

Punishment is to Eradicate the Crime not the Criminal

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Abstract

Death penalty is awarded by the court as a punishment, it means that person is hanging by the neck till death. Under the Indian Penal Code 1860 there are so many sections under which the person can be awarded with death sentence. Indian Constitution provide every citizen few rights as a fundamental right, where Article 21 stated about right to life. But this punishment of capital punishment contravenes the fundamental right of the accused, which is right to life. Even death penalty is not sufficient enough to stop or to control the rate of the crime, by mere finish the particular accused person. In current scenario there are fifty-six countries, where capital punishment is still prevailing, but 103 countries have completely abolished it.

Keywords: abolition, capital punishment, death sentence, execution, hang till death

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INTRODUCTION

Death penalty, also known as capital punishment, is a government sanctioned practice whereby a person is put to death by the state as a punishment for the gravest of crimes such as murder, acts of terrorism, gang rape etc. [1] The concept of the death penalty in India is to punish the person who is doing the heinous crime and under the Indian penal code they are punished with the death penalty. The problem of my research is that the death penalty violates the fundamental right article 21 that is right to life and the reformatory theory is the better than preventive theory which give a chance to criminal to reform himself and become a decent citizen and human being. The death penalty should be abolished in India because in current time in the world there are 103 country in the world which they abolished the death penalty and many other countries on the process to abolish the death penalty then in India also abolish the death penalty. Research on death penalty is a social legal research; it is fully based on doctrinal research. This research is based on secondary data. It has a limited scope within in India only.

MEANING OF DEATH PENALTY

The meaning of the death penalty is that when any person doing any wrongful act and that act violate the law or against the law then if that act which is a crime comes under the death

penalty punished crime under the Indian penal code 1860 then they will be hanged by neck till death.

These are the sections in the IPC in which people is punished with the death penalty [2]

- Section 121 of Indian Penal Code, 1860: Waging War against the Government.
- Section 132 of Indian Penal Code, 1860: Abetment of Mutiny.
- Section 194 of Indian Penal Code, 1860: Giving or fabricating false evidence leading to procure one's conviction for capital offense.
- Section 302 of Indian Penal Code, 1860: Murder.
- Section 305 of Indian Penal Code, 1860: Abetment of suicide by child or insane person.
- Section 307 of Indian Penal Code, 1860: Attempt to murder by a life convict, if hurt is caused.
- Section 396 of Indian Penal Code, 1860: Dacoit with murder.
- Section 364A of Indian Penal Code, 1860: Kidnapping for ransom.

HISTORY OF THE DEATH PENALTY IN INDIA AFTER INDEPENDENCE

In colonial India, death was prescribed as one of the punishments in the Indian Penal Code, 1860 (IPC), which listed a number of capital

crimes. It remained in effect after independence in 1947. The first hanging in Independent India was that of Nathuram Godse and Narayan Apte in the Mahatma Gandhi assassination case on 15 November 1949 [3].

The Centre on the Death Penalty published Death Penalty India Report which found that most in death row are backward, uneducated and first-time offenders with no previous crime history. Another finding was, that out of 1,486 death sentences imposed [4]. Capital punishment is a legal penalty in India. It has been carried out in five instances since 1995, while a total of twenty-six executions have taken place in India since 1991.

The Supreme Court in *Mithu vs. State of Punjab* [5] struck down Section 303 of the IPC, which provided for a mandatory death sentence for offenders serving a life sentence.

REASON FOR ABOLITION OF DEATH PENALTY

1. Death penalty violate the fundamental right article 14, 19 and 21 *Mithu v. State of Punjab* [6] was another case where the mandatory death sentence under Section 303 was declared unconstitutional and hence invalid. The section was based on the logic that any criminal who has been convicted for life and still can kill someone is too cold blooded and beyond reformation, to be allowed to live. The judges in *Mithu's* case held that Section 303 violated the Articles 14 and 21 of our Constitution and so it was deleted from the IPC. [7]

In the subsequent cases of *T.V Vatheeswaram v. State of Tamil Nadu* [8] and *Sher Singh v. State of Punjab* the Supreme Court was faced with the question of delay in execution of the death sentence and whether a prolonged delay was reason enough to commute the death sentence to life imprisonment. While the first case laid down that such a situation gave reason enough for the convict to invoke section 21 and get the lesser punishment, the majority in the latter case differed on this point.

Kehar Singh v. Union of India [9] is the famous case where the assassins of Indira Gandhi were sentenced to death. Kehar Singh was part of the conspirators who planned the murder and did not actually commit the act. The court held that even this was enough to fall in the rarest case criteria. This was a widely controversial decision.

2. No proper way to execute the death penalty in India there are only one way to execution of the death penalty that is the hanging a person by neck till death but instead of it there are so many other ways which may be better than hanging a person these are lethal injection, any other medical process
3. Survey show that there is no credibility that death penalty decrease the crime rate in the world there are so many country who is abolition the death penalty and then the done so may survey in that particular survey its clearly state that a state who abolition the death penalty in that particular country the crime rate goes down this survey is done in the United States of America in that country there are some state who abolish and some state is not abolish and then they were done survey and so many studies which says that the existence of the death penalty is not give surety that crime rate is not increase but the effect of the death penalty is the opposite because after the abolition of the death penalty the crime rate goes down the its time comes to in the India that India should abolish the death penalty [10].
4. Taking so much time for the execution of the punishment- *Rajiv Gandhi* case. The death penalty is little more than judicially sanctioned murder. Justice K.T. Thomas, who headed the three-member bench in the *Rajiv Gandhi* assassination case, has said that executing *Perarivalan*, *Murugan* and *Santhan*, convicted and sentenced to death in the case, would amount to punishing them twice for the same offence, as they had already spent 22 years in jail, the equivalent of life imprisonment [11].

CASES IN THE FAVOR OF ABOLITION OF DEATH PENALTY

One of the most recent cases which many abolitionists in India consider to be a major step towards the possible abolition of death penalties in India is that of Santosh Kumar Bariyar v. State of Maharashtra [12]. The bench comprising Justices S.B. Sinha and Cyriac Joseph ruled that previous judgments of the Court, in which 13 death sentences were validated, were rendered per incursion, or in other words were rendered in ignorance of the law laid down in Bachan Singh's case. In this case the accused along with three others kidnapped a person and demanded a ransom of Rupees 10 lakhs. Eventually they killed him and cut his body into pieces and disposed them in different places. In spite of the brutal execution of the murder the judges were convinced that the 'mitigating circumstances' in this case were sufficient to exclude it from the bracket of "rarest of rare" cases. The Court observed that the accused were not professional criminals with a long past criminal record, that they did what they did with the sole motive of collecting money. So, the Court held that there is a chance of reform and rehabilitation of the accused and for the sake of that possibility granted them the lesser sentence of life imprisonment.

INTERNATIONAL POSITION REGARDING THE DEATH PENALTY

In November 2016, India voted against a UN resolution to establish a moratorium on death penalty, stating that it contravened statutory law in India. 115 countries had voted in favor of the resolution. No executions were carried out in India in 2015.

The modern abolitionist movement started with the works of great Italian criminologist, Cesare Beccaria which convinced many statesmen of the uselessness and inhumanity of capital punishment. During the discussions on adoption of French Penal Code in 1791 there was vigorous debate for abolishment of death penalty. In the 19th century the abolitionist movement grew with eminent jurists like Bentham and Romilly supporting such ideas. Michigan in 1846 became the first state to abolish capital punishment followed

by Venezuela and Portugal in 1867. As a goal for civilized nations, abolition of death penalty was promoted during the drafting of the Universal Declaration of Human Rights in 1948.

Either death or life in prison, either with or without parole large majority of countries have either abolished or discontinued the practice. The U.S. is the most developed country to use the death penalty. The use of capital punishment is usually divided into the four categories set out below. As of October 2017, of the 195 independent states that are UN members or have UN observer status: 57 retain it in both law and practice [13].

28 have abolished it de facto, namely, according to Amnesty International standards, that they have not executed anyone during the last 10 years and are believed to have a policy or established practice of not carrying out executions. 8 have abolished it but retain it for exceptional or special circumstances (such as crimes committed in wartime). 103 have abolished most recently: Madagascar (2015), Fiji (2015), Suriname (2015), Nauru (2016), Benin (2016), Mongolia (2017).

POSITION IN THE UNITED KINGDOM

Around the 17th century Death penalties were one of the most commonly meted out punishments in the UK. The common law in those days was called "Bloody Code" because at one point there were up to 220 offences which were punishable by death, including "being in the company of Gypsies for one month", "strong evidence of malice in a child aged 7–14 years of age" and "blacking the face or using a disguise whilst committing a crime". The Murder (Abolition of Death Penalty) Act 1965 suspended the death penalty in England, Wales and Scotland [14] (but not in Northern Ireland) for murder for a period of five years and substituted a mandatory sentence of life imprisonment. After this even though death penalty still remained part of the legal framework it was implemented in few exceptional cases only. Finally, on 20th May 1998 the House of Commons voted to ratify the 6th Protocol of the European Convention on Human Rights prohibiting capital

punishment except “in time of war or imminent threat of war.” In October 2003 the UK prohibited capital punishment in all cases.

CONCLUSION AND SUGGESTIONS

In India the death penalty should be abolish. An eye for an eye makes the whole world blind,” said Mahatma Gandhi. There is need to eradicate crime and not the criminals. Legalizing the capital punishment will not help removing the crime. There is need to provide counseling and therapy to criminals. It should certainly absorb the sentiment behind the increasing support by the comity of nations to the UN’s camp.

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