

Capital Punishment: An Issue of Life And Death

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Abstract— Capital punishment, also known as death penalty, is the execution of a criminal who has been sentenced to death by a court of law for a serious felony. The most severe type of punishment is known as the death penalty. The most outrageous and revolting crimes against humanity are punished by it. The death sentence has always been the consequence of such acts, despite the fact that the definition and extent of such crimes varies by country, state, and era. The execution of a person who has been granted a death sentence after being proven guilty of a crime by a court is known as capital punishment, according to Encyclopaedia Britannica. Today's globe has a continually increasing crime rate. More murders, abductions, rapes, terrorist attacks, and instances of child abuse have occurred.

The World Population Review of 2022 estimates that India has an overall crime rate of 44.43. In such a situation, laws and penalties to deter and prevent crime must be put into place straight away. One of the major tenets of modern civilization, which is, punishment is the use of coercion to uphold the law of the Modern views of punishment developed over time, and the state was granted the authority to uphold law and order as well as voluntary control over our rights. . The state must penalise offenders in order to maintain law and order in society. The punishments could range from fines and time behind bars to the death sentence or life in prison. The worst or most severe punishment at the moment is death sentence sometimes known as capital punishment. The death sentence is used when a crime is so horrible that it could terrorise society as a whole. Only offences that meet the criteria for the rarest of rare doctrine are subject to the death penalty.

The most severe kind of punishment, capital punishment, is meted out to individuals who have done crimes that are heinous, against humanity, and for which society has to be held to a higher standard. The term 'capital punishment' has diverse meanings in different countries around the world, but one thing it always refers to is a death sentence.

Keywords: Death Penalty, Judicial Murder, Execution.

I. INTRODUCTION

The capital punishment, usually referred to as the death penalty is an institutionalised practice that calls for the deliberate execution of individuals in response to actual or alleged misconduct after an approved, by law governed process has been used to determine that the individual is accountable for the norm violation that justifies execution. According to ancient law books and Plato's renowned depiction of Socrates' trial and execution by democratic Athens in 399 B.C.E., the death penalty has been in use for centuries. Prior to roughly 400 years ago, great European thinkers rarely gave the death punishment any thought at all. The majority of contemporary philosophic discussion of the death penalty has come from proponents of criminal justice reform, either as a result of their morally conscientious evaluation of the law and social norms, or in the context of theories of the modern state and sovereignty. The mid-20th century establishment of an international human rights system and American constitutional challenges led to a new attention on ideas of punishment and the death penalty, including arbitrariness, mistakes, or discrimination in the American institution of capital punishment. The major philosophical query surrounding the death penalty is one of moral justification: under what circumstances, if any, can the state's deliberate execution of known criminals be justified as a morally acceptable response to criminal actions, even the most pressing crimes like murder?

The abolishment of the death penalty is one of the most contentious topics at the United Nations (UN), since it is thought to be a violation of human rights. According to the Indian Penal Code, the following offences carry the possibility of the death penalty:

- Murder (Section 302)
 - Dacoity with murder (Section 396)
 - Criminal Conspiracy (Section 120B)
 - Waging war against the Government of India or attempting to do so (Section 121)
 - Abatement of mutiny (Section 132) and others.

Although the pronouncement of the sentence does not necessarily result in execution, the President of India has the authority to reduce a sentence to life in prison or give a pardon under Article 72 of the Indian Constitution. The terms 'death penalty' and 'capital punishment' are sometimes used interchangeably.

II. REVIEW OF THE LITERATURE

Mary E. Williams *Capital Punishment* talks about how execution, modern-day supporters of capital punishment claims, is the best punishment for those who murder someone on purpose. According to their argument, the fundamentals of contemporary criminal justice dictate that a murderer must get a sentence equal with the damage his crime did. Also, proponents claim that the death sentence allows society to defend the value of innocent life and express its legitimate moral outrage at the crime of murder.

Austin Sarat's *The Killing State: Capital Punishment in Law, Politics, and Culture* talks about the use of capital punishment is the height of power acting infallibly. By definition, there is no possibility of reversibility. It either conveys a 'we don't care' anger or an unwarranted confidence in our ability to see evil and respond to it in a wise and appropriate manner. With such anger or confidence, democracy cannot exist in peace.

Matthew H. Kramer's *The Ethics of Capital Punishment: A Philosophical Investigation of Evil and Its Consequences* is a book whose main goal is to develop a different defence of capital punishment in a select number of circumstances. This book takes a very different stance from that which is often associated with supporters of the death penalty.

III. OBJECTIVE OF THE STUDY

The study will proceed keeping in view the following objectives:

- History of Indian capital punishment.
- Major cases relating to capital punishment..
- Why capital punishment still persist in India?

IV. RESEARCH METHODOLOGY

The methodology adopted here is analytical. Both primary and secondary sources are used. The primary sources are books and e-books, secondary sources are the creative writings and relevant materials collected from various articles, journal, newspaper and book pertinent to the study area.

V. HISTORY OF INDIAN CAPITAL PUNISHMENT

There is no nation on earth where instances of capital punishment cannot be found. The history of human civilisation shows that capital punishment has never been used as a form of punishment. In the past, capital punishment was used to appease the gods or to show society what crimes are specifically anti-social and cannot be tolerated in any way.

Under the rules of Draco, the death penalty for crimes including sexual assault, assassination, treason, and burning was frequently utilised in ancient Greece, despite Plato's contention that it should only be reserved for the truly criminal. The Romans used it for a variety of transgressions even if citizens were briefly spared during the republic.

It was not until Bihar's Shri Gaya Prasad Singh attempted to present a measure that would have repealed the death sentence for transgressions covered by the Indian Penal Code in 1931 that the issue of the death penalty was raised in the legislative body of British India. The suggestion was nevertheless rejected after the then Home Minister responded. Prior to independence, then Home Minister Sir John Thorne made clear the government's view on the death sentence in British India during two discussions in the Legislative Assembly. Following attaining independence, the Republic of India passed two pieces of colonial-era legislation: the Indian Penal Code of 1860 and the Code of Criminal Procedure of 1898. The IPC issued six sentences, including the death penalty.

VI. MAJOR CASES RELATING TO CAPITAL PUNISHMENT

Vinay Sharma v. Union of India (2020), the widely recognised name of the Nirbhaya gang-rape case outraged the nation's conscience. The tragic and violent incident took place on a bus in Delhi's chilly weather. Six suspects are accused of viciously raping the girl, which also caused the girl's death. She was thrown naked on the road after having an iron rod put into her privates. In prison, one of the defendants attempted suicide when the case was brought before the court, and another was a child, therefore he was spared the death penalty. The other four defendants, however, received death sentences and were executed by hanging in 2020. The court condemned the defendant to death based on the crucial details of the crime and the horrific torture that was applied to the victim, which led to her death.

In *Shabnam v the Union of India (2015)*, the woman was given a death sentence by the court, and for the first time under India's criminal court system she was hanged. In this case, Shabnam and her lover killed her family members. This incident took place in 2008. Shabnam murdered her family members in order to get her beloved married, which they forbade. She also asked the president for mercy, but the request was denied.

The female doctor in the *Hyderabad veterinary case (2019)* was travelling alone on her scooter to the Shamdabad plaza., where she parked it, from which point she got a taxi to her workplace. Four of the accused were keeping an eye on her, which led them to puncture her scooter when she was away. When she returned from work, she discovered that her scooter had a puncture. The four suspects arrived as she was being forced and raped and started to burn her body. Although the accused in this case was definitely deserving of death, when the police came into contact with him, it raised questions about our country's criminal justice system.

VII. WHY CAPITAL PUNISHMENT STILL PERSIST IN INDIA?

It is of utmost necessity to inculcate the fear of death in the minds of criminals in order to enhance the environment for the people. India objected with the United Nation General Assembly's vote to outlaw or eliminate the death sentence since it does not abide by the country's legal structure. Though it is viewed as a legal punishment for crimes including murder, child suicide, and terrorism, the death sentence is never applied in India. In the current climate, when India has seen an increase in rape and murder cases, when tough actions should be taken against the culprits, abolishing the death sentence would not make sense. If frequently the death sentence were applied in cases where the accused is conclusively found guilty because it is viewed as a more severe punishment than life in prison, people would not commit crimes as frequently.

VIII. CONCLUSION

India has used the death sentence, also known as capital punishment since beginning. Death sentence has been the most typical punishment in India for crimes and acts that essentially break the law from the days of the monarchy. No horrific or serious crimes that warranted death sentence were known to exist. Many contend that it contravenes fundamental rights and lacks any real deterrent impact. It is plausible to argue that some crimes committed in the Indian setting are so heinous and horrific that only the death sentence can be viewed as just and appropriate.

The question of the death sentence is one that our legislators have long argued and discussed. However, Indian politicians have not reached a final decision regarding the retention or elimination of the death sentence despite years of debate and controversy. Most nations have varied perspectives on crime and use various forms of punishment for criminals. India believes that rather than using traditional forms of punishment, it is best to change the offender's behaviour and attitude towards society. India is among the 78 countries still using the death sentence.

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