

A COMPREHENSIVE STUDY ON “CAPITAL PUNISHMENT

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ABSTRACT:

The article sheds light on the status of the death penalty around the world. The article first introduces the concept of the death penalty or the death penalty and then defines the capital crime. The article then mentions the methods for awarding the death penalty. Furthermore, the two main theories concerning the death penalty are explained, namely reformatory theory and preventive theory. Then the article sheds light on the views of different countries around the world and also talks about the countries that end abolitionism and retention policy. Subsequently, the article explained in detail the Indian view of the capital on the basis of various cases, in which he mentioned the death penalty in India. Finally, the article concludes by showing the positive side of the death penalty.

KEYWORDS: *Death Penalty, Reformatory Theory, Preventive Theory, Capital Punishment, Offender etc.*

AIM:

The aim of this paper is to understand the concept of capital punishment, to study the various methods of capital punishment in India and to analyse the application of capital punishment in cases and also knowing the position in other countries.

OBJECTIVE:

- To understand the concept of capital punishment and its origin.
- To analyze the need for capital punishment in a state.
- To study the various methods of capital punishment in India.
- To study the application of capital punishment in cases and also knowing the position in other countries.

HYPOTHESIS:

NULL HYPOTHESIS: Capital punishment is not effectively applied in India.

ALTERNATIVE HYPOTHESIS: Capital punishment laws in India are effectively implemented in respective cases..

RESEARCH METHODOLOGY:

The research methodology used in this project is the non-empirical type of research. The sources from where the data has been collected are the secondary sources. The secondary sources are used for referring the case laws and collecting the material. Material is also collected from print and electronic media like various search engines and internet databases. From the collected material and the information, the researcher proposes to critically analyze the subject of the study and tries to achieve the core aspects of the study.

RESEARCH QUESTION:

Why is capital punishment applied only in “rarest of rare” cases?

INTRODUCTION:

The death penalty or the death penalty is a legal process whereby someone is put to death by the state as punishment for a crime. Capital punishment means death sentence under

jurisprudence criminology and penology.³ The judicial decision that someone is punished in this way is a death sentence, while the actual enforcement is an execution. Crimes that can lead to the death penalty are known as capital crimes or capital crimes. The term capital comes from the Latin word "capitalis", which literally means "in relation to the head" (referring to execution by decapitation). Murder is punishable with sentence under Section 302 of IPC it is applied in the rarest of rare cases.⁴ According to Encyclopedia Britannica, the death penalty or the death penalty refers to the execution of a sentenced to death after conviction by a court of a criminal offense. Abuse of capital refers to any charges that are punishable by the death penalty. Crimes punishable by death vary from state to state and from country to country. In some American states, these offenses may consist of first-line murder (premeditated), murder with special circumstances (such as intentional, multiple, involved in another crime, with weapons, of a policeman or a recidivism), and rape with extra physical damage, and the federal crime of betrayal. A charge for a capital offense usually means that no bail is allowed.[\(Harcourt 2008\)](#)

METHODS OF EXECUTION IN INDIA:

Hanging:

All executions in India are carried out by hanging. In 1949, Nathuram Godse, the assassin of Mahatma Gandhi, was the first to be executed by hanging in independent India. The Supreme Court of India has suggested that the death penalty should only be given in the "rarest rare cases." 45 Since 2010, two people have been executed in India. Ajmal Kasab, the only terrorist surviving from the attacks in Mumbai in 2008, was executed on 21 November 2012 in the central prison of Yerwada, Pune at 7:32 am IST. The Supreme Court of India had previously rejected his mercy plea, which was then rejected by the President of India. He was hanged a week later. Afzal Guru, a terrorist who was found guilty of conspiring during the December 2001 attack on the Indian parliament, was executed by hanging in Tihar's prison in Delhi on 9 February 2013. In the rarest of rare cases the code should render special reasons while sending a person to the gallows.⁵

³ Capital Punishment in India by Dr. Subash C Gupta, 2000

⁴ Indian Express, New Delhi, dated 27/05/2015

⁵ Indian Express, New Delhi, dated 27/05/2015

Shooting:

The Army Act and Air Force Act also provide for the execution of the death sentence.⁴⁶ Section 34 of the Air Force Act, 1950 authorizes the court martial to impose the death sentence for the offenses mentioned in section 34 (a) to (o) of The Air Force Act, 1950. Section 163 of the Act provides for the form of the death penalty if: - "Upon awarding a death sentence, a court of war will, in its sole discretion, determine that the offender will be killed by the neck. to be hanged until he is dead or will be put to death by being shot. "This stipulates that the prison prisoner of war must arrange the execution of the death sentence by hanging it up or by being shot. Army Act, 1950, and the Navy Act, 1957 also provide similar provisions as in The Air Force Act, 1950.[\(Harcourt 2008; Tushnet and Yackle 1997\)](#)

LAWS AND PROVISIONS RELATING TO CAPITAL OFFENCES IN INDIA:

- Article 21 of the Constitution of India says that no one can be deprived of his life except in accordance with the procedure established by law.
- A person who carries out a criminal conspiracy receives the death penalty on the grounds of Article 120B of the Indian Penal Code.
- A person who wages war against the government or attempts to do so receives the death penalty under Article 121 of the IPC.
- According to Section 132 of IPC who abets committing mutiny by an officer, soldier, sailor or pilot, in the army, navy or air force of the Government of India, so Mutiny will be committed as a result of that complicity, be punished with death or with life imprisonment, or imprisonment of both descriptions for a term that can be extended to ten years, and also liable to fine.[\(Liebling 2017\)](#)
- Section 194 of IPC states that as an innocent person are condemned and thereby Condemned and as an innocent person are condemned and executed as a result of false Such evidence, the person who gives such false evidence, is punished with death or the Or punishment for this described.[\(Lindström et al. 2018\)](#)
- According to Section 302 of IPC, people who commit murder are granted the death penalty.
- Article 303 of the IPC states that the person who, while serving jail for the rest of his life, commits murder, will be punished with death.
- According to Article 305 of the Indian Penal Code, if every person under eighteen years old, every insane person, a frenzied person, an idiot, or a person in a state of

drunkenness, commits suicide, who abets the Commission of this suicide, will be punished with death or life imprisonment, or imprisonment of up to ten years, and will also be fined.[\(Schildbach and Schildbach 2018\)](#)

- Section 364A of IPC states that whoever abducts or abducts a person or holds you a person in custody after such a kidnapping or abduction, and threatens to cause the death or pain to such person, or by his conduct gives rise to a reasonable fear that such a person person can be put to death or hurt, or cause pain or death[\(Spicker 1988\)](#)
- to do this person with a view to the government or a foreign state or international force - governmental organization or any other person or abstain from an act or pay a ransom, will be punished with death, or imprisonment for life, and Shall also liable for fine.
- According to Section 376A of IPC, an amendment in 2013 provided for the death penalty in the event of an injury to the woman during rape that causes her death or is in a persistent vegetative state.
- IPC Section 396 states that if one of the five or more persons in whom committing dacoity, commits murder in dacoity committed, commits murder so committed dacoity, all of those persons will be punished with death, or a prison sentence of life, or severe imprisonment for a term of up to ten years, and will also be reliable to pay.[\(Delcea and Enache 2017; Pettigrew 2016\)](#)

Case -law : Ediga Annama vs State of Andhra Pradesh, In this case the court laid out that apart from looking into the circumstances of the crime the court should also look into the condition of accused section 354 (3) was added to the code of criminal procedure 1973.⁶

Rajendra Prasad vs State of UP, In this case the apex court however stated that the question of whether capital punishment should be abolished to retain was a question of the Legislature and not for the Court to decide.⁷

Mithu vs State of Punjab, In this case mandatory death sentence under section 303 of IPC was declared unconstitutional and deleted from the IPC.⁸

Macchi Singh vs State of Punjab, in this case the court elaborated the doctrine of rarest of rare the court guidelines regarding the things to be considered when deciding the issue that whether the case falls under the category of rarest of rare or not.⁹

⁶ Ediga Annama vs State of Andhra Pradesh, AIR 1973 SC 774

⁷ Rajendra Prasad vs State of UP, 1979 AIR 916

⁸ Mithu vs State of Punjab, (1980)2 SCC 684

Allauddin vs State of Bihar, in this case the Court stated that if it was unable to give a special reason for awarding the capital punishment it should go for a lower sentence.¹⁰

Kehar Singh vs Union of India, In this case the assassins of the Indira Gandhi case was sentenced to death sentence. Kehar Singh who was one of the conspirators but did not commit it even was included this comes under rarest of rare cases.¹¹

Deena vs Union of India, The constitutional validity of section 354 (5) of IPC 1973 was challenged on the ground that it was barbarous inhuman and degrading therefore violating article 21 of the Indian Constitution.¹²

Attorney General of India vs Lachmi Devi, The court held that the execution of death sentence by public hanging is barbarous at violative of article 21.¹³

The sessions court order execution of Balwant Singh Rajoana for the involvement in the assassination of chief minister of Punjab.¹⁴

Triveniben vs State of Gujarat, AIR 1989 SC 142 The court held that the person sentenced to death sentence is also entitled to procedural fairness till his last breath of life.¹⁵

Madhu Mehta vs Union of India, Mercy petition of the petitioner was pending before the president of India for about 8 to 9 years.¹⁶

DRAWBACKS OF CAPITAL PUNISHMENT:

- Can be too extreme in some cases and cannot be a general punishment for a said crime.
- It is not humane and cannot be undone.
- Capital punishment is a form of revenge.
- Additional overall cost and effort.

⁹ Macchi Singh vs State of Punjab, (1983)3 SCC 470

¹⁰ Allauddin vs State of Bihar, AIR 1989 SC 1456

¹¹ Kehar Singh vs Union of India, AIR 1962 SC 955

¹² Deena vs Union of India, (1983)4 SCC 645

¹³ Attorney General of India vs Lachmi Devi, AIR 1986 SC 467

¹⁴ Times of India, dated 27/03/2012.

¹⁵ Triveniben vs State of Gujarat, AIR 1989 SC 142

¹⁶ Madhu Mehta vs Union of India, (1989)4 SCC 62

- It is discriminatory.
- Wrongly accused die for no reason.
- It can cause depression and feelings of guilt on people.

CAPITAL PUNISHMENT IN VARIOUS COUNTRIES:

The death penalty has been applied in different countries from very old times. According to ancient Roman law, to make the death penalty even more painful, the perpetrator was physically tortured before he granted the death penalty. Often this happened in public places to threaten people, so people did not dare to do that again. Roman Republic did not abolish death sentence, its non usage directed to punishment and exile.¹⁷ A patricide was put in a bag accompanied by a dog, a cat and a snake, and the bag was thrown into the river to ensure a painful death for him. Someone who has not paid his loans is thrown from a hill. There was also a provision of death penalty in countries like Yunan. The perpetrator was killed in the public place after his skin was removed. In Philistine the perpetrator was killed by throwing him at the point of the spear or throwing stones at him. In countries, such as Australia and Germany, the criminal was buried alive and then crushed with wheels and their eyes were also damaged by hot iron rods. India accused is convicted the judge shall hear the accused and pass the sentence according to law.¹⁸ Death penalty is also called as capital punishment and is not always executed sometimes it is commuted to life imprisonment.¹⁹ The constitution of India, part V, chapter I, and Article 72 gives the president and the governor of the state the power to suspend pardon or commute or remit death sentence.²⁰ The state is bound to refrain from the act which would destroy the object and purpose of the Treaty.²¹

In the United States, the death penalty (also known as the death penalty or execution) is limited in the United States according to the eighth amendment to the United States Constitution and is in practice used almost exclusively for serious murders committed by mentally competent adults. It is currently a legal punishment in 32 states, as well as the federal civil and military legal systems. Since the death penalty was restored in 1979, thirty-four states have performed. Texas has carried out the most executions by far and Oklahoma

¹⁷ Capital Punishment in India by Dr. Subash C Gupta, 2000

¹⁸ Law commission of India. Report no. 262 on Death Penalty 2015.

¹⁹ www.newindialaw.blogspot.in

²⁰ The constitution of India, part V, Chapter I, Article 72

²¹ Law commission of India report 2015. Pg 45

has had the highest execution per capita until mid-2011. The methods of execution and the crimes to which the death penalty applies vary per state and have changed over time. The most common method since 1976 is lethal injection. Many states such as Texas, Oklahoma, Florida, Ohio and Arizona regularly carry out convicted murderers. [\(Turow 2011\)](#)

In England, the traditional form of punishment measurement applied in England. But it was not the form of the death penalty. In the eighteenth century and the beginning of the 19th century, hanging up was the punishment for many crimes and not just for murder. During the beginning of the 19th century, the number of crimes that could be punished with death was greatly reduced. Pending as a punishment for forgery was abolished in 1836. At the request of the public, a British Royal Commission was established to consider the abolition of the death penalty in 1949. From now on, the death penalty was banned in 1965 for 5 years in England and Wales and finally abolished in 1969. But since the last two decades, taking into account the increasing crime, the reintroduction of the death penalty has become necessary. [\(Linebaugh 2003\)](#)

The People's Republic of China carries out the largest number of people annually, although other countries (such as Iran or Singapore) have higher implementation rates per capita. The authorities of the People's Republic of China have recently taken measures to reduce the official number of crimes with death, and limit how often the death penalty is officially applied. The death penalty is also imposed for crimes related to the number of perpetrators, i.e. attempts to commit crimes that are not really fully executed, including repeat offenses such as fraud attempts. The recidivist nature of the offenses, not their seriousness in them, is what is judged to earn the capital punishment. [\(Linebaugh 2003; Radelet 2017\)](#)

SUGGESTIONS:

- The reformatory theory of punishment which is the most humane of all theories are based on the principle of reform of the legal perpetrators through individual treatment. According to reformatory theory, the purpose of the punishment is to teach or reform the offender. Such criminals must be adequately punished to justify the authority of the moral law. This theory focuses on their rehabilitation and conforms to the norms of society; in law-abiding member. This theory condemns all kinds of corporal punishment.
- Preventive theory says that "prevention is better than cure". The idea behind the preventive theory of punishment is to keep the perpetrator away from society. This

theory justifies the death penalty as an extreme form of punishment because of its deterrent effect. India follows the preventive theory. A man has taken the life of another man. So he should be deprived of his life.[\(Rex and Tonry 2012\)](#)

- Death Penalty is often imposed on the poor, uneducated, underprivileged and minorities. They win a legal battle in a Court of Law. Legal aid now provided in India is for the poor advocates. While arguing a case where one's life is at stake the lawyer who is engaged by seven years legal standing.
- The Government will pay the fees of an attorney. This would be an interest in the lawyer who is arguing on behalf of the accused.
- Instead of inventing a sophisticated method of execution which is quick, painless and decent, it is better to switch over from death penalty to alternative punishment.
- Life imprisonment is a very good alternative to death penalty. As such it is open to the policy makers that they are not yet reformatory in nature but, a very good income to the government. Now, retentionists need not complain that the murderers behind the bars would cost more for the public exchequer.
- Causing death to an individual may be inevitable at times in certain circumstances, such as when a country is locked in either international warfare or civil warfare. Even at times, police personnel may have their lives or other lives. In such cases, strict legal safeguards must be imposed.
- Instead of spending cores or rupees in constructing gas chambers or gallows, the expenditure may be diverted to train efficient law enforcement authorities and correct errors in the judicial system.
- All measures of abolition for the death penalty should be considered as progress in the enjoyment of the right to life.
- Dangerous offenders can be kept away from the public without resorting to executions. Many abolitionist countries are practicing this method of seclusion. It is as good as bad as keeping the mentally insane in an asylum without causing inconvenience to the healthy.
- Till Capital Punishment may be abolished at the end of the year, and may also be avoided with regard to conjugal visits and visits with the family.

CONCLUSION:

Therefore, it is concluded that in India the death penalty has been applied since ancient times, although the methods of the death penalty have changed from time to time. Capital punishment is ancient sanction there is no Country where death penalty never existed.²² History is clear that the death penalty has never been declared illegal in India. The awarding of the death penalty to the perpetrator must be regarded as a requirement of justice. The death penalty is the ultimate warning against all crimes. If the criminal knows that the legal system will not stop putting him to death, the system seems more draconian to him. That is why he is less inclined to break and enter. He may not be planning to kill someone who robs them, but is much more anxious about the possibility if he knows he will be executed. So there is a better chance that he will not break in the first place and come in. A system intended to provide justice cannot do this for the surviving victims, unless the murderer himself is killed. If murder is the deliberate deprivation of the victim's right to life, then the deliberate deprivation of the right of the court to have this right - even if it is excessively strict - is a punishment appropriate to the most serious crime that can be committed. Without the death penalty it could be argued that the legal system does not make provision in response to the crime of murder, and therefore does not offer justice for the victim.

REFERENCES:

1. Ediga Annama vs State of Andhra Pradesh, AIR 1973 SC 774
2. Rajendra Prasad vs State of UP, 1979 AIR 916
3. Mithu vs State of Punjab, (1980)2 SCC 684
4. Macchi Singh vs State of Punjab, (1983)3 SCC 470
5. Allauddin vs State of Bihar, AIR 1989 SC 1456
6. Kehar Singh vs Union of India, AIR 1962 SC 955
7. Deena vs Union of India, (1983)4 SCC 645
8. Attorney General of India vs Lachmi Devi, AIR 1986 SC 467
9. Triveniben vs State of Gujarat, AIR 1989 SC 142
10. Madhu Mehta vs Union of India, (1989)4 SCC 62
11. www.newindialaw.blogspot.in
12. Capital Punishment in India by Dr. Subash C Gupta, 2000

²² Capital Punishment in India by Dr. Subash C Gupta, 2000

13. Times of India, dated 27/03/2012.
14. IPC Chapter-XII Sec-302, 303
15. The constitution of India, part V, chapter I, article 72
16. Capital Punishment in India by Dr. Subash C Gupta, 2000
17. Law commission of India report 2015. Pg 45
18. Indian Express, New Delhi, dated 27/05/2015
19. Capital Punishment in India by Dr. Subash C Gupta, 2000
20. Law commission of India. Report no. 262 on Death Penalty 2015.
21. 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.
22. 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.

