

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 3**

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**2021**

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# Death Penalty as a Punishment for Heinous Crimes

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## ABSTRACT

*The punishment of the death which is interchangeably called as a capital punishment has been there in the human society for ages now. In the earlier or even medieval times most kings and monarchies had the tradition of death penalty as a capital punishment. In a lot of these cases the king would himself escort, flag or even drop the sword in order to embark justice. The times changed and the methods somewhat started to differ but the concept of this still remained potent. There are few questions that have been raised over the time on the application of the death penalty. But no society has ever sought the clear definition so as to clearly draw lines where the reasoning of the death punishment or the capital punishment was robust enough. In most of the regimes the criminal act and intentions was definitive of whether the jury would pass an execution sentence or not. In other regimes it was not only the sole duty of the jury to pass such a sentence, other stakeholders empowered by law could actually pass such a thing. One example of such process would be the Islamic law. In the Islamic law it is provisioned that the punishment of the act such as murder would not be passed by the jury or even a judge. The Islamic law demotivates and tries to control the death penalty but in the case of murder or any grave crime, the family of the victim would have onus to pass a death sentence. This is looked as a compensation for their loss.*

*In the research the aim would be to understand, critically analyse and explain the dynamics of the death penalty for heinous crimes. It would be imperative to look at the moral, the utilitarian and the critical view of the same. During research it would be useful to further understand the history of death penalty across the globe and look at the current frameworks and provisions in death penalties. Another important aspect to look at the research would be to understand the definition and critical grounds for the heinous acts. Then some landmark cases would be looked upon in the Indian contexts and the critical analysis of the utilitarian use of all will be done accordingly.*

**Keywords:** *Death penalty, punishment, heinous crimes.*

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## **I. INTRODUCTION**

The term death penalty, which is also known as capital punishment, can be defined as delivering good on the sentenced verdict which charges the guilty to death post to the conviction by court on grounds of a criminal offense based on a defined law. Death penalty must be distinguished from capital punishment or any other form of punishment which may be carried out without the due diligence of law and legal framework. The term capital punishment usually is used as an interchangeable factor with death penalty, though the interpretation of one doesn't necessarily include the other. Different law and legal frameworks around the world sought different definitions as per the regions' loci of intellect.

### **(A) History of Death Penalty across the World**

Death penalty for murder, arson, treason & rape was predominantly used in medieval Greek laws under the frameworks given by Draco in 7th century BCE era, although the infamous Plato always had argued the basis of the concept and had also proclaimed that it must be only used exclusively for the absolute incorrigible cases. Roman Empire used death penalty for broad category of offense, even the citizen was excluded from the its severity for small period of time in the era of republic.

The history of the death penalty factor is a proof itself that the concept has been derived from the perspective of the holy books and the normalisation of the same was done by the society which sought its learnings from the same set of religious texts. While the religious texts are different throughout the world, the nature severity and context of the region where the religion was born had a lot to do with the text and then the further generations followed suit as per the religious texts. This can be broadly exemplified by explaining the contexts through the eyes of religion.

The followers of the religion of Christianity claims to have found the justifications for death penalties in its religious texts which explains the only sensible punishment for the crime of shedding the blood of innocent was to give the convict the punishment of death to purify thee nature of the society. But still death penalty was applied to many crimes that did not involve the act of unlawful murder, such as blasphemy & adultery. The very ancient & very pious principle according to Lex talionis was and it is quoted that "an eye for an eye, a tooth for a tooth, a life for a life" this Babylonian code was made a societal norm in for of a code and was usually used in many a society to make sure that death penalty wasn't used disproportionately.

If it is noted that its uncertain to absolutely pin point but the Heian period in Japanese provinces although were extremely peaceful but had a social and moral decree that it was customary for

the emperor to execute the or to commute every death sentence. In the light of the Islamic law the death penalty is not described as a mandatory obligation in the crime's life theft, murder, arson and damage of property. In the specific case of killing though. The onus of the decision lies with the family of victim. If the victim's family calls for death penalty. Then death penalty is given to the guilty.

Death penalty usually formed a quite a large number of offenses in the regions of United Kingdom during time of late seventeenth and throughout the eighteenth centuries, the application of the same was not as wide as the purgative jurisdiction of the law was. In fact, in a number of countries where a number of convicts who committed crimes worthy of the capital punishment used to escape the capital punishments, usually the jury wouldn't find them guilty or in a number of cases they were pardoned, most usually they accepted certain conditions like agreeing to banishment. A lot of them would get a sentence that would reduce the punishment. And then they would be transported America and then maybe later to Australia. During the Middle Ages, it would be widely possible for the guilty of death penalty to get benefits of clerical departments. Through this some of whom who can prove self to be such as an ordained priest in coherence with being secular clerk, those who gave their lines in divine services were to be set free. Although it was within judge's jurisdiction to pass sentences that could hold them in the prisons for the tenure of a year, if it were 1717 onwards then to transport for durations of six to seven years. During early 1600s the sole point of proof to prove the ordination was through the form of literacy. Hence through this process the process itself became a custom between the fifteenth to eighteenth centuries to announce individuals to be convicted and to escape death penalty by establishing that the individual could actually read. Till the year of 1705, all a person had to do was to recite or read the 1<sup>st</sup> passage from the Bible. The verse was common to all and would be later came to known as 'neck verse' i.e. a verse that was meant to save the life of the convict.

### **(B) American History of Capital Punishment**

In America 31 out of a total of 51 states still uses death penalty as a capital punishment. It is interesting to note that almost 11 of them haven't executed someone in like a decade or so. In 2018 there were about 20 executions in the United States of America and almost 31 new death sentences were passed. There has been a very steep decline in the numbers of American states passing the executions to convicts, the punishment is reserved for serious and heinous crimes now.

### (C) History of Death Penalty in India

After careful research about the dialogues in the British India's Legislative Assembly unveils that there was no issue flagged about death penalty in Assembly till 1931. One member from Bihar, a certain Mr. Shri Gaya Prasad Singh, introduced a Bill for abolishment of death punishment for offences under the IPC. The motion which was flagged by the member from Bihar was not passed post to the reply of the then Home Minister. The death penalty hence was never removed from the code of criminal procedure of the Indian Penal code. Although in the Indian scope the death penalty is defined as gravest of the grave. But the laws have been used to give capital punishments under certain conditions. It must be noted that capital punishments are very sensitive issue in the legal system of India and have been sensitised according to the human rights norms across the globe.

Capital Offences in IPC		
Sl. No.	Section Number	Description
1.	Section 121	Treason, for waging war against the Government of India
2.	Section 132	Abetment of mutiny actually committed
3.	Section 194	Perjury resulting in the conviction and death of an innocent person
4.	Section 195A	Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person
5.	Section 302	Murder
6.	Section 305	Abetment of a suicide by a minor, insane person or intoxicated person
7.	Section 307 (2)	Attempted murder by a serving life convict
8.	Section 364A	Kidnapping for ransom
9.	Section 376A	Rape and injury which causes death or leaves the woman in a persistent vegetative state
10.	Section 376E	Certain repeat offenders in the context of rape
11.	Section 396	Dacoity with murder
Capital Offences in other laws		
Sl. No.	Section Number	Description
1.	Sections 34, 37, and 38(1)	The Air Force Act, 1950
2.	Section 3(1)(i)	The Andhra Pradesh Control of Organised Crime Act, 2001
3.	Section 27(3)	The Arms Act, 1959 (repealed)
4.	Sections 34, 37, and 38(1)	The Army Act, 1950
5.	Sections 21, 24, 25(1)(a), and 55	The Assam Rifles Act, 2006
6.	Section 65A(2)	The Bombay Prohibition (Gujarat Amendment) Act, 2009
7.	Sections 14, 17, 18(1)(a), and 46	The Border Security Force Act, 1968
8.	Sections 17 and 49	The Coast Guard Act, 1978
9.	Section 4(1)	The Commission of Sati (Prevention) Act, 1987
10.	Section 5	The Defence of India Act, 1971
11.	Section 3	The Geneva Conventions Act, 1960
12.	Section 3 (b)	The Explosive Substances Act, 1908
13.	Sections 16, 19, 20(1)(a), and 49	The Indo-Tibetan Border Police Force Act, 1992
14.	Section 3(1)(i)	The Karnataka Control of Organised Crime Act, 2000
15.	Section 3(1)(i)	The Maharashtra Control of Organised Crime Act, 1999
16.	Section 31A(1)	The Narcotics Drugs and Psychotropic Substances Act, 1985
17.	Sections 34, 35, 36, 37, 38, 39, 43, 44, 49(2)(a), 56(2), and 59	The Navy Act, 1957
18.	Section 15(4)	The Petroleum and Minerals Pipelines (Acquisition of rights of user in land) Act, 1962
19.	Sections 16, 19, 20(1)(a), and 49	The Sashastra Seema Bal Act, 2007
20.	Section 3(2)(i)	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
21.	Section 3(1)(i)	The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002;
22.	Sections 10(b)(i) and Section 16(1)(a)	The Unlawful Activities Prevention Act, 1967
<b>Source:</b> India. Law Commission of India, Report no.262 on Death Penalty, August 2015, pp.31-32		

Fig 1 – Articles and provisions for death penalty

Above given are the sources in the framework of law as well as the sections which define the powers of the jurors to pass an execution judgement or a capital punishment. The plaintiff of course has the powers of clemency and right to an attorney. The laws in India have been designed considering the weight of the moral and utilitarianism view of the execution statement of a death penalty.

#### **(D) Literature Review**

The aim would be to research and understand the landmark cases in India which have an impact in the formation of the death penalty framework in the legal scope of India. Indian contexts views death punishment of the highest severity and the crimes to be very heinous for the judgement like this to be passed and to be implemented.

#### ***Jagmohan Singh vs The State of U. P*<sup>2</sup>**

It was a case of murder that came after the amendment given as the Code of Criminal Procedure in 1973, the imposition of the penalty as death had become a subject for the discretion of Court, and therefore was no longer a mandate on sentence for murder. As per context the arguments were regarding the constitutionality were raised for the penalty as death on grounds which was too wide and discretions vested in court. This was because no standard guidelines were inherently made available, this in all effect violated Articles 14,19 and 21.

The apex Court the claimed right to life wasn't part of Article 19 & deaths couldn't have been termed as unreasonable and opposing the public policies. It was a compensatory which was a part of the law ante commencement & legislature presumably knew of its existence. It wasn't removed, it assumed the legislature didn't think of it as not reasonable. Article 14 hardly invoke in matter of judicial discretions and exercise of discretions in each was strange to the fact & circumstance. Discretions given to court are imposed and death penalties balance the aggravation & mitigation circumstance hence can't be termed unguided. The Article 21 of Code of Criminal Procedures lay detailed procedures as to what, how and when death sentences could be imposed & the impositions of death sentences post to the requisite of trials, procedure hence is an establishment by law and can't be termed as unconstitutional.

#### ***Bachan Singh v. State of punjab*<sup>3</sup>**

The judgement was critiqued through the lenses of minor positions which could have affected the position of the judgement. A good number of changes from the case of Jagmohan singh vs

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<sup>2</sup> (1973 (1) SCC 20)

<sup>3</sup> 1980 (2) SCC 684

the state of Up and Bachan Singh were cited in the scope of Article 19 & 21 and were under expansion through the interpretations provided to Menaka Gandhi<sup>4</sup>. India became significant party to International Covenants based on Civil & Political Rights. Hon'ble Courts upheld it had no impacts on the constitutionalises of death penalties frameworks. The Article 19 could be invoked through as when one of the rights challenged could be infringed. The right to life wasn't party to the Article 19, hence it couldn't have been invoked for determining the constitutional basis of sections under 302 of the Indian penal code which provided death penalties as alternatives for the punishments for murder. The death penalties couldn't be termed as unconstitutional just because it was indirectly or remotely affecting the freedom mentioned in the u/a 19. For responding whether the death penalties could serve as for penological purposes, the Courts held it wouldn't be rightly to claim issues judicially. This was a highly contestable debate having very strong divergence in the views on both sides.

Courts cleared Jagmohan case & upheld the mandates of requirements on a pre-sentencings and hearings which are introduced in CRPC and made it necessary factor to consider under the circumstance of the crimes, and of the criminality.

Citing the discretions of deciding on special reason without having any guideline that lead to arbitrary, indefinite and ad hoc criterions of special reason because each judge had notions of special reason and would depend on individual value systems and responses as well as philosophies. This exercise would cause arbitrage & capricious interpretations, hence violating Articles 14 and 21. Safeguarding mandatory pre-sentencings of hearing, & various provision under the CrPC were only peripheral to the issue of arbitrariness. Legislature had not explained specific guideline or principle for exercises of discretions, and in situations Courts could not evolve principle on the same. This would be termed as encroaching on legislative functions. Arbitrariness could be removed if every case of capital punishment, was reviewed by Supreme Court as a whole. Sentences could not be affirmed w/o unanimous decisions and for them exceptional cases which dealt in death sentences and may be affirmative should be legislatively bound. There is no doubt about the Constitutional envision of the impositions of death penalties, those doesn't mean that they were approved automatically by Constitution rights.

### ***Ediga anamma v. State of Andhra Pradesh***<sup>5</sup>

The mistress of the victim was accused of murdering him and his child out of jealousy due to his infidelity towards her. The murder was horrific and insane. Ediga disfigured and burnt the

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<sup>4</sup> (1982) 3 SCC 24

<sup>5</sup> (1974) 4 SCC 443

bodies. And then she buried them. The debate was about the viability of exercise of judicial discretion for imposing the death sentence on her.

Judgement for the court focused on penal philosophy and understanding crime important. The punishment and crime are on basis are completely related to societal accolades; the current presumptive and societal conditions are to be taken into full considerations. The punishment should balance the society and individual, deterrent elements of punishments must be balancing the possibilities formations individuals. The Factor implicating things like the social and economic conditions of the criminals and penal sanctions which may cause the pressure or delay in executions of sentences of death which may be reason for judicial compassions in the sentencings.

### **(E) Objectives**

The objective of the project which is to understand the death penalty as a punishment for heinous crimes can be manifold but the key aspects are given blow:

- (a) To understand what are death punishments and its history.
- (b) To understand and assess the culture, society and religious texts.
- (c) To understand the legal frameworks death penalties and capital punishments.
- (d) To understand what moral and utilitarian thoughts are behind the humane aspect of death penalties

### **(F) Research Methodology**

In this project I will conduct in-depth qualitative exploratory research using the secondary data. I have reviewed various research papers and presented the findings. The secondary data will be in the form of research papers, online articles and textbooks. Through the deep analysis we will find out the increasing dependencies of phishing attempts in the cybercrimes and will understand the workings behind it. For the data collection the online databases such as EBSCO, ERIC, Research gate, Google Scholar and SAGE were used. Further the collected data was used for the assessment by using the appropriate frameworks and analysis tools as taught in the class.

## **II. CONCLUSIONS AND FINDINGS**

Through the literature review it could be understood that death penalties have been prominent across various regions in the globe. The stem of these could be found in the basic nature of even the religious texts that are very prominent across the globe. The learning extended that



from Christian texts to all the way to Islamic resinous laws there have been provisions for the absolute heinous crimes. Murder, heinous and gruesome activities have always been pointed out as the prime motives behind passing the execution sentences. In Islamic texts for example it was pointed that death penalty is not described as a mandatory obligation in the crime's life theft, murder, arson and damage of property. In the specific case of killing though. The onus of the decision lies with the family of victim. If the victim's family calls for death penalty. Then death penalty is given to the guilty. Christianity claims to have found the justifications for death penalties in its religious texts which explains the only sensible punishment for the crime of shedding the blood of innocent was to give the convict the punishment of death to purify thee nature of the society. But still death penalty was applied to many crimes that did not involve the act of unlawful murder, such as blasphemy & adultery.

**There are some arguments against the capital punishments:**

**1. Moral Arguments** – The argument considers that people who commit murders, or have taken the another's life, inherently forfeit the right to their own life. Adding to this, death punishment is form of a retribution. The expression and reinforcement of the moral indignations is of law-abiding citizens in general. Hence by contrasting, it could be seen that opponents of death penalty, by legitimating the behaviour that laws seek repressions, killings and hence death penalties are counterproductive in moral messaging it conveyed. Further, when used for minimal crime, death penalty is highly immoral since its fully disproportionate in the amount of harm done. Abolitionist also claims capital punishments violate the person's rights to living & fundamentally inhumane & degrading.

**2.** Death has been prescribed for various crime in most sacred religious document and was practiced widely with supports of religious hierarchy, now there is no agreements among faith, among denomination or sect within, on the morals of capitals punishments. Beginnings in last halves of twentieth century, increasing number of religious leader particularly in Judaic and Roman Catholics had campaigns against the. Death punishments were abolished by Israel for all offense except for the highest form of treason and criminality against humanity.

**3. Utilitarian view** - Supporter of death penalty claims that it uniquely deters the effects on potentially violent offenders. It should be understood that for these offenders the threats of imprisonment aren't sufficient amounts of restraints. The opponents of this view point out to researches that the death penalties aren't a significantly more effective version of deterrent than the counter on the guilty for a full life imprisonment.

**4. Heinous Crimes exceptions arguments** – The crimes which are shockingly evil or are of hateful nature are termed as heinous crimes. These crimes have the leverage of being more criminal than others due to the intent of the action. These crimes in the more generalist view are appropriate to be justified by giving death penalty or execution judgements. The greater good or the utilitarian view here states that the execution of these guilty send a much wider message to the society to stop with there heinous acts. This ensures the proper workings of the legal framework while discouraging the presence and growth of absolute evil within the society.

**5. Practical view-** Various disputes have been raised about the viability of death punishments which could administer mannerized form which is consistent with the frameworks of justice. Supporters of capital punishments have believed that it is possibility of fashioning laws and legal procedures which ensures only people who really deserve of deaths are in reality executed. So, by contrasting, opponent that maintain the historical applications of death penalties show that attempts to single certain kind of crimes as worthy of deaths will be arbitrary and discriminatory. Pointing out to factors which they thought of precluding the evitable possibility of capital punishments could be most fairly be applied by arguing that poor and ethnic minorities have often got no have accesses to decent legal assistances, the racial prejudices motivate predominant white jurors which have the death cases and powers to actually convict black and non-white defendant in disproportionate number, because error is an inevitability even in well-ran criminal justice systems, people would inherently be executed for crime they never committed. Arguing about the appeal processes for execution sentences is protracted, guilty who are condemned to deaths often are very cruelly forced to wait and endure very long period of uncertainty about their lives or possible death.

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