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Capital Punishment in India: Constitutional Validity

NAFIZ NASRIN¹

ABSTRACT

The Capital Punishment also known as the Death Penalty. It's a prosecution of a person condemned to death after being condemned of a felonious offence by a Court law. Capital discipline is considered the gravest type of discipline, and it's handed to those who have committed the type of crime that is heinous and against humanity. Capital disciplines are different amongst countries, but one common thing is that it means a judgment to death. There are colourful arguments between individuals regarding the actuality of the Death penalty. According to some people, manslayers hang the safety and weal of society only by putting manslayers to death can ensure the safety of society and also believe that capital discipline is one similar practice the society should support that will bring about a balance of good over wrong also capital Justice icing that everyone is treated inversely It's veritably important that the society put discipline on culprits equal not lower also what the innocent victims and family have suffered, and a miscreant should get what they earn and should suffer for their wrong. On the other hand, according to some people, the Death Penalty is unjust because it eventually inflicted innocent people also, the Death Penalty violates the Right to Life, which is granted by the Constitution Of India. This composition highlights whether Capital discipline violates the Right to Life under Composition 21 of the Indian constitution and also is there any necessity to live the Death Penalty for the betterment of society or whether the Death Penalty should abolish by the law.

Keywords: Capital Punishment, Criminal Offence, Right to life, Constitution, Article 21.

I. INTRODUCTION

Capital Punishment is also known as Death Penalty. The term capital is deduced from the Latin word 'Capitalis', which means concerning the head. The Death Penalty it's the applicable penalty for the must-have obvious, severe and contemptuous acts against humanity. The motive behind assessing Death Penalty is to discourage others from committing wrongs by sanctioning corrections. In India, substantially, two types of systems are used or followed for assessing capital discipline those are Hanging or shooting. According to the law of felonious procedure (CRPC) 1973, the death penalty may be administered by hanging the defendant by his neck

¹ Author is a student at Amity University, Kolkata, India.

until he passes down. The firing system is set down in the laws governing military discipline. Section 354(3) of CRPC (law of felonious procedure) provides a system for executing the Death penalty. There are different Opinions regarding the death penalty in India; some favour the retention of the discipline, while others are of in the opinion that it violates indigenous rights; according to them, the procedure of law isn't fair or just and therefore, it's a clear violation of Composition 21 of Indian Constitution also Death Penalty is considered to be a violation of the abecedarian mortal rights thus it should be abolished. The Death Penalty which is awarded by the court in veritably rare and exceptional cases.

II. HISTORY OF DEATH PENALTY IN INDIA

The Capital discipline is also known as the Death Penalty. It's a prosecution of a person condemned to death after being condemned of a felonious offence by a Court law. Capital discipline is considered the gravest type of discipline, and it's handed to those who have committed the type of crime that is heinous and against humanity. Capital discipline are different amongst countries, but one common thing is that it means a judgment to death. There are colourful arguments between individuals regarding the actuality of the Death penalty. According to some people, manslayers hang the safety and weal of society. Only by putting manslayers to death can we ensure the safety of society and also believe that capital discipline is one similar practice the society should support that will bring about a balance of good over wrong. also, capital Justice icing that everyone is treated inversely. It's veritably important that society put discipline on culprits equal, not lower also what the innocent victims and families have suffered, and a miscreant should get what they earn and should suffer for their wrongs. On the other hand, according to some people, the Death Penalty is unjust because it eventually inflicted innocent people. also, the Death Penalty violates the Right to Life, which is granted by the Constitution Of India. This composition highlights whether Capital discipline violates the Right to Life under Composition 21 of the Indian constitution and also whether there is any necessity to live the Death Penalty for the betterment of society or whether the Death Penalty should abolish by the law.

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procedure(CRPC) 1973, the death penalty may be administered by hanging the defendant by his neck until he passes down. The firing system is set down in the laws governing military discipline. Section 354(3) of CRPC(law of felonious procedure) provides a system for executing the Death penalty. There are different Opinions regarding the death penalty in India; some favour the retention of the discipline, while others are of in the opinion that it violates indigenous rights; according to them, the procedure of law isn't fair or just and therefore, it's a clear violation of Composition 21 of Indian Constitution also Death Penalty is considered to be a violation of the abecedarian mortal rights thus it should be abolished. The Death Penalty which is awarded by the court in veritably rare and exceptional cases.

If you talk about the Death Penalty, we need to look into the history of the Death penalty in India. The history of the Death penalty is divided into four orders. Death Penalty under Hindu Law Death penalty cases are as old as the Hindu community; in Hindu law, Death wasn't considered barbaric. discipline has been an integral part of society, and the necessity of the Death penalty has been beautifully demonstrated by Kalidas. Also, the Death penalty was mentioned in the period of literal and Mythological epics like Ramayana and Mahabharata. Ramayana and Mahabharata have also asserted the need for Death Penalty by stating that it's a king's loftiest duty to keep a Society safe from threats and all kinds of crimes. Indeed the Buddha period where Ashoka didn't suppose that Death Penalty was unjust. Kautilya also banded the Death penalty in his jottings. In his view Death penalty or Death discipline is an essential tool for icing Public Safety. Death penalty under Muslim Law Islam is governed by Sharia law, which was developed from the Holi Qur'an and the sunnah (Hadith). In Holi, Qur'an denies the authority to take mortal life. In Sharia law, it was stated that the Holi Qur'an permits the taking of life by authorities other than Allah through the Process of law and Justice. Crime mentioned according to Sharia law is – Had Crimes – The crime that affected the community were appertained to as Had those crimes are murder, theft, consumption of alcohol, bloodshed, apostasy and rebellion. Tazar Crimes – The alternate order of similar offences are those for which a tazeer or a felonious offence has been committed. These crimes include tried infidelity, false evidence, and profanity. Oisas Crimes – It's considered as a social crime. The crime which is defended by Qisas included purposeful or lawless murder, attempted purposeful murder or accidental murder. This crime is punishable by Qisas. Death Penalty Under the Mughal Empire In the Mughal conglomerate, the Quranic laws were primarily followed in their administration. While assessing arbitrary discipline, judges considered Quranic principles for the discipline. In Akbar's view, according to him Death Penalty should only be put after thorough consideration and should only apply to serious offences. Jahangir and Aurangzeb's laws were also analogous

to Akbar; they believe that the prosecution of the Death Penalty involved brutal ways like tossing the internee in the hot sun or nailing the captures in the walls. Death Penalty in pre and post-Independence Period Shri Gaga Prasad Singh, a member of Bihar, introduced or tried to introduce a bill regarding the invalidation of the Death Penalty for crimes under the Indian Penal Code, from the the issue of the Death penalty came into a highlight. Before independence, also Home Minister Sir John Thorne made clear the government's position on the Death Penalty in British India and espoused colourful laws and regulations regarding the Death penalty, including the Indian Penal Law 1860 and the Law of felonious procedure 1898.

III. LAWS THAT GOVERN DEATH PENALTY IN INDIA

The Indian Penal Code 1860 The Indian Penal Code Contains colorful crimes that include the Death penalty. In IPC (Indian Penal Code) there are colorful section that talks about crimes which beget Death Penalty. Those are bandied below –

Section 121 – According to this section waging war against a country is a crime that defined under section 121 of IPC(Indian Penal Code) any person who attempts to wage war against India the person may be doomed to Death.

Section 132 – This section defines abatement of Mutiny, any person who abets in the Commission or a insurgency officer, solder or airman in the army cortege or air force of the government of India, so Mutiny Will committed and it can lead to Death Penalty or Death discipline. Section 194 – this section dealt with the list of crimes Punishable by death. According to this section fabricating substantiation punishable by the death penalty if it's done to gain conviction for a crime. A person who commit this crime can face Death discipline.

Section 302 – According to this section a person who commits Murder this section put Death penalty.

Section 305 – This section put Death penalty for supporting or aiding a person who's under the age of 18 or a minor or an intellectually impaired person in committing self-murder. Following section were added in IPC by Criminal Law(Amendment) Act of 2013 for which a court may put Death Penalty.

Those Section's are Section 376A – This section put Death Penalty for rape. Section 376E – This section put death penalty for committing repeated rape.

IV. CONSTITUTION VALIDITY OF CAPITAL PUNISHMENT

Before agitating the indigenious validity of Capital discipline first we need talk about the abecedarian rights which is handed by the constitution of India. The Constitution of India

guarantees to every person a abecedarian right to life subject It's privation by the procedure established by law. Composition 21 of the Indian constitution guarantees the abecedarian right and particular Liberty. The question arises that while this composition guarantees right to life and particular liberty to any citizen is it absolute? the answer is no because, the state to take down or limit indeed this right for maintaining law and order. farther Composition 14 of the Indian Constitution declares “ equivalency before law and equal protection of the laws ”, which means that no person shall be discriminate against unless the demarcation is needed to achieve equivalency. Since the establishment of Indian constitution number of challenges to the constitution of Death penalty arisen through supreme court solicitation. The first challenge to the Death Penalty came in the time 1973 with the case Jagmohan Singh vs State Of Uttar Pradesh, in this case it was challenged Composition of the Indian constitution. It was claim that judges retain the arbitrary power to put Death Penalty also it was claim that the Death Penalty annihilated all In this case the validity of Death Penalty was challenged on the ground that the Death doomed violates Composition 19 and 21, because it didn't give any procedure. The Supreme court held that the Death judgment done according with the procedure which was established by law. It was observed that the judges make the decision grounded on the data, nature and circumstances of the case during the trial. Another Important case from which the coming development of Capital discipline regulation established in the notorious case Maneka Gandhi vs Union Of India, in this case two essential point stressed, first, that not all abecedarian right are distinct from one another. Second, the procedure must be fair, reasonable and devoid of any introductory because it takes down Persons life so the procedure must be fair there shouldn't be any unjust to any person. Death Penalty was always being challenged by different perspective, the issue of capital discipline has long been batted and bandied by our lawmakers, despite of debate and disagreement Indian lawmakers have yet to reach a firm decision whether the death penalty should be retained or abolished. India take corrective approach of discipline, they suppose that changing a felonious gets is the most important and effective approach towards society it's a better way to deal with the crime

V. CASE LAW RELATING TO DEATH PENALTY

1. Mohamad Ajmal Amir kasab vs state of Maharashtra 2012

This case also known as Mumbai attack case, in this case kasab and nine other terrorists carried out a number of well planned bombing and firing attacks throughout the megacity. Ajmal Kasab was a member of Lashkar- e- Taiba Mumbai attack in 2008 was a series of heinous attacks in major places of Mumbai especially CST road station Mumbai, the Leopold café, the Taj hostel, Oberoi trident hostel and the Nariman House. The terrorists

attack at CST station, which was carried out by Ajmal Kasab, 58 people Dead and over 100 Injured. Kasab who was the only survivor of the group that carried out wide desolation throughout Mumbai, killing 166 people. also he was taken into trust, interrogation and charged with other 86 offences including murder and waging war on India. Kasab's attorneys argued that the claim against kasab was false. In March 2009 trial began for him, and in May 2010 kasab entered the Death judgment from a special court. Despite kasab's attorney contending for mercy and claiming that his customer had been brainwashed by terrorist group and could be recuperation. In February 2011 Mumbai high court rejected the appealed in July 2011. Kasab appealed the Death judgment to the Supreme Court. Ajmal Kasab on 21 st November 2012 at 7.30 AM he was hanged to death at pune's yerwada jail.

2. Yakub Memon vs state of Maharashtra 2013

In this case yakub Memon was charged with taking part in Bombay blast case, which was organized by Dawood Ibrahim and Tiger Memon, yakub Memon was arrested on august 5,1994 at the new Delhi Railway Station. Yekub memon set up lowered of murder, abetting terrorist exertion, and lawless conspiracy to commit terrorist acts. The Trial Court doomed him to Death under the Terrorist and disintegrated Conditioning Act 1987. Momen request modification to the Supreme Court the Death judgment for Momen was upheld by the Supreme court. Momen submitted a restorative solicitation to the Supreme Court, the same rejected and also he requested a stay of prosecution though a mercy solicitation, which the governor of Maharashtra rejected. On July 2015 yakub Memon was executed Nagpur central Jail.

VI. POPULAR INCIDENTS OF DEATH PENALTY

Mohammad Ajmal Amir Qasab, who convicted Mumbai terror attack in the year of 2008. He was sentenced to Death and was hanged on 21st November 2012. Yekub Memon convicted Mumbai Blasts in the year 1993. He was sentenced to Death and was hanged on 30th July 2015. The famous Nirbhaya case, in Nirbhaya case there were four convicts – pawan Gupta, vinay sharma, Akshay Kumar, and Mukesh Kumar were hanged to Death in Delhi's Tihar jail in the year 2020.

VII. CONCLUSION

The Death penalty has been most common for crimes that violate the law; in fact, there was no conception of serious crime that would warrant the Death penalty. It's the present that the

conception of 'rarest of rare cases', 'serious crimes', and 'grievous crime' are taken into consideration before assessing the death penalty. The death penalty is always a batted content; for those who support the Death penalty or are in favour of capital discipline, the Death penalty should be given for the most serious, heinous and rarest of rare crimes. On the other hand, those who are against capital discipline, they're arguing on religious, moral and ethical grounds, and according to them, it's an inhuman and callous investment; also Death penalty should be replaced by life imprisonment; they claim that capital discipline violates the right to life and is unnaturally inhuman and demeaning. Sympathizers of capital discipline believe that the trouble of imprisonment isn't sufficient for those who commit heinous crimes. Numerous countries have abolished capital discipline by stating that it's barbaric and inhuman in nature, and according to them, it violates the right to life and liberty given to every citizen of the country. Still, capital discipline, indeed its brutal nature, is effective in reducing felonious offences. However, heinous crimes against an individual or the country at large, If we're talking about the right to life, we need to keep in mind that the right to life isn't an absolute right in the case of a condemned felon who was charged with some serious.

My point of view on this content, capital discipline is naturally valid and reasonable-handed. It's given in cases of grievous and extreme nature. Indeed though it's hard to determine in terms of crime which crime earn capital discipline, still crime like rape, terrorism and murder should always be awarded capital discipline because these crimes are heinous in nature and trouble to society. In India, Capital discipline is only ever issued in the rarest of rare cases; thus, rescinding the death penalty would put the nation at a lesser threat because the state should be unfit to take necessary steps or action when the rarest of rare cases arise.
