



DEATH PENALTY IN INDIA

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ABSTRACT

In the history of punishments, death penalty or capital punishment has always occupied a very important place. In ancient times and even in the middle ages, sentencing offenders to death was a very common kind of punishment and present time death penalty is still established in special reasons that is rarest of rare cases. Article 21 of the constitution protect the life and personal liberty to all the citizen of India. No person shall be deprived of his right except according to the procedure established by law.

Keywords: *Rarest of the rare, poena mortis, mercy petition, extraordinary, circumstances, execution, culprip, establishment, constitutionally, deprivation, process*

1. INTRODUCTION

Death penalty is a process where a crime so grievous has been committed that the state condemns the act by sentencing the convicted to death. It is applied only in such cases where the crime is so nature which cannot be vitiated without a penalty of death. It has existed since time Immemorial, the first recorded instance being that of Hummurabi in the 18th Century B.C.

In India, the Bachhan Singh case laid down the “extraordinary circumstances” which define whether or not death sentence was required in the said case. There has been a global trend towards the abolition of death penalty or capital punishment; however, India has not adopted this position.

❖ What is Death Penalty:-

The term “death penalty” is derived from the Latin word “poena capitalis” or “poena mortis” “poena” means penalty and capitals or mortis means death. The death penalty is a legal process whereby a person is put to death by the state as a punishment for certain crimes. The death penalty or capital punishment is primarily applied for murder and sexual violence cases that are deemed “rarest of rare”.

❖ Position in India:-

In India, Article 21 of Constitution of India titled ‘Protection of Life and Personal Liberty’. This article enshrines the Right to Life guaranteed to every citizen of India.

There are provisions to awards death punishment for various offences under the sections of 103(1), 103(2), 104, 107, 109(2) 111(2)(a), 113(2)(a), 160, 230(2), 310 (3), “Bharatiya Nayaya Sanhita, 2023” .Apart from this there are many other provisions for death penalty in various legislations like the NDPS Act, anti- terrorism laws etc-.

The Indian Constitution has provision for clemency of capital punishment by the President. Once the Sessions Court has awarded death sentence to a convict in a case, it must be confirmed by the High Court. Even after that the convict may prefer an appeal to the Supreme Court. If this also fails the accused has the option of submitting a 'mercy petition' to the President of India and the Governor of the State. Detailed instructions regarding procedure to be observed by the states for dealing with petitions for mercy from or on behalf of convicts under sentence of death and with appeals to the Supreme Court and applications for special leave to appeal Penalty is a process where a crime so grievous has been committed that the state condemns the act by sentencing the convicted to death. It is only applied in cases where the



crime is of such nature that it cannot be vitiated without a penalty of death. It has existed since time immemorial, the first recorded instance being that of Hammurabi in the 18th Century B.C.

The first known execution in independent India is presumed to be that of Rasha alias Raghuraj Singh, who was executed on September 9, 1947, at Jabalpur Central Jail. The Bachan Singh case laid down the "extraordinary circumstances" which define whether or not death sentence was required in the said case. The grievousness of the cause of murder in itself is not a sufficient grounds to pass capital punishment.

Death Penalty can be defined as the lawful infliction of death as a punishment for a wrongful act. In this paper the scope and validity of death penalty in the context of the Indian judiciary shall be discussed. Firstly we shall look at the advent of death as a punishment for crimes and how it has evolved in several other judicial systems all over the world. In this context the common arguments relating to death penalty put forwards by the abolitionists shall be discussed. Then importance has been given to the Indian context and the various statutes in India dealing with Capital Punishment. This shall be followed by a brief of some of the most famous and important cases relating to the subject matter decided by the Indian Courts. The aim of this paper is to give the readers a clear understanding of the position of the Indian courts in regard with awarding of capital punishment.

❖ **Pardoning power of President of India and Governors of state**

According to Article 72 of the Constitution of India;

- 1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.
 - a) in all cases where the punishment or sentence is by a court Martial;
 - b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
 - c) in all cases where the sentence is a sentence of death.
- 2) Nothing in sub clause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force."

Similarly the pardoning powers of the Governors of State are mentioned in Article 161. These provisions ensure that the accused is sentenced to death only after there is no room for error left. The culprit gets multiple avenues to appeal and now life imprisonment has become the rule while death sentence is the exception.

❖ **Landmark cases dealing with Death Penalty in India:**

In the case of Jagmohan Singh v. State of U.P which was the first case dealing with the question of constitutional validity of capital punishment in India. The counsel for the appellant in this case put forward three arguments which invalidate section 302 of the IPC. Firstly that execution takes away all the fundamental rights guaranteed under Clauses (a) to (g) of Sub-clause (1) of Article 19 and, therefore the law with regard to capital sentence is unreasonable and not in the interest of the general public. Secondly that the discretion invested in the Judges to impose capital punishment is not based on any standards or policy required by the Legislature for imposing capital punishment in preference to imprisonment for life. Thirdly, he contended, the uncontrolled and unguided discretion in the Judges to impose capital punishment or imprisonment for life is hit by Article 14 of the Constitution because two persons found guilty of murder on similar facts are liable to be treated differently one forfeiting his life and the other suffering merely a sentence of life imprisonment. Lastly it was contended that the provisions of the law do not provide a procedure for trial of factors and circumstances crucial for making the choice between the capital penalty and imprisonment for life. The trial under the Criminal Procedure Code is limited to the question of guilt. In the absence of any procedure established by law in the matter of sentence, the protection given by Article 21 of the Constitution was violated and hence for that reason also the sentence of death is unconstitutional.

After looking into the arguments the five judge bench upheld the constitutionality of death penalty and held that deprivation of life is constitutionally permissible for being recognized as a permissible punishment by the drafters of our Constitution.



2. CONCLUSION

In view of the above it is not just a subject of legality and constitutionality of the death penalty but also the moral and social aspects that are related to this controversial topic that have led to extensive confusion in this respect. Keeping away the question of law, the question of death penalty has to take into considerations factors such as public sentiments on one hand and tussle with the moral issue of the “eye for an eye” principle on the other way.

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