

## DEATH PENALTY: A COMPREHENSIVE STUDY

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### ABSTRACT

*We live in a country where the idea of justice and penalty has been prescribed from the ancient times. The idea of punishing the offender emerged when the wrongdoers in the society were made liable to pay for their crimes and this was the time when death penalty came into existence. But gradually an idea that crept into the minds of the wrongdoers was that the intensity of the crimes that are committed by them and the punishment which is prescribed for such crimes is quite lenient with respect to the crime which is committed. This led to the furthermore increase in the crime rates as the offenders were confident about the fact that even if they commit a heinous offence there exists no legislation which would hamper or endanger their life and would enable them to exist and nurture in the jails as well as custody. There are various offences committed which attract different forms of punishments as well as penalties. Out of all forms of punishments given to the offenders Capital punishment or Death penalty is the stringent of all and has been considered as ultimate punishment in various countries around the globe. This article will talk about the definition and concept of death penalty in India as well as the applicable provisions in India regarding capital punishment. There has been a constant debate about whether death penalty should be completely abolished keeping in mind the various rights such as human rights and rights of the offenders. As the Article 21 in India guarantees every citizen in India the right to life as well as personal liberty the coin cannot be said to be having only one-sided result of the toss. The issues related to the punishment to the poor as well as innocent people also draws the attention. As such needy and destitute class of people if involved in a false case cannot afford to hire good advocates for their defence due to the absence of resources.*

**KEYWORDS:** death penalty, various crimes, capital punishment, human rights, legislation.

### INTRODUCTION

Every society works on certain laws which govern the working of the society. These laws are strictly based on the conditions that it fulfils two purposes of the legislation one of which is that one should be punished for all the wrongdoing which he commits and the second is that it would set an example for others that if you commit such an offence then you would be punished in the same way. The same idea is kept into mind with respect to the capital punishments. The driving force behind the commencement of the capital punishment is that it sets an example and instils a sense of

fear in the minds of wrongdoers. This topic has gained a lot of attention among the critics as it enshrines the use of criminal justice system in India to punish a wrongdoer by the way of capital punishment. The advocates of human rights question the validity as well as the existence of death penalty as a punishment for a heinous offence and consider it to be a violation of human rights. But on the contrary, it is quite evident that sparing the life of a single serious offender may put the lives of many people in the society in danger. The imposition of death penalty is not always followed by execution which means that after the

declaration of the imprisonment there is still scope for the reduction or commutation of the death sentence which was imposed on the wrongdoer.

In India the Section 53 of IPC as well as Section 368 of Crpc provides for the punishment of death penalty to the offenders. The Indian judiciary has always been of the view that death penalty should only be provided to the perpetrators in case of serious offences only. Such offences are the offences which are heinous in the eyes of the collective conscience of the community. But keeping the humanitarian aspect in mind many a times such punishment is reduced to life imprisonment instead in order to uphold the humanitarian aspect of judiciary. The provisions regarding the death penalty differs from place to place and time to time. Different judiciaries of different countries have amended the laws regarding death penalty keeping in mind the humanitarian aspect of judiciary.

### MEANING OF CAPITAL PUNISHMENT

Death penalty or capital punishment was even called as judicial homicide in the earlier times. When the killing of a person in the form of hanging him to death is sanctioned by the state this process is called as upholding the order of capital punishment or death penalty for a crime and is collectively called as death penalty or capital punishment. The order which is passed by such sentence is called as death sentence and when such sentence is carried out on the order of the courts it is called as execution of sentence.

### CRIMES WHICH ARE PUNISHABLE WITH DEATH PENALTY IN INDIA

**RAPE** – in India if any person or group of people commit rape or gang rape by outraging the body of a woman or indulges in any kind of offensive sexual activity with a woman or causes injury to the body of a woman without her consent then such person or group of persons are said to commit rape or gang rape

as per section 375 and section 376D of IPC and can be given capital punishment.

**TREASON**– if a person tries to do such act or omission by any kind of publication or manipulation of words, symbols or gestures which suggests that he is trying to wage war against the government he can be given capital punishment under section 124A of IPC.

**CRIME RELATED TO TERRORISM** – any kind of illegal acts committed by any person which threatens or endangers the life of the people by causing damage to the life and property using explosives or weapons in order to commit terrorism. Such person shall be punished with death penalty under section 121 of IPC, 1860.

**MURDER** – if any person kills another person due to some malafide intention and in turn causes the death of such person by inflicting serious injuries to the person shall be punished with death penalty under section 302 of IPC.

### POSITIVE IMPACT OF DEATH PENALTY

There are kinds of serious crimes committed by offenders such as rape, murder etc. in cases of commission such heinous crimes death penalty is generally justified. the intensity of such crimes is so large that a punishment like death penalty can instil a sense of fear in the minds of perpetrators that if they kill or do wrong with someone then they can also be killed. This would help to decrease the crime rates.

### NEGATIVE IMPACT OF DEATH PENALTY

The negative impact is that our judiciary may be defined as a faulty judicial system and there are many such instances that when an innocent is tried and given capital punishment and he even have no resources to defend himself and finally must meet his end day due to this scarcity.

### CASES RELATED TO DEATH PENALTY

SHABNAM V. UNION OF INDIA

The India criminal judicial system for the first time awarded a death sentence to a woman

and hence she was hanged till death. In this case Shabnam killed her family members as they were not allowing her to marry her lover. So, she planned a brutal murder of her family members and did not even spare her little sister due to which the court was of the view that she shall be hanged to death the next year after her mercy petition was rejected by the president.

#### MACHHI SINGH AND OTHERS V. STATE OF PUNJAB

In this case there was a feud between a joint family members in which 17 people lost their lives due to the conflicts. The aggravating and mitigating factors were explained by the courts and the court also explained the reasons which led to the imposition such punishment. The aggravating factor may be defined as the factors which are taken into consideration when the murder is preplanned with extreme brutality in case of a murder of a public servant in or out of his course of duty.

#### MANOJ AND OTHERS V. STATE OF MADHYA PRADESH

In this case the guidelines regarding the death penalty were specified by the court for the collection of mitigating circumstances of the offender and at the trial stage as well as the trial courts must eradicate the information from state. The state must collect and produce material before the sessions court which defines the psychiatric psychological evaluation of the accused.

#### CONCLUSION

Death penalty has been a way to punish the offenders in a strict way since the earlier times. In India death penalty was always used to set an example among the masses that whoever commits a heinous offence shall have to pay the price by giving his/her life. The main idea behind the inclusion of capital punishment in the Indian judicial system was to create a sense of fear in the mind of criminals. Although according to the statistics it is evident that death penalty Has failed to suffice the very motive for which it was included in the Indian

judicial system. There is no reduction in the commission of heinous offences. India follows the provision that human life is a basic right under article 21 of the constitution. This paper analyses the meaning, context and situation of death penalty in India. This paper provides an overview of the death penalty in India. This study tries to create a balance between the death penalty and human rights and creates a balance between the two. It can be rightly justified that in cases where there is a heinous crime committed death penalty bis justified but in most of the cases where there is scope of mercy such awards of punishment are gradually reduced, and death penalty is justified in rarest of the rare cases.

Death penalty in rarest of rarest cases does not affect the principles of Human Rights as stated by ICCPR (The International Covenant on Civil and Political Rights) for those countries that have still not abolished it still with some restrictions assessed on it. The Supreme Court has, in several cases, declared that death penalty should not be declared unconstitutional, as the framers of the Constitution haven't seen it applicable to do this, and that the council also hasn't taken any way to abolish the death penalty. Still, there are various arguments that contend for rescinding capital discipline. The emotional smirch of vengeance would lead us nowhere differently than in a cycle of violence and sadness. therefore, in my view, executing culprits by awarding them capital discipline should be abolished and that there is no place in the ultramodern world for similar killings by the State, and that India should abolish capital discipline as soon as possible. From the analysis of various judgments pronounced by the Courts, it is quite understood that there is no uniformity in precedents. The private and arbitrary awarding of capital discipline has made the death penalty justice into ' judge centric justice'. The morality(partiality) of judges is more vital than the principles laid by precedents. This has created query in the outgrowth of capital action and the same has

been conceded in various judgments. Thus, it's high time for the Judiciary to reevaluate the constitutionality of capital discipline in India.

### SUGGESTIONS

- There needs to be a clear study about the implications of death penalty and its validity in Indian context.
- A reformist approach would really help as according to many researchers it has been shown that to some or the other extent the death penalty has somehow increased the crimes in place of reducing them.
- In the largest democracy of the world i.e., India death penalty should not be based on mere sentimental nuances and the pressure of media or public on the judiciary which would create unnecessary burden of delivering justice in the most profound way by the judicial system.
- The reason for awarding death penalty should be the commission of a heinous and inhumane crime committed by habitual offenders and if there is no scope of improvement of such criminals.

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