchan Singh’s* case and ruled that the community will have the right to the death punishment if it so desires and the following conditions are met:

- When a murder is carried out in a way that is incredibly gruesome, repulsive, or

² 11th President of India from 2002 to 2007

[https://amity.edu/UserFiles/aibs/3fc0Article-XII%20\(Page%2088-92\).pdf](https://amity.edu/UserFiles/aibs/3fc0Article-XII%20(Page%2088-92).pdf)

³Lok Sabha Secretariat,Capital Punishment In India, 27, 3 (October 2015) https://loksabhadocs.nic.in/Refinpu/New_Reference_Notes/English/CAPITAL_PUNISHMENT_IN_INDIA.pdf

diabolical in order to provoke the community's intense and extreme outrage.

- When a Scheduled Caste member is murdered in a way that incites social unrest.
- When the scale of the crime is huge.
- When a murder victim is-
 - A defenceless kid
 - A weak woman or a person who has been unaidedly rendered by an old age or illness.
 - When the wounded party is a person on whose authority or reliance the slaughterer is based.
 - When a public figure is hurt and a murder is done for a political or similar motive rather than for a personal one

262nd Law Commission Report, 2015:-

In order to protect national security, the Law Commission of India proposed in its 262nd Report (August 2015) that the death penalty be repealed for all crimes other than those related to terrorism. The Commission indicated in its earlier report from 1967 that India could not take the risk of abolishing the death sentence, but in 2015 it came to the conclusion that the time has come for India to do so for the following reasons:

- 1.) Times have changed.
- 2.) It's not a Deterrent.
- 3.) India's justice system is flawed.

Rate of Execution And Commutation In India

Although there is concept of Death penalty in India but only 8 criminals are executed till date from year 1998. In past 20 years 3571 death sentences were commuted to life imprisonment. The ones who are hung till death are-

- Dhananjay Chatterjee (14 August 2004)
- Mohd. Ajmal Amir Kasab (21 November 2012)
- Afzal Guru (9 February 2013)
- Yakub Memon (30 July 2015)
- Nirbhya gang rape convicts (20 March 2020)

Capital Punishment Commutation

The Governor of any State and the President of India are empowered by the Indian Constitution's Articles 161 and 72 to grant pardons, reprieves, respites, or remissions of punishment as well as to suspend, remit, or commute the sentence of anyone found guilty of any crime.

- All instances in which the punishment or sentence is imposed by a Court Martial;
- All situations in which the punishment or sentence is imposed for a violation of any law pertaining to a subject over which the Executive power of the Union or State extends;
- In every situation when a death verdict has been rendered.

Execution Procedure In India:

Once the death sentence has been issued A High Court must confirm the decision made by a sessions (trial) court in order to complete it. A Special Leave Petition (SLP) under Article 136 of the Constitution may be filed in the Supreme Court after being confirmed by the High Court. The Supreme Court decides whether or not the special leave petition merits being heard as an appeal by using its authority under Article 136. In two cases—Babasaheb Maruti Kamble v. State of Maharashtra⁴, November 2018, and Jeetu v. State Of Madhya Pradesh & Others⁵, July 2020—it was decided to buck an earlier trend of dismissing Special Leave Petitions (SLPs) involving the death penalty in limine (dismissal of Special Leave Petition at the threshold without giving any detailed reasons) that practise.

Review and Reopening of a Review:

According to Article 137 of the Constitution, a petition asking the Supreme Court to review a decision or order it has made may be filed before the court within thirty days of the decision or order's date. According to the Supreme Court's ruling in Mohd Arif or Ashfaq v. The Registrar, Supreme Court of India & Ors⁶, September 2014, review petitions for cases involving the death penalty should be heard in open court; however, the oral hearing would be limited to 30 minutes. Such a process would be impartial and just. Three judges would sit on a bench to hear the cases, and the unusual method would be used in all instances of death sentences where the appeal had been denied but the punishment hadn't yet been carried out.

Curative Petition:

Following the dismissal of the review petition, the Supreme Court decided in Rupa Ashok

⁴ Babasaheb Maruti Kamble vs. The state Of Maharashtra(2019) 13 SCC 631

⁵ Jitendra vs. State of Madhya Pradesh(2009) (2) MPHT 479

⁶ Mohd Arif or Ashfaq v. The Registrar,(2019) 9 SCC 404

Hurrah v. Ashok Hurrah & Ors.⁷ April 2002, that if it is proven that there was a violation of the natural justice principles or suspicion of bias on the part of a judge, the Supreme Court may grant a curative petition to reconsider its decision. In the aforementioned case, the Supreme Court ruled that it could employ its inherent authority to revisit its decisions in order to prevent abuse of its process and correct grave injustices. If available, the same bench that ruled the review petition would hear the curative petition, or the three senior-most judges of the Supreme Court.

Mercy

The President of India and the Governor are authorised to grant pardons and, in certain circumstances, to suspend, remit, or commute sentences under Articles 72 and 161 of the Constitution. A three-judge Supreme Court panel rendered a historic ruling on the death penalty in the case of Shatrughan Chauhan v. Union of India⁸ in January 2014. They held, in particular, that an excessive delay in carrying out the death sentence was a crucial mitigating factor in a plea for commutation. Triveniben V. State of Gujarat & Ors,⁹ February 1989, which also decided that the Court may evaluate whether there was an excessively long delay in deciding the mercy petition, if the State engaged in dilatory behaviour, and whether the delay was reasonable.

Death warrant

The “death warrant” or “black warrant” form is found in Form No. 42 of the Second Schedule of the Code of Criminal Procedure, 1973, which is used when the death penalty is imposed. The warrant is addressed to the superintendent of the appropriate jail, who must return it to the court once he or she has confirmed that the death sentence has been carried out. If a sessions court issues a death warrant before the end of the judicial and administrative process, it would amount to a serious violation of the law as laid down by the Supreme Court in Shabnam v. Union of India¹⁰, which affirmed the guidelines laid down by the Allahabad High Court in PUDR v. Union of India, January 2015.

II. CONSTITUTIONAL VALIDITY OF CAPITAL PUNISHMENT

India is one of the 78 retentionist countries which have retained death penalty on the ground that it will be awarded only in the ‘rarest of rare cases’ and for ‘special reasons’. Although

⁷ Rupa Hurra vs. Ashok Hurra,(2002) 4 SCC 388

⁸ Shatrughan Chauhan v. Union of India(2014) 3 SCC 1

⁹ Triveniben V. State of Gujarat & Ors (1989) 1 SCC 678

¹⁰ Shabnam v. Union of India,(2014)SCC 1281

neither the legislation nor the Supreme Court has clarified what the “rarest of rare cases” or “special reasons” are. Every person is guaranteed a fundamental right to life under the Indian constitution, subject to its infringement through a legal process. In addition, Article 14 of the Constitution stipulates that everyone is entitled to “equality before the law and equal protection of the laws,” which means that discrimination against anybody is prohibited unless it is necessary to achieve equality. The five-judge Supreme Court bench affirmed the constitutionality of the death penalty in *Jagmohan Singh v. State of Uttar Pradesh*¹¹, ruling unanimously that it did not violate Articles 14, 19, or 21. The legitimacy of the death sentence in this instance was contested on the grounds that it contravened Articles 19 and 21 because no procedure was provided. It was argued that the process outlined by Cr. P.C. was limited to finding guilt alone and did not include the imposition of a death sentence. The Supreme Court ruled that the legal process is followed while deciding whether to execute someone. It was noted that the judge decides between a death sentence and a life sentence based on the circumstances, facts, and type of crime that were presented during the trial. Justice Krishna Iyer empathically emphasised in another case, *Rajendra Prasad v. State of Punjab*¹², that the death sentence is in violation of articles 14, 19, and 21. He added that in order to apply the death penalty, the following two conditions must be met:

- The unique reason for imposing the death penalty in a case must be recorded;
- The death penalty must only be imposed in extreme circumstances.

In *Bachan Singh v. State of Punjab*¹³, the issue was once again raised, and the five-judge bench of the Supreme Court reversed its earlier ruling in *Rajendra Prasad* by a vote of 4 to 1 (Bhagwati J. Dissenting). Because the “public order” contemplated by clauses (2) to (4) of Article 19 is different from “law and order,” it was expressed that the death penalty, as an alternative punishment for murder, is not unreasonable and, therefore, is not in violation of articles 14, 19, and 21 of the Indian Constitution. It also enunciated the principle of awarding the death penalty only in the “rarest of rare cases.” The death sentence is not only unlawful because it violates Articles 14 and 21, but it is also undesirable from a number of perspectives, Bhagwati J. Wrote in his dissenting opinion In *Mithu v. State of Punjab*, S. 303 of the IPC was declared invalid as a violation of Articles 21 and 14 of the Indian Constitution because the offence covered by the section could only be punished by the death penalty and did not grant the judiciary the discretionary power to make other sentences, leading to an unfair, unjust, and unreasonable

¹¹ *Jagmohan Singh v. State of Uttar Pradesh*(1973)1 SCC 20

¹² *Rajendra Prasad v. State of Punjab*(1973) 3 SCC 727

¹³ *Bachan Singh v. State of Punjab*(1979) 1 SCC 727

process that would have resulted in the deprivation of a person's life. In conclusion, it is evident from a study of the aforementioned case laws that the death penalty is still widely used in India, despite the fact that several legislative attempts to do so have failed. This is demonstrated by the recent case of Ajmal Amir Kasab, who was executed in 2012.

III. SUGGESTIONS AND CONCLUSION

The Death penalty also called as capital punishment has been used in India since Ancient times so as to punish the criminals over the period of time global opposition has been grown against it whereas several nations have abolished the capital punishment as well even the law commission of India also recommended to abolish the death penalty in its 262nd Report with some exceptions therefore at this point it can be observed that putting blanket ban on capital punishment would be harmful for India only as it is given in the rarest of the rare cases only such as hanging of Nirbhaya rape culprits, Ajmal Kasab of other people who were executed can be justified. It can be said that if death penalty will be completely abolished state won't be able to take the necessary actions when rarest of the rare case will arise.
