



# CAPITAL PUNISHMENT- ABOLISHMENT OF DEATH PENALTY

AYMAN JAMAL

B.A.LL.B (Hons) 5<sup>th</sup> Year Student, Department of Law, NRI-Vidyadayini Institute of Science, Management and Technology, Bhopal.

**ABSTRACT:** There is no denial to the fact that crime rate is increasing in the developing contemporary India, inspite of various legislations to prevent crime in the country while maintaining law and order in the society. One of the highest levels of punishment awarded is "Capital Punishment" or "Death Penalty". As we know that different people live with different opinion and different way of thinking, capital punishment is one of the debatable topics among the people of nation. Such debates give rise to questions such as whether killing another human being in the name of justice is right or wrong and whether such killing helps in curbing crime rate in the society. This paper makes an attempt to answer these questions in light of the capital punishment. The paper makes a discussion about what capital punishment stands for, the mode in which capital punishment is awarded and executed and how it is linked to doctrine of "rarest of rare" in India. The paper also makes a detail purview on different case laws where criminal can get punishment of death penalty. The paper also discusses the various approaches that can be taken, such as the reformative and preventive approaches as opposite to capital punishment. Thereby, this article gives detailed view of capital punishment in India.

**KEYWORDS:** Capital Punishment, Death penalty, Legislation, Crimes.

## 1. INTRODUCTION

Punishment' is that the coercion went to enforce the 'law of land' which acts together of the pillars of recent civilization. It is the duty of the State to punish the criminals in order to take care of law and order within the society. In the past, there wasn't any specific law or order for such crimes and therefore the quantum and extent of punishment was largely hooked in to the King. With time modern theories of punishment developed and voluntary submission of our rights and power to take care of law and order was given to state. The foremost brutal or we will say the very best punishment awarded in times is 'Capital Punishment'.

Capital punishment is that the punishment which involves legal killing of an individual who has committed a particular crime prohibited by the law<sup>1</sup>. Capital punishment is additionally referred to as 'Death Penalty' which is sanctioned by the govt in which an individual is put to death by the state as a punishment for the crime he committed.

The sentence condemning a convicted defendant to death is understood as 'Death Sentence' and therefore the act of completing the death sentence is understood as 'Execution'.

Whenever, the court awards a punishment there is a theory or proposition on the idea of which it passes its Judgment. These theories are known as 'Theories of Punishment' and are generally of five types:

1. Deterrent Theory
2. Reformatory Theory
3. Preventive Theory
4. Retributive Theory
5. Expiation Theory

The word 'Abolition of Death Penalty' is one of the foremost discussed topics in United Nation (UN) where execution is taken into account as a violation of Human Rights. UN laid more emphasis on Reformatory Theory of Punishment instead of the Deterrent Theory of Punishment.

Justice V.R. Krishna Iyer within the case of *Rajendra Prasad V. State of Uttar Pradesh* commented that-

"The special reason must relate, to not the crime but to the criminal. The crime could also be shocking and yet the criminal might not deserve the Death Penalty<sup>2</sup>" On the off chance that we take a look at the Theories of Punishment we can say that the Reformatory Theory has its decent amount of benefit over Deterrent Theory. Since, in Reformatory Theory there's a 'Degree of Improvement' present while in Deterrent Hypothesis this degree is thoroughly missing.

In India, the detainees of Tihar Jail make 'Quintessence Sticks' and 'DhoopBatti' which might be a decent approach to cause them to change or adaptable with the society. While, on the contrary hand in Deterrent Hypothesis there's no pith of mankind not one or the other it gives the extension to progress. Capital punishment might be an intense subject since it implies eliminating the lifetime of a person which is an extremely touchy issue. This is frequently the reasoning why questions are raised against nations like China, India, USA, Arab nations for granting Capital punishment.

<sup>1</sup> Roger hood, capital punishment, encyclopaedia Britannica <https://www.britannica.com/topic/capitalpunishment>

<sup>2</sup> Rajendra Prasad vs State of UP, 1978 AIR 916.

Among these nations China alone conveys out greatest number of executions with over 60%.

## 2. 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 a life based on artificial and created evidence.” -A.P.J.

ABDUL KALAM<sup>3</sup>

At whatever point a Punishment is granted for the wrong doing there are two fundamental explanations behind exacting such discipline;

1. One is that the individual who submitted the wrong should languish over it.
2. And, the other one is that delivering discipline on miscreant goes about as a model for other people.

In India choosing the case for capital punishment is in view of teaching of "most extraordinary of the uncommon test" which was expressed on account of *Bachan Singh V. State of Punjab*. This implies that capital punishment will just be granted in most uncommon of uncommon cases only<sup>4</sup>.

Further, on account of *Macchi Singh and Others V. Province of Punjab*<sup>5</sup>-the Three Judge Bench followed the choice of Bachan Singh and expressed that just in most extraordinary of uncommon situations when aggregate inner voice of local area is so that it will expect the holders of the legal forces to cause capital punishment then it tends to be granted if-

- 1.) *When the homicide is submitted in an amazingly ruthless, disgusting or obnoxious way in order to excite serious and extraordinary ire of the local area.*
- 2.) *When a homicide of an individual from a Scheduled station is submitted which excite social anger.*
- 3.) *If there should arise an occurrence of "Lady of the hour Burning" or "Endowment Passing".*
- 4.) *When the wrongdoing is gigantic in extent.*
- 5.) *When the casualty of homicide is-*
  - An Innocent youngster
  - A weak Women or a Person delivered independent by develop age or ailment.
  - when the harmed party is a person according to whom the slaughterer is in mark of power or dependence.
  - when the harmed party is a city figure just as murder is submitted for political or comparative explanation rather than individual explanation.

<sup>3</sup> 11<sup>TH</sup> PRESIDENT OF INDIA FROM 2002 TO 2007

<sup>4</sup> Bachan Singh vs State Of Punjab, AIR 1980 SC 898 (Y Chandrachud, A Gupta, N Untwalia, P Bhagwati, R Sarkaria)

<sup>5</sup> Machhi Singh And Others vs State Of Punjab, 1983 AIR 957 (Thakkar, M.P. (J)).

### 3. THE DOCTRINE OF “RAREST OF RARE”

On account of Bachan Singh V. Province of Punjab<sup>6</sup>, The Supreme Court brought up its view in regards to capital punishment that capital punishment ought to be granted uniquely in most extraordinary of uncommon cases. This view of Supreme Court was profoundly upheld as it intended to diminish the utilization of Capital Punishment.

The Ratio Decidenti or the Rule of Law applied by the Supreme Court on account of Bachan Singh is that capital punishment is protected as it were in the event that it goes about as an option in contrast to life detainment. Also, same will be applied in most extraordinary of uncommon case at the point when the elective alternative is undeniably abandoned.

Further, on account of Santosh Kumar Bariyar V. Province of Maharashtra the Supreme Court further clarified that "The most uncommon of uncommon proclamation just fills in as a rule in authorizing the arrangements referenced in Section 354(3) of CrPC and settles in the arrangement that life detainment is the standard and passing discipline is an exception<sup>7</sup>.

The Constitution of India under Article 21 states that no individual will be denied of his 'Entitlement to Life' except if finished with fair treatment of law<sup>8</sup>. In the instance of capital punishment when the discipline of passing is granted then it likewise restricts the extent of presentation of new realities or law for the situation. In the event that the discipline has been executed it is unalterable.

### 4. LAW COMMISSION REPORT OF 2015

India's Law Commission in its 262nd Report (August 2015) suggested that the idea of capital punishment ought to be abrogated for all violations other than psychological oppression related offenses to defend public security<sup>9</sup>. The Law Commission in its past audit in the year 1967, the commission finished up that India couldn't hazard the "test of abrogation of the death penalty". Yet, in 2015 the Commission expressed that "the commission feels that the opportunity has arrived for India to move towards annulment of the passing penalty"<sup>10</sup>.

In spite of the way that death penalties are once in a while executed in India, still the commission recommended that the punishment ought to be annulled. The commission gave following reasons:-

- 1.) Times have changed.
- 2.) It's not a Deterrent.

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<sup>6</sup>. Id at 34.

<sup>7</sup> Santosh Kumar Satishbhushan Bariyar vs State Of Maharashtra, 2009 (6 SCC 498) (S.B. Sinha, Cyriac Josep

<sup>8</sup> Indian Constitution, Art. 21.

<sup>9</sup>. Report No. 262, The Death Penalty, Law Commission of India, 2015.

<sup>10</sup> ID

## 5. DEATH PENALTIES IN INDIA: CONVICTION AND ACQUITTALS<sup>11</sup>

Parliament had a year ago extended the extent of capital punishment by presenting it in instances of assault of young ladies less than 12 years under Protection of Children from Sexual Offenses (POCSO).

According to Project 39A report on capital punishment, delivered by National Law University, Delhi, somewhere in the range of 2000 and 2014 preliminary courts condemned 1,810 individuals to death, the greater part of which were driven to life detainment and about a fourth of those, 443, were cleared by the Supreme Court and high courts.

Previous Chief Justice of India Ranjan Gogoi had heard capital punishment cases on need by establishing four seats, each including three adjudicators, which sat at the same time for more than about a month and a half to choose instances of the death penalty.

The summit court had affirmed seven passing disciplines in 2017 though in 2016 it had affirmed the death penalty in one case and drove seven capital punishments.

In any case, the preliminary courts in India condemned 162 people to the hangman's tree in 2018, which was the most noteworthy in almost twenty years, since 2000. Out of these, 45 included cases for homicide and 58 for homicide including sexual offenses.

The high court's of the nation had affirmed 23 death penalties in 2018 while they drove 58 of them and dispatched 10 cases. The year saw vindication in 23 cases in high courts.

The Supreme Court had maintained capital punishment of 73 of these detainees, out of which many had effectively gone through 10 years waiting for capital punishment. The summit court a year ago drove 11 capital punishments to life detainment, while affirming them in three cases in the audit supplication becoming aware of the December 16 Delhi assault case.

According to its information on capital punishment, upwards of 720 detainees have been executed in India since 1947. A big part of these are represented by Uttar Pradesh, trailed by Haryana, 90 and Madhya Pradesh with 73 executions.

One of the underlying executions of autonomous India, was of Nathuram Godse and Narain D Apte, professional killers of Mahatma Gandhi; they were hanged to death in Ambala Central Jail in Haryana on November 15, 1949.

The wrongdoings culpable with death term in India fall under The Prevention of Child Sexual Offenses Act (POCSO) 2012, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Unlawful

<sup>11</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/death-penalties-in-india-convictions-and-acquittals/about-720-executed-since-1947/slideshow/72834576.cms>

Activities (Prevention) Act 1967, Maharashtra Control of Organized Crime Act (MCOCA) 1999, Narcotic Drugs and Psychotropic Substances (NDPS) 1985, among others.

In 2018, with 22 instances of the death penalty, more than four times more contrasted with 2017, Madhya Pradesh bested the rundown of states giving capital punishment.

With 16 convicts being condemned to the death penalty, Maharashtra was second in the rundown, firmly followed by Karnataka and Uttar Pradesh with 15 cases every one of capital punishments.

Over the most recent 20 years a sum of 3751 capital punishments were driven to life detainment. In July, 2007 Yakub and 11 others were indicted with sentence to death. By unique court for arranging or on the other hand completing the 1993 bombarding in Mumbai which slaughtered almost 260 individuals and harmed a few others.

In March, 2013 the SC maintained Memon's Death sentence, while driving capital punishment of 10 others to life detainment while one passed on afterward. In the previous 14 years just 4 have been hung till demise:

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

## 6. COMMUTATION OF CAPITAL PUNISHMENT

The Constitution of India u/A 161 and 72 engage the Governor of any State and Leader of India to grant pardons, respites, reprieves or abatements of punishment or to suspend, dispatch or drive the sentence of any individual indicted for any offence<sup>12</sup>.

- (a) altogether situations where the discipline or sentence is by a Court Martial;
- (b) altogether situations where the discipline or sentence is for an offense against any law identifying with a make a difference to which the leader force of the Union/State expands;
- (c) altogether situations where the declaration is a decision of casualty.

### 6.1 LEGAL PROCEDURE

simply the once the demise decision is granted by a meetings (preliminary) court, the decision must be set up by a High Court to make it wrapping up. When affirmed by the High Court, the censured convict has the choice of

<sup>12</sup>Indian Constitution, Art 161 & Art 72

speaking to the Supreme Court. In the event that this is beyond the realm of imagination, or if the High Court turns down the allure or denies to hear the appeal, the censured individual can present a 'benevolence request' to the President of India also, the Governor of the State.

The current day sacred forgiveness powers of the President and Governors begin from the Government of India Act 1935 in any case, dissimilar to the Governor-General, the President and Lead representatives in free India don't have any privilege forgiveness powers.

## 6.2 EXECUTION PROCEDURE

- **HANGING**

Hanging is the strategy for execution in the non military personnel court framework, as per the Indian Criminal Procedure Code.

- **SHOOTING**

Under the 1950 Army Act, hanging as well as shooting are both recorded as official methods of execution in the military courtmartial system.

## 7. CONCLUSION

"Life is valuable and demise is unavoidable" At the point when a capital punishment is granted to the charged it is more than simple a discipline, we are finishing or murdering an individual in name of equity and law. Murdering an individual is corrupt what's more, it exhibits the absence of regard towards human existence. What's more, restricting capital punishment doesn't imply that somebody is supporting the lawbreaker.

At the point when a capital punishment is granted it disposes of the extent of progress which could have changed the existence of an individual, this is the motivation behind why popular governments around the planet are supporting reformative hypothesis of discipline what's more, abrogating hindrance hypothesis of discipline.

"Indeed, even the most abominable criminal remaining parts a human being equipped with regular human poise" as a result one should regard every one and all individual. We are nobody to choose who gets to live and who will bite the dust based on rules what's more, guidelines which we made ourselves. The facts confirm that a criminal should be rebuffed for the wrongdoings he perpetrated however we as a human advancement need toward kill the offense not the illicit. This is the principle distinction between person and creatures. We are given a valuable blessing – 'we are a human' and slaughtering another person adulterate the simple reason of being a person. We consider ourselves a 'cultivated society' however we execute another individual for the sake of equity. The guideline of capital punishment depends on obstacle hypothesis which in conventional terms set a model by perpetrating dread on the psyche of others however there are certain alternate ways by which a main model can be set, for example, in reformative hypothesis.

The idea of the death penalty is old and boorish and ought to be canceled as it includes murdering of a person which is shameless as life is valuable and passing is unalterable. Majority rule governments ought to flourish more on reformative hypothesis as opposed to obstruction hypothesis as it give a possibility of progress which can change the life of an individual and can offer him a possibility to get back in the general public and henceforth reformative hypothesis has its benefit over impediment hypothesis.

Subsequent to taking a gander at all the insights and report we can infer that China actually has far to cover to nullify the idea of death punishment.

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