

A CRITICAL STUDY ON CAPITAL PUNISHMENT IN INDIA

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ABSTRACT

India is a well developing country at the same time lots of crime rates were increasing nowadays. There are lots of legislation in India to stop and control crimes, even though the crime rates are increasing because the punishments are not sufficient for the crimes. The punishment should be severe to reduce the crime rate. All punishments are based on the same motive to give penalty for the wrongdoer. There are different kinds of punishment in India such as capital punishment, life imprisonment, imprisonment etc., Capital punishment is known as the most severe form of punishment. This paper says about the status of capital punishment all around the world and also defines the concept of capital offence. It also explains about the modes of capital punishment in India. This article explains two major theories related to capital punishment, namely reformatory theory and preventive theory. In this research the researcher also explained about rarest of rare cases. This article mentioned about abolitionist and retentionist countries, also capital punishment in ancient India. This article has a detailed view about the capital punishment in India and also the methods of execution in India.

KEYWORDS: capital punishment, death penalty, legislation, capital offence, crimes.

INTRODUCTION

India is a country which consist of large number of crimes and criminals. In India all punishments are based on the motive to give penalty for the wrongdoer. There are two main reasons for imposing the punishment, one is the wrongdoer should suffer and other one is

imposing punishment on wrongdoers discourages other from doing wrong. There are different kinds of punishment in India based on their offence such as capital punishment¹, imprisonment, life imprisonment, imprisonment with fine, fine, etc.,. In this research the researcher focused on capital punishment or death penalty. Capital Punishment is one of the important part of Indian criminal justice system. Crimes result in death penalty are known as capital crimes or capital offences. The term capital punishment is derived from the Latin word "capitalis" means "regarding the head". The term death penalty is also known as capital punishment. Capital Punishment is a process by a person is put to death by a state for their criminal offence. Capital punishment or death penalty means the offender sentenced to death by the court of law for a criminal offence. Capital punishment which has been awarded for the most grievous crimes against humanity. Death penalty differs from place to place, state to state and country to country. There are many human rights movements in India which says capital punishment is immoral. The human rights organisations are argued that capital punishment affect one person's right. In jurisprudence, criminology and penalty, capital punishment means a sentence of death. Indian criminal jurisprudence is based on the combination of two theories. The constitution also gave powers to president and governor to suspend or pardon death sentence. In India capital punishment is awarded for the most serious and grievous offences. Capital punishment is given for murder, robbery with murder, waging war against the government and abetting mutiny, etc.,. The death sentence is given only when the court comes to an end that life imprisonment is insufficient, based on situation of the case. The Main aim of this study:

- To study about the capital punishment in India.
- To study about the criminological approach of capital punishment.

RESEARCH METHODOLOGY

This research is based on doctrinal type pattern. Doctrinal research is also known as traditional research. Doctrinal research is divided into different types such as analytical and descriptive method. This research is based on information which has been already available and analysed those facts to make a evolution of this research. This research involves secondary data. In this research the researcher mostly used books, articles, journals, etc.

¹ Gupta 1986; Mohapatra and Mohapatra 2016

CAPITAL PUNISHMENT IN INDIA

Capital Punishment is a legal death penalty in India. India gives capital punishment for a serious offences². In India capital punishment is awarded for most heinous and grievous offence. In India Article 21 of the Indian constitution is “protection of life and personal liberty”. This article says “No person shall be deprived of his life or personal liberty except as according to procedure established by law”. This article says right to life is promised to every citizens in India. In India IPC provides death sentence as a punishment for various offences such as criminal conspiracy, murder, waging war against the government, abetment of mutiny, dacoity with murder, and anti-terrorism. The Indian Constitution has provision for mercy of capital punishment by the President. There are twenty two capital Punishment is taken place in India since 1995. After the independence there are fifty two capital punishment is taken in India In “*Mithu vs state of Punjab*”³ the Supreme Court struck down the IPC Section 303 which provide mandatory death sentence for the offenders⁴. India voted against a United Nations General Assembly resolution calling for a prohibition on the death penalty⁵. In November 2012, India again continue its posture on capital punishment by voting against the UN General Assembly draft resolution request. to ban death penalty⁶.

CASES DEALING WITH DEATH PENALTY IN INDIA

MITHU VS STATE OF PUNJAB (1983)

In this case the Supreme Court struck down Section 303 of the Indian Penal Code, which provided for mandatory death sentence for offenders.

BACHAN SINGH VS STATE OF PUNJAB

In this case the Supreme Court says that capital punishment was given only to the rarest of rare cases.

² 25 Majumder, Sanjoy. "India and the death penalty." *BBC News* 4 August 2005.

³ 1983 SCR (2) 690

⁴ VENKATESAN, V. (7 September 2012). "A case against the death penalty". *Frontline*. Retrieved 30 July 2013.

⁵ "General Assembly GA/10678 Sixty-second General Assembly Plenary 76th & 77th Meetings". ANNEX VI. Retrieved 30 July 2013

⁶ "General Assembly GA/11331, Sixty-seventh General Assembly Plenary 60th Meeting". 20 December 2012. ANNEX XIII. Retrieved 30 July 2013

JAGMOHAN VS STATE OF UP

This was the first case dealing with the question of constitutional validity of capital punishment in India.

METHODS OF EXECUTION IN INDIA

In India the capital punishment is executed by hanging or shooting.

Hanging

All capital punishment in India is implemented by hanging. After independence ,In Mahatma Gandhi case Godse was the first person to be executed by capital punishment in India. The SC of India suggested capital punishment must be given only to the rarest of rare cases in India .⁷

Shooting

In India the Army Act and Air Force Act also provide implementation of capital punishment in India⁸. In Air Force Act, 1950, section 34 allows the court martial to thrust the death sentence for the unlawful act mentioned in section 34(a) to (o) of The Air Force Act, 1950.

In Indian the government mostly used hanging method to execute capital punishment.

**STATISTICAL REPORT ABOUT CAPITAL PUNISHMENT IN INDIA
NATIONAL CRIME RECORDS BUREAU(NCRB) AND AMERICAN CONVENTION
ON HUMAN RIGHTS (ACHR) STATISTICAL REPORT**

YEAR : 1995- 2003

<i>year</i>	1995	1996	1997	1998	1999	2000	2001	2002	2003
<i>sentences Given</i>	-	-	-	-	-	-	106	126	142
<i>sentences changed to life</i>	-	-	-	-	-	-	303	301	142
<i>executed</i>	13	1	1	3	0	0	0	0	0

⁷ 45 Sakhrani, Monica; Adenwalla, Maharukh; *Economic & Political Weekly*, "Death Penalty – Case

⁸ "Consultation paper on mode of execution of death sentence and incidental matters" (PDF). Law commission of India. Retrieved 29 July 2013.

YEAR : 2004-2013

<i>year</i>	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<i>sentences given</i>	125	164	129	186	126	137	97	117	97	125
<i>sentences changed to life</i>	179	1241	1020	881	46	104	62	42	61	115
<i>executed</i>	1	0	0	0	0	0	0	0	1	1

According to law commission report, capital punishment in recent have been very few. Only three offenders were executed over a period of 10 years. One is in Maharashtra(2012), Delhi(2013) and Maharashtra(2015). In India there is no death penalty was takes place between 2005-2011, that period was known as execution- free period. The latest capital punishment was Yakub Menon. On average the, the court sentenced number of people to death row in India every year according to NCRB. The above data shows a major gap between Death sentence pronounced and actual death sentence executed. According to the American Convention of Human Rights(ACHR) and National Crime Records Bureau (NCRB) data there have several death sentence pronounced between 2001 - 2013 , but the authorities carried out only few executions. In India the death sentence rarely converted into executions. The law commission in India mostly recommends to abolish death sentence.

CRIMINOLOGICAL APPROACH OF CAPITAL PUNISHMENT IN INDIA

There are two types of theories of punishment in capital punishment

1. Reformatory theory
2. Preventive theory

REFORMATIVE THEORY

“an eye for an eye turn the whole world blind”by Mahatma Gandhi. This line is the thrust of reformatory theory of punishment. All theories are based on the principle to reform the

offender. The main objective of all these theory is to reform the convicted person through individual treatment. The main aim of the reformatory theory is to educate or reform the offender by himself. An offender is punishment for his own benefit⁹. This theory has been supported from various sides. Reformatory theory support criminology. Criminology says every crime as a diseased phenomenon, a mild form of insanity. criminal anthropology, criminal sociology and psychoanalysis supports Reformatory theory. This theory aims to correct the criminal minds into a good manner and they can lead a life like normal citizen. This theory criticise all kind of corporal punishment.¹⁰

1. Criminal Anthropology :The modern criminal anthropology says crime is a disease. Criminal anthropology says it is necessary to treat a criminal instead of punishing him. Hospitals and welfare homes are better adoption place to decrease crime than prisoners. Some crimes are happened by the normal persons due to willful violation of moral law. Sometimes crimes are caused due to mental or physical defect.
2. Criminal sociology: Criminal sociology says to improve social and economic conditions to remove inequalities, than to punish the criminal. Punishment cannot change the crimes and crimes can be changed by justice and equality.
3. Psychoanalysis: psychoanalysis is related to criminal anthropology and criminal sociology. Psychoanalysis support reformatory theory. Instead of punishment education and psychoanalytic treatment is needed for preventing crimes.

Reformatory theory is superior among theories of punishment. Some crimes are more helpful to preventive theory.

PREVENTIVE THEORY

“ prevention is better than cure”

The main aim of this preventive theory is to keep the offender away from the society. According to preventive theory the main aim of punishment is to set an example for others and prevent them from criminal activities. In this theory the offenders are punished with death penalty, life imprisonment. Preventive theory was supported by many law reformers because preventive theory has humanizing Penal law. On many reformers view the preventive theory has

⁹ Sue Rex & Michel Trony, "Reform and Punishment" Willan Publishing

¹⁰ Bachan Singh v State Of Punjab; AIR 1980 SC 898

a real effect on offenders. The main purpose of preventive theory is to take steps that accused person does not repeat the crime after enjoyment of Punishment. This theory explains that capital punishment as an most severe form of punishment because of its detriment effect. . A man has taken the life of another man. So he is responsible to be deprived of his life.In India they follows preventive theory.

ABOLITIONIST AND RETENTIONIST COUNTRIES

Many countries all around the world have abolished death penalty and some countries abolished death penalty for some crimes. In this topic the researcher clearly explained about the international status regarding the capital punishment .Death Penalty status are classified into 4 categories :

- Abolitionist for all crimes
- Abolitionist for ordinary crimes
- Abolitionist de facto
- Retentionist

There are 98 countries were abolitionist death penalty for all crimes, 7 countries were abolitionist death penalty for ordinary crimes only, and 35 were abolitionist death penalty in practice and 140 countries in the world abolitionist capital punishment in law. only a minority of countries use the capital Punishment in practice. The country which follows capital punishment including India, China, Indonesia and the United States.

	number of countries
1.Abolished death penalty for all crimes	97
2.Abolished death penalty only for ordinary crimes	8
3.Abolished death penalty in practice	35
4.Retentionist countries	58

CLEMENCY POWERS

If the Supreme Court files a case against capital punishment, a prisoner can submit a mercy petition to the President of India and the Governor of the State. Under Articles 72 and 161 of the Constitution, the President and Governors, have the power “to grant pardons, reprieves, respites or remissions of punishment”. There are many mercy petitions filed by the offenders for their offence to president or governor. That is known as pardoning power of president or governor. Maximum number of petition were accepted by president. When president rejected mercy petition then the offender have the right to file curative petition.

MERCY PETITIONS DECIDED BY THE PRESIDENT OF INDIA (LAW COMMISION REPORT)

year	Number of mercy petitions accepted	Number of mercy petitions rejected	Total
1950-1962	180	1	181
1962-1967	57	0	57
1967-1969	22	0	22
1969-1974	3	0	3
1974-1977	NA	NA	0
1977-1982	NA	NA	0
1982-1987	2	30	32
1987-1992	5	45	50
1992-1997	0	18	18

1997-2002	0	0	0
2002-2007	1	1	2
2007-2012	36	36	72
TOTAL	306	131	437

SUGGESTION

- Capital punishment in India should be replaced by reformatory theory.
- Prisoners should be educated such that they come to be a normal human being who earns in a legal way than using illegal means.

CONCLUSION

In India, capital punishment has been Practiced since ancient times. Many countries abolished capital punishment¹¹. When we look at our national crime statistics death penalty has not proved to be deterrent for doing offence, the crimes rates are increasing only. We have to reform our laws especially for death penalty in india. Our laws should reform and the punishment should be so rigours and it should be a example for people around him, about his unlawful acts. There is a punishment worse than death penalty. Make the offender continuous discussion about capital Punishment and the rigorous life in prison is worse than capital punishment. Each day and night the offender should feel for his offence. The capital punishment is not effective to reduce crimes in Society. Hence null hypothesis proved.

BIBLIOGRAPHY

- James A, Mccafferty. *Capital punishment*. Published by a division of transaction publishers.2010.
- N. Prabha Unnithan. *Crime and justice in India*. Published by sage publications.2013.

¹¹ Gandhi 2016

- Gopal Gandhi. *Abolishing the Death Penalty: why India say no to capital punishment*. Published by Indira international centre.2016.
- Lill Scherdin. *Capital Punishment: A Hazard to a sustainable criminal justice system?* 2016.
- Reena Mary George. *Prisoners voices from Death Row: Indian Experiences*. Published by Routledge.2016.
- Roger Hood,Carolyn Hoyle.*Death Penalty: worldwide perspective*. Published by oxford.2015.
- Michael Kronenwetter. *Capital Punishment: A Reference Handbook*.2001.
- Fyodor Dostoyevsky. *Crime and Punishment*. Pearson Publications.2008.
- Carol .S. Stecker, Jordan M Steiker. *Courting Death: The Supreme Court and Capital Punishment*.2016.
- Robert M Bohm. *Death Penalty Today*. Published by CRC Press. 2008. 1st edition.
- Sir Fred Phillips.*The Death Penalty and Human Rights*. Caribbean law publishing company. 2009.
- Milan vaishnav.*When crime pays : Money and Muscle in Indian politics*. Harper Collins Publications.2017.
- P.K.*Supreme Court on rarest of rare cases*. Universal law publishing.2011.
- Dr. N.M. Ghatate. *Death under the shadow of Judiciary*.published by oceans books private LTD.2016.
- Udai Raj Rai.*Fundamental rights and their Enforcement*. PHI learning private LTD.2011.
- Evan J Mandery.*A wild Justice : The Death and Resurrection of Capital Punishment*.published by W.W.Norton Company.2013.
- Matthew.H.krawer.*The Ethics of Capital Punishment: A philosophical investigation of evil and its consequences*. Published by oxford university.2011.
- Andrew Novak.*The global decline of Mandatory death penalty*. Published by Routledge.2016.
- Sue rex, Michael Tonry. *Reform and punishment : The future sentencing*.2012.
- Austin Sarat, Christian Boulanger.*The culture live if capital punishment: comparative perspective*.published by standard university.2005.
- Gandhi, Gopal. *Abolishing the Death Penalty: Why India Should Say No to Capital*

Punishment. 2016.

- Gupta, Subhash C. *Capital Punishment in India*. 1986.
- Jawale, Kalpana Vithalrao, and Vivek V. Jawale. “Changing Dimension of Capital Punishment and Judicial Pronouncement in India.” *SSRN Electronic Journal*, 2012, doi:10.2139/ssrn.1992960.
- Kumari, Dr Areti Krishna, and Areti Krishna Kumari. “Capital Punishment and Statutory Frame Work in India.” *SSRN Electronic Journal*, 2007, doi:10.2139/ssrn.1015473.
- Mohapatra, Bijoy Chandra, and Sudhansu Ranjan Mohapatra. *Capital Punishment in India*. 2016.

- Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
- Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

