

Capital Punishment

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ABSTRACT

India is also known as Largest Democracy of the World. India is a country that is developing and also simultaneously the crimes are increasing at a very high rate. There are many laws to stop and decrease crimes, irrespective of these laws the crimes are increasing also at a higher rate as the punishments are not adequate for the crimes. There ought to be discipline to abridge the pace of wrongdoing Mechanism. There are some of the hypothesis also which have been demonstrated in my paper that is 'whether the Rarest of rare case damage the constitutionality of Article 21 of the Constitution of India?' And how capital punishment is gainful for the general public of India? This Article will provide all the answers of the Query .

INTRODUCTION

."We are all the creation of God. I am not sure a human system created by a human being is competent to take away a life based on artificial and created evidence".-A.P.J. Abdul Kalam.

The death penalty, often known as capital punishment, is the execution of a criminal who has been condemned to death by a court of law after being convicted of a crime. One of the most essential aspects of capital punishment in India is the Indian criminal justice system. It is the penalty for the most atrocious, terrible, and abhorrent acts against humanity. While the definition and scope of such offences differ from country to country, state to state, and age to age, there are some commonalities. By common usage in jurisprudence, criminology and penology, capital sentence means a sentence of death.

When a court issues a sentence, it does so based on a theory or premise. These theories are referred to as "Theories of Punishment," and they are divided into five categories: Theory of Dissuasion, Theory of Reformation, Theories of Prevention, Theory of Retribution, Theory of Expiation. The term "abolition of the death penalty" is one of the most frequently used terms in the United Nations, where the death penalty is considered a violation of human rights. The Reformatory Theory of Punishment received more attention from the UN than the Deterrent Theory of Punishment. "The specific cause must relate, not to the crime, but to the criminal," wrote Justice V.R. Krishna Iyer in the case of Rajendra Prasad v. State of Uttar Pradesh.

TYPES OF CAPITAL PUNISHMENT :-

There are a range of methods to assassinate criminals on death row, including:

- Stoning The criminal is beaten with stones until he or she dies. It seems to be the most terrible way of execution because the perpetrator dies slowly and in excruciating pain.
- Shooting The offender is either shot in the head or the chest using this procedure.
- Hanging In this procedure, the offender is just strangled till he or she dies.
- Tranquilization: Toxin injections are administered into the body of the suspect, and he dies within a few hours. This leads in a slow but peaceful death for the offender.
- Beheading This investigation indicates removing the criminal's head from his body.

SECTIONS OF LAW :-

The IPC established six potential penalties, including the death penalty. If the accused is convicted of an offence punishable by death and the court sentences him to any punishment other than death, Section 367(5) of the CrPC 1898 required courts to record the reasons why the death penalty was not levied. Section 367(5), CrPC 1898, was repealed by Parliament in 1955, drastically affecting the position of the death penalty. The death penalty was no longer the norm, and courts didn't need exceptional justifications for not enforcing it in circumstances when it was a mandatory punishment.

India's attempt to remove death penalty

In India a Few steps were made to the annul capital punishment yet they also failed. Before Independence the private bill has been also introduced in the Legislative Assembly of 1931 to annul capital punishment for criminal offenses which had been dismissed by the British Home Secretary.

At the point when the underlying Lok-Sabha Session was directed the Independent Indian Government had precluded the going from securing a bill for annulling capital punishment. The endeavors made in the RajyaSabha meeting in 1958 and 1961 had likewise failed. The Law Commission introduced their reports which presumed that the act of capital punishment will win and the executives must have the power of mercy. This report had been introduced to the Government and the Lok-Sabha, in 1967 and 1971 separately.

The Doctrine Rarest of Rare

The introduction of the principle of Rarest of Rare was coined in the judiciary after the delivery of a landmark judgement 'Bacchan Singh V State of Punjab [(1980) 2 SCC 684]'. This doctrine got more clarity in the landmark case Macchi Singh V State of Punjab. The doctrine of Rarest of Rare doesn't have a particular legal definition, but it states that death penalty should only be granted to the accused in rare or exceptional cases where the society is in any danger from the life of the criminal. This doctrine can only be applied when the following aspects of the crime are taken into part which is the magnitude of the crime, nature of crime and the criminal, victim of the crime, motive or reason behind commission of crime and method of commission of crime. The punishment of death penalty can be granted only if all these aspects are justified. The debate about the misuse of this punishment is completely groundless.

Does the constitutional validity of Article 21 get violated by the Rarest of the rare case?

In Jagmohan v. State of U.P AIR 1973 SC 947 Cr.LJ 3301973 SCC162, a debate had occurred testing the legality of capital punishment in the SC. It was asserted that the death penalty had violated a person's entitlement to life, Article 21 of the Indian Constitution an essential fundamental right. In this case, the court dismissed all the contentions and said that the death penalty couldn't be said as infringement of Article 21. In this Case the SC supported the constitutionality of capital punishment and furthermore guaranteed that it would help in forestalling the flare-up of wrongdoings in the general public.

In Deena v. UOI AIR 1983 SC 1155, the inquiries concerning the execution of capital punishment were purchased up under the watchful eye of the court and it was demonstrated that the method of hanging is certainly not a barbarous type of execution and subsequently Article 21 of the Indian constitution isn't disregarded.

In Trivenibai v State of Gujarat the court held that the transgressor must be given reasonable preliminary and the postponement in capital punishment till their execution.

Hence we can say that the Doctrine Rarest of rare case doesn't abuse the legality of Article 21 of the Constitution of India.

Capital Punishment to accused violates Human Rights in India but is but beneficial to the society.

According to Article 5 of UDHR, 1948 no individual should be subjected to any kind of torture or cruelty, any harsh or immoral treatment or punishment. The General Assembly of United Nations taught that there is a necessity for elevated requirement of procedural assurance to be trailed by every country where the death penalty is being penetrated and the methodology should be reasonable, sensible and just. In the thirteenth convention of the European convention for the protection of Fundamental Rights and Human Rights was opened for the signatures of the considerable number of individuals for their marks to annul the act of Capital Punishment. As it is considered as one of the most debasing, barbarous and cruel discipline which encroaches the human privileges of the transgressor under Article 3 of the Human Rights convention of European Convention.

Why does death penalty still prevail in India?

As it is clear that the reformatory theory of punishment has failed significantly in India and there has been an expansion in the pace of wrongdoing consequently the dread of death ought to be incurred in the brains of the criminals to make a superior domain for the general public. India has likewise opposed the resolution which included the abolishment or forbidding of capital punishment by the United General Assembly as it conflicted with the legal enactment of India. The death penalty is considered to be a legal practice in India but it is only executed for the rarest of the rare case such as acts of terrorism, instigation of child's suicide (Section 302 of IPC,1860),murder (Section 302 of IPC,1860), second evidence for drug trafficking etc. In current scenario India has witnessed an increase in the murder and rape cases, there should be strict actions taken against the accused hence abolishing death sentence would make no sense. As capital punishment is viewed as a dreaded discipline than life detainment the individuals would fear perpetrating wrongdoing, if there is an expansion in the execution of capital punishment when the charged is totally demonstrated liable. The Indian trial court has forced 102 cases of capital punishment for assault murder in 2019 which is the highest in last 4 years. Under the direction of our previous Chief Justice RanjanGogoi the SC managed around 27 cases of the death penalty which is the highest number since 2001.

Conclusion

Death is one thing nearly everybody fears so on the off chance that it turns into a punishment for terrible wrongdoings, at that point individuals may fear perpetrating the wrongdoing itself. In the current day situation it wouldn't be wanted to totally annul the act of capital punishment. This practice ought to be held for the welfare of the general public and ought to be granted for horrifying wrongdoings just for the rarest of rare case. Presently the lawsuits are excessively perplexing and long; henceforth the procedure might be moderate and the execution rate is low. In this way the cases will be arranged fast and prompt/suitable discipline is to be given to the miscreant. The punishment of death must be proportionate to the idea of wrongdoing and gravity

of the blamed. Capital punishment will not be deferred after its announcement. The terrorists must not be skewered for their violations. So rather than totally cancelling capital punishment we shall save it in the IPC for an exacting impediment impact upon the culprits and to keep up the confidence of equity in the general public by guaranteeing that the miscreant won't be skewered on the off chance that he carries out an appalling wrongdoing. We should not overlook Bentham's theory of pleasure and pain, in this manner based on the research paper it tends to be said capital punishment will be executed in the 'rarest of the rare cases' for the well being of the residents of the society.

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