



DEATH PENALTY: QUESTION ON HUMAN RIGHTS

AUTHOR – AMAN, STUDENT AT ASIAN LAW COLLEGE, NOIDA

Best Citation – AMAN, DEATH PENALTY: QUESTION ON HUMAN RIGHTS, *ILE JOURNAL OF CRIMINOLOGY, VICTIMOLOGY AND PENOLOGY JURISPRUDENCE (ILE JCVPJ)*, 1 (1) of 2023, Pg. 7-11, APIS – 3920 – 0050 | ISBN – 978-81-964391-3-2.

Abstract

Human rights are the fundamental entitlements that individuals possess from birth. While countries worldwide advocate for human rights, it is crucial to establish an effective legal system to combat the rising crime rates and administer appropriate punishments to offenders. Society often desires to impose the death penalty to eradicate inhumane elements within it, but implementing capital punishment is a complex process. It is typically reserved for exceptionally severe or exceedingly rare crimes. However, it is now necessary to explore alternative methods of capital punishment that align with societal values and uphold global humanitarian laws. This article provided an overview of the status of capital punishment in both Indian and international contexts.

Keywords – Capital punishment, culprit, fundamental rights, rarest of the rare crime.

Introduction

Punishment serves as the means to enforce the fundamental laws of society, which are essential for the functioning of modern civilization. Upholding law and order is the responsibility of the State, and this includes the task of punishing criminals. In the past, there was no specific framework for addressing crimes, and the nature of punishment relied heavily on the decisions of the ruling monarch. However, over time, modern theories of punishment emerged, and individuals willingly entrusted the state with the authority to maintain law and order. Presently, the most severe form of punishment is known as 'Capital Punishment'. As a civilized society, people desire peace, safety, and security. With the rise in crime rates, there is a growing demand for a robust judicial system that can effectively deal with offenders and administer appropriate punishments to deter any repetition of such offenses. The purpose of imposing punishment is to safeguard the rights of individuals, ensure justice for the victim, and set a precedent that discourages similar actions within society. The

death penalty represents the most extreme form of punishment reserved for the most serious offenders.

Human Right Aspect

When a crime occurs, it involves both the violation of the victim's rights by the accused and certain rights of the offender as well. Approximately 70% of countries have abolished the death penalty due to concerns regarding human dignity and its perceived immorality as a form of punishment. At the international level, several treaties and conventions promote the rights of the accused. Even in the Indian constitution, Article 22 addresses the specific rights of the offender, and it is the responsibility of the state to ensure their enjoyment of these rights. In our society, individuals who are incarcerated are often treated as guilty without undergoing a trial by the court. Instead of resorting to the death penalty, many countries have implemented alternative methods of execution between 2011 and 2021, including beheading, hanging, lethal injection, shooting, and electrocution. Even, though there are

petitions filed against the execution of the death penalty which is hanging by neck till death on the ground that it violates the right to life and health as per Article 21 of the Indian Constitution and the Supreme Court also agrees to review the method of execution on the death penalty and the CJI DY Chandrachud states that first, they will check that the alternative method must be consistent with human dignity and also the legislature provides scientific and reliable data which protects human dignity. Justice Narasimha also said that Change or upgradation of technology and better sciences can help us to relook on this matter. The basic idea is about protecting the rights of the victim along with the human dignity of all individuals.

International Scenario

The topic of "Abolition of the Death Penalty" is extensively debated within the United Nations (UN), where it is viewed as a violation of human rights. The UN places greater emphasis on the Reformatory Theory of Punishment rather than the Deterrent Theory of Punishment. According to a report by Amnesty International in 2022, there are 112 countries that have abolished the death penalty, 9 countries that retain it only for serious crimes during times of war, 23 countries that retain it but have not executed anyone in the past 10 years, and 55 countries, like India, that still retain the death penalty in their laws.

Several international instruments and conventions provide insight into the abolition of the death penalty as they aim to promote human rights globally. The International Covenant on Civil and Political Rights (ICCPR) is a significant document in international human rights law. While it does not abolish the use of the death penalty, Article 6 contains guarantees regarding the right to life and establishes important safeguards to be followed by signatories who retain the death penalty. The Second Optional Protocol to the ICCPR focuses on the complete abolition of the death penalty.

Other protocols related to the abolition of the death penalty include Protocol No. 6 and Protocol No. 13 to the European Convention on Human Rights, both of which address the abolition of the death penalty under specific circumstances. The Protocol to the American Convention on Human Rights to Abolish the Death Penalty is another relevant instrument in this context. Additionally, the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention) and the UN Committee against Torture serve as sources of jurisprudence for imposing limitations and necessary safeguards on the death penalty.

Indian Scenario

According to the Annual Death Penalty Statistics Report of 2022, the number of prisoners on death row reached a record high of 539 individuals as of December 31, 2022. This marks a significant increase compared to 2016, when only 400 prisoners were facing the death sentence. The population on death row has been steadily growing over the years, with a 40% increase observed between 2015 and 2022.

Capital punishment is reserved for the rarest of the rare cases. The method of execution for the death penalty, as outlined in Section 354(3) of the Code of Criminal Procedure, is hanging by the neck until death. The concept of the "Rarest of Rare" was introduced in the case of 'Bacchan Singh V State of Punjab [(1980) 2 SCC 684]', and further clarified in the landmark case of Macchi Singh V State of Punjab. Although the doctrine of Rarest of Rare does not have a specific legal definition, it suggests that the death penalty should only be imposed in exceptional cases where society is threatened by the actions of the criminal. This doctrine considers various factors such as the severity and nature of the crime, the criminal's characteristics, the victim, the motive or method employed, and the reasons behind the commission of the crime.

Crimes punishable by the Death Penalty

- Indian Penal Code, of 1860 deals with the penal provisions by specifying the punishment for the respective offences. So there are certain offences which have a maximum punishment of the death penalty which is :

Section 121	Waging war against the government
Section 302	Punishment for Murder
Section 364A	Kidnapping for ransom or Kidnapping a person with the intent to cause them harm or death
Section 376A & 376E	Rape
Section 396	Dacoity with Murder
Section 305	Abetting the suicide of a Minor
Section 120B	Criminal Conspiracy

- Part II, Section 4 of Prevention of Sati Act- Aiding or Abetting an Act of Sati
- 31A of the Narcotic Drugs and Psychotropic Substances Act- Drug trafficking in cases of repeat offenses.

Execution of the death penalty since 2000

- Dhananjay Chatterjee, executed on August 15, 2004 – awarded the death sentence for rape cum murder of a 14-year-old minor girl
- Ajmal Kasab was executed on November 21, 2012, after being sentenced to death for carrying out a terrorist attack in Mumbai.
- Mohd Afzal was executed on February 8, 2013, in connection with the Parliament attack case.

4. Yakub Memon was executed on July 30, 2015, for the Mumbai serial blasts in 1993

5. Mukesh, Akshay, Vinay, and Pawan, executed on March 20, 2020 for the Nirbhaya case of 2012

Landmark Judgment on Death Penalty

In India, it is very difficult to give a death sentence to offenders so easily because we follow the humanitarian approach and promote the rights of every citizen of the country. It can neither abolish capital punishment nor legalize it by making proper legislation. In the case of *Jagmohan Singh v. State of Uttar Pradesh*, the constitution validity was challenged and the Supreme Court held that “the choice of death sentence is done by the procedure established by law”. It was noted that the judge decides between a death sentence and a life sentence based on the circumstances, facts, and type of crime presented during the trial. Also, in the case of *Rajendra Prasad v. State of U.P. (1979)* Justice Krishna Iyer gave his opinion on the three types of criminals who should get the death penalty :

- (1) in cases of white-collar crimes,
- (2) for crimes against the social order, and
- (3) for eliminating a dangerous killer who possess harm to society.

Supreme Court also laid down certain guidelines on the circumstances in which death punishment is granted:

- Manner of Commission of murder – When the murder is committed in an extremely brutal manner so as to arouse intense and extreme indignation in the community, for instance, when the house of the victim is set a flame to roast him alive when the body is cut to pieces or the victim is subjected to inhuman torture.
- Motive – When the murder is committed for a motive that evinces depravity and meanness, e.g. a hired assassin, a cold-blooded murder to inherit property or gain control over



property of a ward, or a murder committed for the betrayal of the motherland.

3. Anti-social or socially abhorrent nature of the crime – where a scheduled caste or minority community person is murdered in circumstances which arouse: social wrath; or bride burning for dowry, or for remarriage.

4. The magnitude of the Crime like multiple murders of a family or persons of a particular caste, community, or locality.

5. The personality of the victim of murder

Law Commission in its 262nd report recently recommended the abolition of capital punishment for all crimes in India, except the crime of waging war against the nation or for terrorism-related offenses. It cited several factors to justify abolishing the death penalty, including its abolition by 140 other nations, its arbitrary and flawed application, and its lack of any proven deterring effect on criminals.

Conclusion

Capital punishment holds a significant place within India's criminal justice system. However, with the rise of the human rights movement in India, concerns have emerged regarding the justification of retaining capital punishment. Over 70% of countries worldwide have abolished the death penalty as a means of upholding human rights. India should prioritize the reformatory theory of punishment, aiming to set a positive example in society and offer a path toward rehabilitation for the accused. In cases where the death penalty is imposed for heinous or exceptionally rare crimes, the Indian Constitution's Article 72 allows individuals to seek a presidential pardon, parole, or mercy petitions to challenge their death sentences. Thus, in the current scenario, the process of imposing the death penalty is neither easy nor swift. India's legal system ensures that the accused are granted rights and protects and promotes their human rights as well. It is essential to focus not only on apprehending the offender but also on eradicating the occurrence

of the crime itself. When viewed from a broader standpoint, the purpose of punishment in criminal law is to foster a well-ordered society. This involves restoring peace and preventing future instances of criminal behavior by carefully considering the rights of both the culprit and the victim.

References

- Editorial team, Capital Punishment in India, Lok Sabha https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/CAPITAL_PUNISHMENT_IN_INDIA.pdf
- Gurpreet Kaur Dutta, Capital Punishment in India: Laws and Cases, Finology Blog <https://blog.finology.in/Legal-news/capital-punishment-in-india>
- Team, Death Penalty, Amnesty International <https://www.amnesty.org/en/what-we-do/death-penalty/#:~:text=The%20use%20of%20the%20death%20penalty%20for%20crimes%20committed%20by%20Amnesty%20International%20each%20year.>
- Editorial Team, Death Penalty: The International Framework, United Nations Office Of High Commissioner <https://www.ohchr.org/en/topic/death-penalty/international-framework>
- Details of Death Penalty, National Crime Records Bureau <https://ncrb.gov.in/en/node/2832>
- https://ijariie.com/AdminUploadPdf/A_S_tudy_on_Execution_of_Death_Penalty_ijariie14_218.pdf
- Abhinav Narayan, Capital Punishment: A comparative study, Amity Law School, NOIDA [https://amity.edu/UserFiles/aibs/3fc0Article-XII%20\(Page%2088-92\).pdf](https://amity.edu/UserFiles/aibs/3fc0Article-XII%20(Page%2088-92).pdf)
- Krishnadas Rajagopal, SC asks govt. for data on death by hanging and a possible alternative mode of execution, The Hindu

<https://www.thehindu.com/news/national/sc-asks-govt-for-data-on-death-by-hanging-and-a-possible-alternative-mode-of-execution/article66645002.ece>

- Editorial Team, Raising the Bar on Capital Punishment, *Drishti* *Insights*
<https://www.drishtiias.com/daily-updates/daily-news-editorials/raising-the-bar-on-capital-punishment>

- Dhananjay Mahapatra, Supreme Court agrees to review validity of hanging as mode of execution, *The Times of India*
<https://m.timesofindia.com/india/supreme-court-agrees-to-review-validity-of-hanging-as-mode-of-execution/articleshow/98880616.cms>

