

Capital Punishment In India

Prashant

Student, B.A. LL.B; Maharshi Dayanand University, Rohtak

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ABSTRACT

Capital punishment is considered as the highest degree of punishment which is awarded in any society or democratic nation in order to maintain law and order. But how executing some person for the sake of ultimate justice is justified, is a question of worth pondering. Rather we should focus on eradicating the crime and not the criminal. If we look at the prevalence of capital punishments all over the world then we would find that china is the sole country which ends up hanging 1000 person a year where as in India, the doctrine of (barest of the rare) is followed and often the capital punishments, with the passage of time gets converted into the life imprisonment. Between the period of 2002 to 2016, India has executed a total of four persons. Regarding the procedure and law of capital punishment, India and china have various similarities but the sedeming feature of capital punishment of china is that once it is awarded, it cannot be revoked in any circumstance. Having look on such policies, the united Nation(UN) has also opposed such policies, the United Nation(UN) has also opposed such harsh laws and stated that “ life is precious, and death is irrevocable” U N further stated that killing a human being for the sake of justice also denies the fact that we are human. We are no one to decide the fate of life of someone. Therefore, killing someone is not justified and we should approach a different way of tackling the criminals I.e. reformative approach which give an opportunity to the criminal to change himself and live peacefully in the society.

Introduction:

Punishment is the force which is used to implement the (law of land) and it also acts as the foundation of modern civilization. In order to maintain law and order in the society, it is the duty of the state to control the criminal behaviour of its citizens. In the ancient time, there were not any specific laws governing the situation of law and order rather the extent and quantum of punishment to be awarded in such case would totally depend on the emperor. With the span of time, various modern theories of punishment emerged and the power to govern the law and order situation was given to the state. The most deterrent punishment which is awarded in the present time is the capital punishment.

Definition of Capital Punishment: Capital punishment is the punishment which involves legal killing of a person who has committed a certain crime prohibited by law.

It is also known as (Death penalty which is approved by the government in which a person is subjected to death by the state as a punishment for the crime he has committed.

The sentences awarded to a converted person to death is known as ‘death sentence’ and the act of carrying out or implementing such sentence is known as ‘execution’.

Whenever the court awarded a punishment to an accused there will be a Theory on the basis of which the judgement of that particular case is based upon. such proposition or theories are known as ‘Theories of punishment’ generally these theories are of five kind deterrent theory reformative theory preventive theory retributive theory

expression theory one of the most discussed topic of the United Nation you and is this evolution of death penalty where that penalty is considered as most in human and violation of fundamental Human Rights UN laid down more emphasis on reformative theory of punishment rather than the deterrent theory of punishment in the celebrated case of Rajendra Prasad V state of Uttar Pradesh justice v r Krishna Iyer committed that the special reason must relate note to the crime but to the criminal the crime may be shocking and yet the criminal may not deserve the death penalty.

If we do analysis of the various theories of punishment, then we can deduce that among these theories, is ‘reformative theory’ has fair advantage over rest of the theory. the reason behind is that these is ‘scope of improvement’ in the reformative theory and such scope is completely absent in the ‘deterrent theory’

In India prisoners on one hand, do petty jobs like making of ‘Dhoopbatti’ and ‘Essence sticks’ which is a proper way of reinstating them to fit in the society when they will be coming out of jail in this way subjecting criminal to such behave leads to scope of improvement. Rather in case of deterrent theory, there is no scope of improvement.

Capital punishment is a very serious discussion as it take the life of a person this is also reason why voices are being raised against the countries like USA India China and Arab countries for not a blushing the penalty of death punishment.

All over the world, the 60% of total execution in implemented by the China alone whereas in India it is awarded only in the reset of rare cases. Looking at the nature and severity of the punishment it should be the option of last resort.

In the present society there are two segments of people having different views about capital punishment-

On the one hand there is a segment of people who believe that a person is deserve to be put to death if he has committed heinous crime. On the other hand, there are other segments who believe that a person, no matter how grave offence he has committed, should be given a second chance to reform him. It is not proper to execute a person straightforwardly.

Capital Punishment in India:-

“We are all the creation of god. I am not sure a human system created by a human being is competent to take away life based on artificial and created evidence”.

-APJ Abdul Kalam

Generally, there are two reasons for awarding the capital punishment-

- A) First is that a person who has committed some wrong, must suffer the consequences of it; and
- B) Second is that inflection of capital punishment on a long does may act as an example for other.

The suitability of the cases in which capital punishment may be awarded has been death by the Supreme Court in the celebrated case Bachan Singh v. State of Punjab. And the Supreme Court in this case held that capital punishment should be awarded only in those who care which pass the doctrine of ‘rarest of rare case’.

Further this decision was followed by a three Judge bench in Macchi Singh and others v. State of Punjab and held that when the collective conscience of the society is so Shaken deeply that it crosses all limits of humanity and the society as except the judicial official to pass capital punishment, only then it may be the proper case for capital punishment.

Further, capital punishment can be awarded if-

- 1) When the murder is committed in an extreme brutal manners, revolting or dastardly way so as to shake the collective conscience of the society.
- 2) When a murder of a member of Scheduled castes/scheduled tribe is committed which arouse social wrath
- 3) In the cases of ‘Dowry Death’ or ‘Bride Burning’
- 4) when the victim of Murder is-
 - (A) A vulnerable woman or a person rendered unaided by mature epoch or illness
 - (B) An innocent child
 - (C) Once the injured party is an individual in relation to whom the slaughterer is in point of authority or Reliance.
- 5) When the crime is enormous in proportion.

- 6) When the injured party is a civic figure as well as murder is committed for political or similar reason rather than personal reason.

DOCTRINE of “Rarest of Rare”

The view taken by the Supreme Court in Bachan Singh v. State of Punjab, that capital punishment should be awarded only in the rarest of rare cases was highly supported as it aimed to reduce the trend of inflicting the death penalty.

The ratio decidendi of this case was that- the death penalty is constitutional only when it acts as an alternative to life imprisonment.

The Supreme Court further explained the doctrine of ‘rarest of rare’ in the Santosh Kumar v. state of Maharashtra. It said that “The rarest of rare dictum only serves as a Guideline in enforcing the provisions mentioned in Section 354(3) of CrPC and entrenches the policy that life imprisonment is the rule and death punishment is an exception.

Law Commission Report, 2015

In its 262nd Report (August 2015), The Law Commission of India has recommended that the concept of capital punishment should be abolished for all the crimes other than the terrorism related offence to safeguard the national security.

In 1967, the Law Commission of India on that time did not feel safe to take a step forward towards the “abolishing the capital punishment in India”. But now in 2015 report, it has clarified that it is proper time for “abolishing the capital punishment in India”.

However, there is very low state of education in India but still Law Commission favoured the move of abolishing the capital punishment. It assigned the following reason for the same-

- 1) It has not a Capacity to make a deterrent effect on the people
- 2) In India's justice system is flawed
- 3) Times have changed

Rate Of Execution And Computation Of Capital Punishment Of India-

The concept of death penalty is present in India but there is very low rate of executions. Between 1998-2016 there are only 7 executions. Between 2004 to 2013 capital punishment verdict were delivered but only 3 of them were executed.

In the last for 14 year, there have been only 4 executions till death:

- 1) Dhananjay Chatterjee (14th August, 2004)
- 2) Yakub Memon (30th July, 2015)
- 3) Mohammed Ajmal Amir Kasab (21st November, 2012)
- 4) Afzal Guru (9th February, 2013)

Commutation of capital punishment –

The Indian Constitution under article 161 and 72 Empower the Governor of any state and President of India to award pardons, reprieves, respites or remission of penalty or to suspend, remit or commute the sentence of any person convicted of any offence

- (a) In all cases where the punishment or sentence is by a court-martial
- (b) In all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the union/state extend;
- (c) In all cases where the degrees is a verdict of fatality.

Legal Procedure

When a death punishment is awarded by a court of session, it has to be confirmed by the high court of that concerned state only then it would be executable. However, still the convicted person has the option of going in appeal to the Supreme Court. But if somehow, this relief is not granted to by the Supreme Court then death row convicted can file a Mercy petition before the President of India or the Governor of the State.

Execution Procedure

Hanging

According to the code of criminal procedure 1973, hanging is the method of execution in the civilian Court.

Shooting

As per Army Act, 1950 hanging as well as shooting are both considered as official method of execution in the military court-martial system.

Conclusion

“Life is precious and death is irrevocable”

When a capital punishment is awarded to the accused, it is more than mere a punishment; we are killing a person for the sake of Justice. Killing a person demonstrates the lack of respect towards women life. Being against the death penalty does not mean that criminal should not be punished rather he must be punished for the wrong he has committed but not in such in humans way as is capital punishment capital punishment puts on ends to the scope of improvement of the criminal which would have otherwise he achieved if death penalty would not have been there. This is the reason why most democratic nation is supporting the view of reformatory theory, instead of deterrent theory.

This concept of capital punishment is barbaric and should be abolished as it involves killing of a woman being which is immoral as life is precious and death is irrevocable. Democracies should emphasis on reformatory theory rather than the deterrent theory as it provides a chance of improvement. Therefore reformatory theory has its advantages over deterrent theory

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