

A Critical Analysis On Death Penalty In India And The Grounds In Which The President Accepts The Mercy Petition

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1.1 ABSTRACT

In Colonial India, death was prescribed as solitary of the punishments in the Indian Penal code, 1860, which listed a integer of capital crimes. The first hanging in independent India was that of Nadhram Gadse as well as Narayan Apte in the Mahatma Gandhi assassination case on 15th Nov 1949. According to the constitution of India, The President and the Governors of state are bound to act on the advice of the union committee of ministers while deciding on the mercy petitions. Death penalty has become an exemption from the rule after a modification to the Code of Criminal Procedure in 1973. Nevertheless, the Law Commission in its 35th report in 1967 assessed the dictate of the death penalty in India and recommended the retention of death penalty. Even after endorsement International Covenant on Civil as well as Political Rights that requires a evolution towards abolition of death penalty, India seems to be bearing into different way altogether. The principle of the death penalty being applied in the rarest of rare laid down in the milestone judgment of Bachan Singh v State of Punjab has been interpreted in a different way in various cases. This paper proposes to examine the relevance of the test of rarest of rare in subsequent cases and tries to trace down the contemporary trend of the death penalty, its effectiveness, and its effects on society.

Key words: Capital Punishment, Mercy appeal, Death sentence, Death punishment, warrant, judicial appraisal.

2.1 INTRODUCTION:

"Death penalty is unalterable it cannot be recalled. It extinguishes the flame of life forever and is evidently destructive of the right to life, the most precious right of all, a right without which gratification of no other rights is possible...." The paper attempts to question whether this chastisement will help in combating the rising crimes against women. Is the death penalty the merely solution that can be offered to the rising crimes? Most importantly, will death sentence even help in combating any crime? Abolitionists argue that human rights are sidelined by awarding the death penalty; on the other hand, retentionists smother a picture of the death penalty as an effectual measure to counter crime due to its deterrence effect. This thesis tries to answer these questions. This paper discusses the judicial trends of awarding death penalty, where judges deviates from the law and principles, and examines the theories on which bereavement penalty rests its foundation. India retains capital sentence for a figure of solemn offences, the supreme court of India has allowable the death penalty to be approved out in five instances since 1995, which a whole of 26

Executions have taken place in India while 1991. In December 2007, India chosen alongside a United Nations general meeting decree vocation for a cessation on the death penalty on 31st

August 2015, the commission of India submitted an explanation to the government which optional the abolition of capital chastisement for all crimes in India, excluding for the crime of waging war against the nation or for violence linked offences. The report cited more than a few factors to justify abolishing the death sentence, including its obliteration by 140 other nations its arbitrary and flamed request as well as its lack of any proven deterring effect on criminals. At least 100 populace in 2007, 40 in 2006, 77 in 2005, 23 in 2002 and 33 in 2001 were sentenced to bereavement, according to Amnesty International figures. About 26 mercy petitions are waiting before the President, some of them from 1992. Seema Gasit and Renuka Shinde are the merely two women in India on death row, whose mercy pleas were rejected by president after Supreme court of India long-established their death sentence.

3.1 CONSTITUTIONALITY OF THE DEATH PENALTY

While the death penalty has for eternity been questioned as being violative of the fundamental rights, the bench has, after extensive discussions, rejected this viewpoint. *Jagmohan Singh v State of U.P* was the primary attack by abolitionists on death penalty, challenging the soundness of the punishment against multiple constitutional rights. The confront of constitutionality of the punishment was rejected by the constitutional bench of the Supreme Court. Authority of the punishment was attacked on four vital points. It was said to be infringing fundamental right surefire by the Constitution of India. Firstly, it was contended that it infringed all the freedoms assured under art. 19(1)(a)-(g). Secondly, the process of presentation the punishment ran contrary to the article 14 of the Constitution guaranteeing fairness. It was contended that the discretion the judges had to award two persons guilty of the similar crime with different punishments of either a sentence of life or death was violative of parity before the law. Thirdly, there was no procedure in CrPC for the determination of the punishments to be awarded. The nonexistence of any procedure established by law under which living could be extinguished resulted in violation of the right to life and liberty. Finally, the contention was that the complete discretion the judges had to award punishments devoid of any legislative policy or standard formulated by legislature was a case of excessive allocation. The Supreme Court was not persuaded by the contentions raised in the case. Aligned with the argument of excessive delegation, court held that the impossibility of setting losing the standards was at very core of the criminal law which invests judge with a very ample discretion of power which is liable to be corrected by superior courts. It also opined that lack of life was constitutionally permissible as it was imposed after a trial in accordance with the process established by law.

3.2 JUDICIAL APPLICATION OF THE DEATH PENALTY

Justice Krishna Iyer, of the Supreme Court, is amid one of the few judges who took a stand for the elimination of death penalty in India. His judgments show a different aspect of the punishment where he tries to contemplate the emotions of the accused to find out the reasons which finally led to the crime. *Ediga Anamma v State of Andhra Pradesh* is an important judgment delivered by Justice Iyer, in which it was detained that the crime and criminal are equally substance while deciding the sentence. The Court extensively dwelt upon the social milieu the accused that had killed her lover's wife and her kid in cold blood and brilliantly wiped off all the evidences. The Court also measured her social and mental conditions, and after considering all the mitigating and aggravating circumstances, dissolved the death sentence awarded to her and awarded her life

Detention, with the Court noting: "Modern penology regards crime as well as criminal as equally material when the right sentence has to be picked out although in our procession system

there is neither comprehensive provision nor adequate equipment for collection and presentation of social and personal data of the culprit to the degree required in the verdict on sentence. However, in the Criminal Procedure Bill, 1973, Parliament has shrewdly written into the law a post conviction stage when the judges shall "hear the accused on the query of sentence and then pass sentenced upon him according to law." They require for special reasons in awarding the death penalty as demanded in the amended Criminal Procedure Code was reiterated in *Rajendra Prasad v State of U.P.*, a case in which the Court tried to set the values for the imposition of the death penalty. The Supreme Court held that the particular reasons which were mandatory before awarding death penalty in cases punishable by life imprisonment as per section 354(3) of Criminal Procedure Code re-enacted in 1973, must recount not to the crime but to criminal. It could be awarded only if the safety of state and society, public interests, and order of the general public bound that course

4.1 DEATH PENALTY AND HUMAN RIGHTS

Death penalty is the decisive denial of human rights as guaranteed by the Universal Declaration of Human Rights. Article 5 states that: "No one shall be subjected to torment or to cruel, inhuman or degrading treatment or punishment." If lynching a person is considered to be cruel and torture, then definitely hanging a person by neck until death cannot be justified. Implementation is indeed cruel and hence in contrary to the principles of human rights. Death punishment has another relation with human right in India. In death row, an accused, after getting verdict to death, waits for his execution, which sometimes extends to months, years as well as even decades in some cases. *Rajiv Gandhi assassination case* serves a good example of this; the convicts *Murugan, Santhanas well as Perarivalan* spent years in prison. Justice K.T. Thomas who was the associate of the bench who sentenced the convicts has called for a review; in conflict that the application of the death penalty to the accused now would be double jeopardy. Many other convicts are in death string waiting for their execution. Sitting in prison as well as waiting for the execution for an inordinate period of time constitutes psychological soreness which amounts to one of the most cruel and unusual treatments which can be useful to individuals.

5.1 CONCLUSION

"Our penal code provides for capital punishment for extensive range of offence. But sadly, the death penalty has never condensed these crimes in the country." Justice V.R. Krishna Iyer While over 66% of the countries in the globe abolishing death penalty, India still retains it, mainly believing it to have a deterring effect. The punitive system is based on three major theories of retribution, deterrence as well as rehabilitation. Deterrence and retribution, where the civilization demands revenge, fail to provide adequate reasons for the use of the death punishment. It is evident that killing a killer has never stopped from a new killer emerging. Additionally, the death penalty neglects the rehabilitation or reformatory theory from the very commencement. India needs to move from a retributive model to reformatory-punitive scheme. Killing is and has never been a solution. The solution lies in the effective system to arrest the perpetrators and effective prosecution so that no one escapes from the hands of law. If that happens, life imprisonment will passably fulfill the deterrence and retributive theory; the death penalty will not serve any supplementary purpose. It is high time that India renews its concentration towards the abolishment of the death penalty.

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