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Critical Analysis of Capital Punishment in India

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Abstract:

'Life is precious and death is irrevocable'. "Capital Punishment" or "Death Penalty" is the uppermost level of punishment presented in any democratic society to maintain law and order. The study's objectives were to analyze "Capital Punishment" in India critically by examining current research, legal rules, historical occurrences, and some judicial decisions etc. It is seen that in India follow 'Capital punishment' is 'Rarest of the Rare' cases. But still India executed 'Capital punishment' to criminals. The Indian Penal Code (IPC) and Criminal Penal Code both mention the applicable laws for "capital punishment." Article 21 of the Indian constitution states that only legal procedures, may be followed in order to take away someone's life or personal freedom. In a nutshell, after reviewing all the arguments, a few key areas of strength for those in favor of the punishment" are vehemently opposed to it. The argument over capital punishment is very dubious. This kind of punishment is a legitimate right to free speech where the death penalty has been abolished or is only used against criminals who have been found guilty.

Keywords: *Death penalty, capital punishment, criminals, crimes, punishments.*

Introduction

Punishment is imposed by the government or the ruler of the region in order to maintain the rule of the land, which serves as a support on the stable and Morden civilization. It is the responsibility of the state to punish criminals in order to maintain law and order in society. In other words, punishment is the imposition of undesirable or unpleasant actions on an

individual or group in order to restrain or force them, as well as society, to refrain from committing further crime.

The great philosopher Salmond gave his definition – 'an act deemed by law to be harmful to society in general even though its immediate victim is an individual'(LL.M IInd Sem Jurisprudence II (L-2002), n.d.)

In our society, we can see people of various classes, as not every finger is the same; in the general public, there are residents who adhere to the law and others who flout it for malicious reasons and for so-called enjoyment. It is the state's responsibility to protect the general public's interests from those who make people's lives miserable and install fear in society.

The individual who truly does any demonstration which is taboo by regular equity or legal regulation carries out a wrongdoing. At the point when any wrongdoing is carried out it isn't perpetrated against the individual however a state in general. What precisely is a wrongdoing is characterized in the laws of each and every state. A few demonstrations might be a wrongdoing for some state and not so much for a few different states. Assuming the wrongdoing is perpetrated it draws in punishment for commission of such offense so it shouldn't get rehashed. To meaningfully affect the general public the punishment used to be founded on the objective it needed to serve at large, whichever might be the discipline the superb reason for giving equity to the general public was significant. The center was generally to rebuff the crook. Is it simply adequate to rebuff the lawbreaker? And the reconstruction?

In the historical period there were no or a smaller number of laws made to regulate the social environment work smooth and protect the interest of the law. Mainly the King or the ruler of the region has the ultimate power to make the final decision. The punishment seen was life imprisonment, fines or compensation, acquire property, etc. The curl and most undesirable punishment were death penalty. The Author here have tried to cover all possible aspects which regulated capital punishment in early times, and its development in modern times.

The death penalty, commonly referred to as capital punishment, was once known as judicial homicide. The death penalty is the sanctioned execution of criminals. Because crime is actually committed against society rather than a person. The

execution of a person sentenced to death after being found guilty by a court of law of a criminal offense is what the Encyclopedia Britannica defines as the death penalty.¹

The capital punishment as a punishment seems to be a highly serious subject because it involves taking someone's life, which is a very delicate matter. This is the cause of the question, "Why the death punishment to the criminals," being raised in nations like India, the United States, and some other states. But when we are focusing on India, it is observed only rarest of rare cases where the punishment is given rest are mainly focusing on reformatory, preventive punishment theory.

Objective of the Study:

The "Death Penalty," sometimes known as capital punishment, is the harshest penalty a society or democracy can impose to uphold the rule of law. The study's objectives were to analyses "Capital Punishment" in India critically by examining current research, legal rules, historical occurrences, and some judicial decisions etc.

History and Development of Capital Punishment

One of the worst forms of punishment for offenders is the death penalty. Throughout the beginning of time, we have observed rulers executing criminals whose actions were regrettable and disrupted the laws and norms enacted to ensure the orderly operation of society. Let's first comprehend the development and history of the death penalty before moving on to the fundamentals.

(A) Ancient legal system:

According to Hindu mythology we have seen the following in the most famous and followed Upanishad and purana. The most noteworthy punishment of capital punishment was recommended for specific offenses, in particular, (1) demonstrations of undermining the state, (2) Mahapatra - killing a Brahmana, drinking the alcohol called 'sura' by a two times conceived (dwija), infidelity with master's significant other, and abetment of these offenses (Manu IX 235 and XI 54). Incendiaries, murder, burglary, harming, infidelity, abetment of the robbery by giving resource, instruments for house breaking or refuge, influencing break of bank, endeavor to kill, causing cutting short vide Kaut. P.259, Harita VIII 190-202,220-221, Yaj. II 273, Manu IX 271, 279,371, and Gaut. XXIII 14, Kat.806 recommended capital punishment for a Brahmana on the off chance that he carried out burglary of gold, caused foetus removal or killed a lady (Stri-hatya). There were a few methods of causing capital punishment alluded to in old regulation texts, for example, by overseeing poison, by consuming or by wrecking him through wild creature.

(B) Modern Legal System:

Indian constitution focuses on reformatory and preventive theory rather than retributive and capital punishment. It is seen that only is rare of rarest cases the death penalty is executed. India feels that mistakes and crime are done by people and the judgement is given by people which stays that a person cannot make other person in this undesirable punishment such as

capital punishment. The Indian constitution aspects providing facts and statements on Death penalty are as follows:

- As indicated by Article 21 of Indian Constitution - "No individual will be denied of his life or his own freedom aside from according to methodology laid out by regulation" Different resolutions in India manage criminal regulation have set down arrangements connecting with capital punishment.
- Indian Punitive Code - India held capital punishment as one of the disciplines in the Indian Punitive Code, 1860 (IPC) after autonomy. Demise punishment is likewise endorsed in extraordinary or neighborhood regulations for different offenses. As of now, capital punishment is given under the IPC for different offenses, for example, Area 121, Segment 132, Area 194, Area 195A, Segment 302, Area 305, Segment 307(2), Area 364A, Segment 396, Area 376E, and Segment 376A.
- Armed forces Acts - The unique or nearby regulations which accommodate capital punishment are the Military Demonstration, 1950; the Aviation based armed forces Act, 1950; the Naval force Act, 1950; the Indo Tibetan Line Police Act, 1992; the Assam Rifles Act, 2006; the Line Security Power Act, 1968; the Shastra Seema Bal Act, 2007; the Guard and Inward Security Act, 1971; the Opiate Medications and Psychotropic Substances (Anticipation) Act, 1985 as corrected in 1988; the Booked Standings and Planned Clans (Counteraction of Abominations) Act, 1989; the Hazardous Substances Act, 1908 as corrected in 2001; the Unlawful Exercises Counteraction Act, 1967, as amended in 2004; the Maharashtra Control of Coordinated Wrongdoing Act, 1999; the Karnataka Control of Coordinated Wrongdoing Act, 2000; the Andhra Pradesh Control of Coordinated Wrongdoing Act, 2001; the Concealment of Illegal Demonstrations against Security of Maritime Route and Fixed Stages on Mainland Rack Act, 2002, is another. Arunachal Pradesh Control of Coordinated Wrongdoing Act, 2002, which imposed a passing penalty, and other surrounding legislation, have been repealed.

The death penalty, which is brutal and gives the wrong impression to the Indian people and the rest of the world when they think about the country's constitution and the way it is applied to punishment, has been abolished as a result of the above-mentioned Armed Forces Acts.

Doctrine of Rarest of Rare:

The Teaching of rarest of rare doctrine was laid out on account of Bacchan v. Territory of Punjab². The High Court, for this situation, tried to remove a teaching especially for offenses blame able with death to diminish the vagueness for courts in regards to when to go for the most elevated discipline of the land. By most of 4 to 1, the legality of capital punishment was maintained by the High Court and a rule was set out that capital punishment should be encircled exclusively in the "rarest of rare cases." Nonetheless, the extent of this expression was left vague. The Proportion Decidendi of Bacchan Singh case is that capital punishment is sacred assuming it is endorsed as an option for the offense of homicide and assuming the ordinary sentence recommended by regulation

¹Encyclopaedia Britannica definition on Capital Punishment

²Bacchan vs. Territory of Punjab

for homicide is detainment forever. This implies that capital punishment must be forced on "Doctrine of rarest of rare cases" where an elective choice is barred.

Afterward, on account of *Macchi Singh v. Territory of Punjab*³, the court attempted to set down standards for evaluating whether a wrongdoing fell into the class of "rarest of rare cases." On account of *Santosh Kumar Bariyar v. Province of Maharashtra*⁴, that's what the High Court decided, "rarest of rare decree fills in as a rule in implementing Segment 354(3) and lays out the strategy that life detainment is the standard and demise discipline is an exemption." Art 303 of the Indian Punitive Code ordered capital punishment for all wrongdoers carrying out a day to day existence punishment. This segment was struck down as being held unlawful. The year 2008 represented the instance of *Prajeet Kumar Singh v. Province of Bihar*⁵, wherein the court controlled precisely on what might be a "rarest of rare case." The Court held that a capital punishment would be granted as it were, "the point at which a homicide is committed in a very fierce, unusual, merciless, loathsome or devious way to excite extraordinary and outrageous ire of the local area."

When we hear those particular cases was rarest of rare case of death penalty. But the question a rise is how to identify that the particular is the rarest of rare case. For this our Supreme court have listed the measurement of rarest of rare case.

It was infallibly started with one of the landmark cases, *Macchi Singh case*⁶, the court set out specific models for evaluating when a case could fall under the ambit of most extraordinary of uncommon. The measures are dissected as beneath:

- Way of commission of homicide - When the homicide is committed in a very ruthless, crazy, underhanded, revolting, or unforgivable way to stir serious and outrageous ire of the local area; for example,
- At the point when the casualty's home is set ablaze with the aim to heat him alive.
- At the point when the casualty is tormented to brutal demonstrations to achieve his/her demise.
- At the point when the body of the casualty is damaged or cut in pieces in a severe way.
- Rationale in the commission of homicide - When complete evil and remorselessness are the thought processes behind a homicide; for example,
- A recruited executioner carrying out murder simply for a money related reward.
- A cutthroat homicide consolidating a smart plan to gain influence to acquire property or for some other narrow-minded gains.
- Socially despicable nature of the wrongdoing - When a homicide of an individual having a place with one of the retrogressive classes is carried out. Instances of lady of the hour consuming, broadly known as share passings, are additionally canvassed in this.
- Extent of the wrongdoing - When the extent of the wrongdoing is gigantic, for example, in instances of various killings. Like in many cases we have seen two crimes committed on one victim as a girl was raped and

then burned by an alcoholic man. These are the cases where the death penalty is imposed and are termed as rarest of rare cases. But on the other hand, there are many judgements when this type of cases are encountered in which one judgement was of homicide but other was of life imprisonment.

- Character of survivor of homicide - When the homicide casualty is an honest kid, a defenseless lady or individual (because of advanced age or illness), a person of note, and so forth.

Methods of Execution Capital Punishment

After understanding the meaning, the evolution of capital punishment, not its time to understand the way or the method of execution of capital punishment. There are many ways of execution of death penalty here we will encounter all the ways within India and other countries and also identifying the ways which are followed India

- (i) Hanging: All executions in India are completed by hanging. In 1949, Nathuram Godse, the professional killer of Mahatma Gandhi, was quick to be executed by hanging in autonomous India. The Incomparable. Court of India has recommended that capital punishment ought to just be given in the "most uncommon interesting cases." Ajmal Kasab, the as it were fear monger getting by from the assaults in Mumbai in 2008, was executed on 21 November 2012. The High Court of India had recently dismissed his leniency supplication, which was then dismissed by the Leader of India. He was hanged seven days after the fact. On February 9, 2013, Afzal Master, a fear-based oppressor who was deemed responsible for plotting during the attack on the Indian parliament in December 2001, was hanged in Tihar's jail in Delhi. In the most improbable of circumstances, the code should provide specific justification before sending a person to the scaffold.
- (ii) Shooting: The passing sentence can also be carried out in accordance with the Military Demonstration and Flying Corps Act. The Aviation Based Armed Forces Act of 1950, Section 46, authorizes the court to compel the imposition of sentences for the offenses listed in Sections 34(a) through (o) of The Flying Corps Act of 1950. "After imposing a death sentence, a court of war will, in its sole watchfulness, determine that the guilty party will be slain by the neck, will be hanged until he is dead, or will be executed by being shot," states Segment 163 of the Constitution.
- (iii) Gas Chambers: a procedure in which an individual or group of individuals is forced into a small, tightly-closed compartment where not even air can flow. Infested areas gave rise to a structure like a shower where dangerous chemicals, including nitrogen oxide, are released. These gases are damaging to human health and can cause death. Generally speaking, this kind of punishment was used in earlier times, specifically in Germany's Nazi administration. Despite not being utilized today, it is nevertheless employed as a secondary form of punishment alongside the death penalty in some states, including California, Arizona, Oklahoma etc.
- (iv) Stoning: It is a form of punishment when the offender is given to the community or group of people. Stones are picked up and thrown at the criminal by the crowd gathering nearby. The constant stoning causes severe

³Macchi Singh v. Territory of Punjab

⁴Santosh Kumar Bariyar vs. Province of Maharashtra

⁵Prajeet Kumar Singh vs. Province of Bihar

⁶Macchi Sing and other vs state of Punjab, 20th July, 1983

injuries and, eventually, death. That was a custom that was regularly observed throughout the entire planet. Early on, particularly throughout the Middle Ages when Islam was in power, even was an important feature in India. It is no longer practiced in India, but is still found in Gulf countries including Saudi Arabia, Qatar, Iran, Yemen, Sudan, and the United Arab Emirates.

- (v) **Electrocution:** It is a different kind of punishment that qualifies as a harsh punishment that is still used in industrialized countries like the United States, the Philippines, and China. In this, the offender is made to sit in an electric chair, have his or her hands restrained, and then receive electric shocks at predetermined intervals with an escalating watt. The person finally dies as a result of this.
- (vi) **Decapitation:** A person's head being severed from his or her body is another cruel technique to put someone to death. In ancient conflicts, this kind of punishment was used, in which the king wouldst throw the enemy's head away from the body. Currently, middle east countries are still using these sorts of punishment.
- (vii) **Lethal Injection:** It's a technique for overdosing the criminal on drugs. The abuse of narcotics eventually results in death for the offender. This is an ancient tradition that was utilized in former times, but it is currently mostly observed being used in the United States and other regions of the world, where some are in notice and some are not due to a lack of data.

The above listed are the most prominently used punishment, which prevailed in earlier as well as in current scenario. Talking about India, the hanging and the shooting are the two types of execution of the Death Penalty. Shooting was used in earlier stages but slowly and steadily the shooting as execution is removed and hanging is the execution process used.

Arguments for Capital Punishment:

Capital punishment gives end: Some relatives of wrongdoing casualties might require years or a long time to recuperate from the shock and loss of a friend or family member. Some might very well won't ever recuperate. Something that rushes this recuperation is to accomplish a conclusion of some sort or another

It makes one more type of wrongdoing impediment: Wrongdoing would spin out of control as at no other time in the event that there wasn't a viable method for dissuading individuals from perpetrating the demonstrations. Jail time is a powerful hindrance, however for certain individuals, more is required. Examiners ought to have the choice of involving various disciplines to limit wrongdoing.

Our equity framework shows more compassion toward crooks than it does casualties: It's time we put the accentuation of our law enforcement framework back on safeguarding the casualty as opposed to the denounced. Keep in mind, an individual who's waiting for capital punishment has quite often perpetrated wrongdoings before this. A long queue of casualties has been sitting tight for equity. We want equity for current and past casualties.

Current crime location science can now successfully take out practically all vulnerability: One of the greatest contentions against capital punishment is the chance of mistake. Without a doubt, we can never totally wipe out all vulnerability, yet these days, it's comparably close as you can get. DNA testing is more than almost 100% viable. What's more, regardless of whether DNA testing and other such logical techniques didn't exist, the preliminary and requests process is so exhaustive it's close to difficult to convict a guiltless individual.

Detainee parole or escapes can allow crooks one more opportunity to kill: Maybe the most compelling motivation to keep capital punishment is to keep the wrongdoing from reoccurring. The parole framework these days is a joke. Regardless of whether a crook is condemned to existence without probability of parole, he actually gets an opportunity to kill while in jail, or far more detestable, escape and go on a wrongdoing/murder binge.

It adds to the issue of overpopulation in the jail framework: Jails the nation over deal with the issue of an excessive number of detainees and not adequate room and assets.

It provides investigators with yet another negotiation option in the application deal process, which is crucial for cutting costs in a crowded court environment: Around 80 or 90 percent or more of criminal cases end up being settled through petition bartering. It's a really bad choice given the time, cost, and staff requirements of a lawbreaker case. Really, the vast majority of people who are called in are at blame for the offense with which they are charged. Investigators can ensure appropriate punishments when the death penalty is used. Arguments against Capital Punishment:

The chance of blunder: The most well-known and convincing argument against the death penalty is that, eventually, innocent people will perish as a result of mistakes or flaws in the justice system. Subsequent investigations revealed numerous innocent defendants who had previously received the death penalty but had been found not guilty.

Unjustifiable Judgment: Because of their impoverished circumstances, the respondents in a large number of instances involving the death penalty are either not addressed at all or are only treated insufficiently, which results in a more pronounced unfairness. A kind of racial division that arises for different reasons is also observed. As a result of the safeguard legal counsel frequently making mistakes and losing cases, the poor might give incredibly minimal compensation. As unrestrained prudence has suggested to the chief prosecutor, poor continuously people from minority communities become an easy target for such capital disciplines due to bias and predisposition. Whenever someone wants to pursue something, it often leads to a cycle of oppression and rejection of equity for them.

Absence of Prevention: Any punishment should be used as a deterrent against repeating a similar act. Yet, based on the measurements available, the manslaughter rate has not been successfully reduced by the death penalty. Investigations have revealed the startling fact that executions actually increase the rate of homicide. That suggests that the death sentence does not deter serious conduct.

Legitimizing conditions: Those who have experienced severe harm, capitulation, brutality, disdain, or a negative societal context occasionally commit these unforgivable wrongdoings. These favorable conditions have a real impact on their humanity. This makes it inappropriate to hold individuals solely responsible for their misdeeds. We all have a responsibility to act somewhat compassionately. The general consensus is that people shouldn't be criticized for their actions unless they have a responsible brain, which assumes that they are aware of what they are doing and that it is incorrect.

Consequences for society: The death penalty is itself a planned homicide. This is inadmissible even it is incurred by state authority as it brings down the worth of life. Such demonstration can abuse the general public, truth be told. "Vengeance is fundamental" can turn into a general public mentality. By seeing such demonstrations, our own psychological cosmetic begins accepting that savagery is important to control the bad behaviors. By giving the death penalty, the group of the casualty is for all time damaged and deceived.

Monetary expenses for citizens of the death penalty are a few times that of saving somebody in jail forever: The vast majority don't understand that completing one capital punishment costs 2-5 times more than saving that equivalent criminal in jail until the end of his life. It has to do with the vast requests, extra required techniques, and lawful fighting that drag the interaction out. It's typical for a detainee to be waiting for capital punishment for 15-20 years. Judges, lawyers, court journalists, representatives, and court offices all require a significant speculation by the citizen.

Recommendations

Throughout the discussion, it has come out that some of the topics on which some people have focused are crucial ones for those who support the death penalty while others have steadfastly opposed it. The topic of the capital punishment, also referred to as the death sentence, is highly dubious. This topic is open for discussion in countries where the death penalty is abolished or reserved solely for killers who have been found guilty of a crime and have a fair right to free speech.

Opponents claim that the death penalty is insufficient because it doesn't reduce the number of crimes because it causes abnormal birth cycles of equity, violates the criminal's overall right to life, and does not deter homicide. They also claim that life imprisonment without the possibility of further appeal serves as a deterrent for homicide.

When we first considered lifelong imprisonment as a punishment, we were thinking about the alternative punishment for the death penalty. Our Reformatory Law was also remembered, but at the same time. Therefore, I believe that lifelong transit is not a legitimate field. The fact that this discipline's execution is expensive in a developing country without an economic infrastructure, cannot fully absorb these expenditures is another justification for my viewpoint.

In this way, in conclusion, we ought to advance change in a predisposition ridden legal framework. We can do this in two ways. To start with, make qualified and experienced guard accessible to all, paying little heed to race or monetary

standing. This will offer everybody an equivalent chance for a fair preliminary and will kill the segregation waiting for capital punishment. Second, make the region in which the blamed is attempted a non-figure whether capital punishment, or any sentence, is sought after. Just through these progressions can genuine a fair outcome be given, instead of savage state sanctioned murder.

The death penalty is a terrible public judgment call from an ethical, social, and financial standpoint. The following might be preferable options to select as a sensible alternative to the passing penalty:

- Prior to the possibility of parole, those convicted of serious violent crime should serve at least 25 years in prison. Prison should be permanent in some circumstances, with no possibility of parole ever.
- Prisoners who are truly and intellectually capable should work in jobs that are not slave-like and take into account some nobilities and the motivation behind the detainee's life while they are jailed.
- The income generated by the prisoners should be split between paying for their imprisonment and generating funds for the victims of terrible conduct and their survivors. This would take into account a compensation reserve for social, mental, and strictly necessary help for victims and the families of survivors. These resources could also provide financial support to families who have lost a worker due to a crime.

Conclusion

"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 Kalam⁷

At the point when a capital punishment is granted to the denounced it is more than simple a discipline, we are finishing or killing an individual in name of equity and regulation. It is shameless to kill an individual what's more; it shows the absence of regard towards human existence. Contradicting the death penalty also doesn't imply that one is endorsing the criminal. The imposition of the death penalty eliminates the potential for significant advancement that might have altered a person's existence. For this reason, numerous countries throughout the world accept the reformatory discipline hypothesis while also eliminating the barrier discipline hypothesis. As a result, one should respect every single person because "even the most wretched lawbreaker stays a human being equipped with normal human poise." We have no right to decide who will live and who will die based on rules and regulations that we set ourselves. The evidence clearly shows that a criminal should be punished for the crimes he did, but as a society, we must focus on punishing the offense rather than the criminal. The essential difference between people and other species is this.

The fact that "we are a human" is a precious gift, because killing someone else distorts the essential truth of what it means to be a person. Even if we refer to ourselves as an "enlightened civilization," we continue to murder people in the name of equity. The legal basis for the death penalty is obstruction hypothesis, which does not only set a model by inspiring fear in the minds of others. But there are some

⁷11th president of India, 2002-2007

alternative methods by which a primary model can be established, such as reformative hypothesis.

The idea of the death penalty is old and uncouth and ought to be nullified as it includes killing of an individual which is corrupt as life is valuable and passing is irreversible. Majority rules systems ought to flourish more on reformative hypothesis as opposed to obstruction hypothesis as it given opportunity of progress which can change the existence of an individual and can offer him an opportunity to get back in the general public and subsequently reformative hypothesis enjoys its upper hand over obstacle hypothesis. Subsequent to taking a gander at every one of the measurements and report we can reason that China actually has far to cover to nullify the idea of capital punishment.

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