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Death Penalty in India: A Critical Study

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ABSTRACT: -Since ancient times, we have been listening to the death penalty, if someone commits a heinous crime, then he is given capital punishment. Death penalty can prevent such crimes from happening. Death penalty is considered to be the biggest punishment in the world, this punishment is old in Indian history, but at present there is a lot of discussion about the provision of abolishing this punishment. Constitution of India came into force in 1950, but before that, the death penalty was easily given in India due to being under British rule. Adopting all these, there was a provision of capital punishment for serious offenses for 5 years before the commencement of the constitution, but later the punishment for many offenses was changed in the Indian constitution keeping in mind the cruelty of his crime. But in today's time it is not so, today the perception has changed, at present there is a belief that death penalty is a crime against humanity and society in itself, God has given us life and no one has the right to take it, thus death penalty should be declared a crime against such constitutional and human right, the government should take steps keeping in mind its negative consequences and take steps to separate the provisions of death from the law. It takes more time to pronounce the death sentence, during which the prisoners have to go through both mental pain, due to this, the prisoners start begging for the death penalty, this situation should not be faced by person. Article 21 of the constitution of India guarantees to its citizens the right to life and personal liberty, no citizen can be deprived of these rights, innocent people are at greater risk of punishment by capital punishment, more of them are poor. Most of the poor peoples cannot afford the good lawyer for their defence

Keywords – Capital punishment, heinous crime, Death penalty, Human rights, Humanity, Prisoners etc.

Introduction:- Our society works according to same rules and laws, due to which there is atmosphere of peace in the society, in order to run the society well, laws and constitution are made in any country, whoever breaks the law will be punished. Is a punishable offense the punishment of any offense depends on its seriousness. The constitutional validity of death penalty was first challenged in the United States of America, which took steps to abolish the death penalty. In India, the death penalty is called capital punishment. Section 53 of Indian Penal Code, 1860, provides for the death penalty. Section 368 of the Code of Criminal Procedure empowers the High Court to award capital punishment. The death penalty is given in cases where serious crimes are committed, in which the collective conscience of the community is so astonished that it expects the judiciary to give death penalty to the perpetrators. They can be kept in the purview of serious cases. It is currently discussed that the death penalty should be replaced with life imprisonment. The Supreme Court has repeatedly held that the long delay in capital punishment is the human effect of causing condemned prisoners to suffer physical and mental agony amidst hope and despair. The death penalty becomes humane, due to which the prisoner's sentence has to be changed to life imprisonment. According to new data, delaying the trial of death row convicts makes the death penalty effective, besides increasing the travel on the convict and his family. By the end of December 2017, 371 prisoners in India are said to be awaiting the death penalty. Were doing an old case of 1991 which is from 27 years ago, only 4 convicts were given death sentence in 13 years. Only four convicts were given death sentence in 13 years including

one rapist of a minor child and three guilty of terrorism offenses. As per 2015 report death row convicts still could not get sentence due to delay. In trial 2018 in the Supreme Court upheld the death penalty for two of the four convicted rape and murder convicts, and organizations criticized the death penalty. Many countries have abolished the death penalty. India has been opposing the United Nation's proposal to ban the death penalty from time to time. Each member state of the United Nations has the right to determine its legal authority and legal punishment. India has to limit the death penalty in the decision taken by the Supreme Court.

Definition of death penalty- Death penalty is a legal process where a person is given death sentence by the state as punishment for the offense committed by him .

Crimes Punishable with death penalty in India

Murder- Murder is a heinous crime as per section 302 of IPC. *Bachchan Singh v. State of Punjab*¹ the Supreme Court held that the death penalty can be said to be constitutional only if it is invoked as an extraordinary punishment in heinous cases.

Terrorism related crime – Any act which endangers the life of the people or causes serious damage to property, the use of explosion comes under terrorism, which can also be punished with death.

Rape -When the rapist causes the victim's death in the course of crime, treats her body mercilessly, or those who commit gang rape can be sentenced to death.

Treason- When any tries to wage war against the government, he can also be given the death penalty.

Kidnapping- Unlawful detention or intimidation of a person can also be punishable with death

Positive aspect in favor of the death penalty - The parties to the death penalty believe that the death penalty is intact not only in India but all over the world. The death penalty cannot be abolished by referring to a civilized country. In serious cases like murder and rape, the death penalty is justified. With this,, criminals who have a feeling of such guilt in the mind of the criminals can also be killed. They ask for stones in support of the death penalty . The person who has committed such a serious crime does not have the right to live, so it is only right to live,so it is only right to give them death. It will also give justice to the victim and its effect will also be seen in the society.

Negative aspect of the death penalty - It is often observed that we have faulty justice system and right to justice due to which the innocent are killed. Reveal this innocent person guilty because of the arrangement of becomes, and proves himself innocent didn't know how to cut .Whose because of which he gets the death penalty.It is right to kill someone or to give death to the criminal who has committed murder as punishment. Some parties believe that this act of murder. That's why many countries have been favor of abolishing the death penalty.Some parties believe that criminals must be given a second chance to live and improve their lives.By giving a chance to the criminals, they will realize their criminal incident and by staying in jail, they can repent of their criminal incident.

*Ediga Anamma v. the State of Andhra Pradesh*²-The Supreme Court laid down the principle that life imprisonment for the offence of murder is the rule and capital sentence is the exception in certain cases. The court also stated that a special reason should be given if the court decides to impose a death sentence.

*Machhi Singh and Others v. the State of Punjab*³ -: A feud between the families took away seventeen lives. The Supreme Court explained the mitigating and aggravating factors and also gave the circumstances related to the imposition of the respected punishment. In the aggravating factor, murder should be

¹ AIR 1980 SCC 684

² AIR 1974 SCR (3) 329

³ AIR 1983 SCR (3) 413

preplanned with extreme brutality or murdering a public servant on or off the duty. And in the mitigating factor, the court considers the circumstances of the offender along with the circumstances of the crime .

The Protection of Children from Sexual Offences Act, 2012 - The courts are given the power to sentence the punishment for the death penalty. In the following headings, a few insights into the most horrifying death row cases have been mentioned⁴.

Vinay Sharma v. the Union of India⁵ - In this case also famously known as the Nirbhaya gang -rape case, had a shocked the conscience of the whole country. The unfortunate and brutal incident occurred in the chilled weather of Delhi on a bus. The girl was brutally raped by six accused which also led to the death of the girl. An iron rod was also inserted into her private parts and she was thrown naked to the road. All the physical and mental torture led to her death. When the case was brought before the court, one of the accused committed suicide in jail and one of the accused was a juvenile so he was not sentenced to death. But the other four accused were sentenced to death and were . also hanged in the year 2020. This judgment was concluded after analysing the aggravating factors outweighed the mitigating factors if any. The death sentence was imposed because life imprisonment seemed inadequate considering the relevant circumstances of the crime and the inhuman torture committed on the victim which brought about her death.

Shabnam v. Union of India⁶ -The court awarded a death sentence to the woman and the same was hanged for the first time in the Indian Criminal Justice system. In this case Shabnam with her lover killed the members of her family. This incident happened in the year 2008. Shabnam killed her family members because they weren't allowing her to marry her lover. Therefore she planned a brutal murder for her family which amounted to be the aggravating factor. She didn't even leave her young and also submitted mercy to the president which got rejected and she is mostly to be hanged by next year.

Hyderabad veterinarian case⁷ - In this case the female doctor was all alone in the scooter which she parked to the Shamdabad plaza and from where she took the taxi to the office where she was going to work. In the meanwhile four accused were monitoring her and which led them to puncture her scooter in her absence. When she was back from her work she saw that her scooter was punctured. And in the meanwhile ,these four accused came and stared forcing her and raping, burning her body . The case was clear cut case for awarding death sentence, but here the police encountered the accused leading to questions about our Indian Criminal System.

Manoj & Others v. State of Madhya Pradesh⁸ - In this case the supreme court issued guidelines of death penalty to collect mitigating circumstances of the accused at the trial stage the trial court must elicit information from the accused and the state -the state must for an offence carrying capital punishment at the appropriate stage produce material which is preferably collected beforehand , before the sessions court disclosing psychiatric and psychological evaluation of accused.

Suggestion

- Death penalty should be abolished in India because most of the liberal democracies of the world have abolished it.
- Many research works have shown that the death penalty has not led to a reduction in crime, but has increased crimes. Therefore, a reformist approach should be adopted.
- The death penalty should be given in the rarest of the rare cases where there has been no scope for improvement in Criminals.

⁴ Protection of Children from Sexual Offences Act ,2012

⁵ Writ Petition (CRL.) No.65 Of 2020

⁶ Writ Petition (Criminal) No.88 Of 2015

⁷ <https://blog.ipleaders.in>

⁸ 2022 Live Law (SC) 510

- Sensitive issues like the death penalty should again be review in India.
- In the context of the death penalty law, a seminar should be organized on national and International levels.

Conclusion

The death penalty is one of the most controversial topics of the Indian society . It exists from the ancient periods and still prevailing in some major countries, India is one of them. In India, death punishment is given only in rarest of the rare cases but what is the exact meaning of the phrase ‘rarest of the rare cases’ has caused much controversy. The ultimate aim to give punishment anywhere is to reduce the crime and to impose some penalty on the name of justice .India follows the same phenomenon but as per the Indian constitution, it is the violation of the provisions of right to life and dignity provided in Art.21, still it is constitutionally valid. This paper provides an overview of capital punishment in India. It also explains the history and various cases on the death penalty. The study observed that all the judgments pronounced in heinous offences while keeping in mind the public at large which eventually settle that the awarding capital punishment on rarest of the rare case is just and fair.

Capital punishment has always been a controversial matter of social and moral aspect in the world .Since death punishment is the process of killing a person, who is accused of a heinous offence in the name of justice, it is not just a punishment but more than that as according to the principle of the human rights it is immoral and determines the lack of respect for the human life. Also if someone opposing the death punishment, it doesn't mean he or she is supporting the criminal. As per Indian constitution or some other countries, death punishment is valid and the same constitution provides the provisions of right to life and human dignity too. United Nation supporting the abolition of the death penalty and India is an active member of the United Nation, still ,capital punishment is there in our statute book. This is because in today world, the conditions and circumstances of crime is brutal a few of them are Delhi gang rape case and Hyderabad gang rape case are known to be the most brutal cases as of now,because of this society demands justice which must be as harsh as the crime committed. That's why the death penalty is still exercised in India.But we need to understand, even though we have the death penalty as capital Punishment for like these heinous offences still it is not helpful for eliminating the crime instead the crime rates are rapidly increasing yearly.But in relation to the death penalty, the punishment for this crime in India should also be reconsidered.Therefore ,the Legislation and judiciary while implementing any law should think in that way, we need to eliminate the crimes and not the criminal.

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