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A commentary on capital punishment in India

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Abstract

The penal law of India recognizes the death penalty and provides for capital punishment by various Acts for offences falling under specific categories. However, In India, like other larger democracies around the world, attention has been drawn to the humanitarian and constitutional side of capital punishment. For a long time, various jurists and scholars argued in favour and against it but the provisions for death penalty remained intact which are not only there today but if seen in present time, by amendments, new sections having provision for death penalty are being introduced most heinous offences. Therefore, Indian society appears in favour of death penalty. Questions have come before the Supreme Court on different occasions regarding death penalty such as whether the capital punishment is constitutional or not? And in respect of which offences death penalty can be the only way to meet justice? Thus, a new category “rarest of rare” of heinous offences was developed. The Supreme Court has attempted to identify that which cases fall under the category of rare. Now, while awarding sentence of death to the accused of any heinous offence falling under the category of rarest of rare, it is mentioned by the Judge that why this case was of rarest of rare. Judge decides the category in the light of guiding principles and previous judgments.

Keywords: Constitution of India, rarest of rare cases, death penalty, capital punishment

Introduction

The system of capital punishment has been going on since ancient times. Study shows that almost all the civilizations had the law of death penalty for the serious offences. For example, the offence of murder. Homicide was considered an act against the God because God is the only power who gives life so, only God holds right to forfeit a life. Causing death of a human being was also an act against the society. Apart from the homicide, there were many other offences which were considered anti-social in which the only punishment was the death penalty. However, with the passage of time new spiritual principles emerged in the society. The death penalty came to be seen by many jurists and social reformers as an anti-humanitarian punishment. He was of the opinion that even the ruler does not have the right to take life, the ruler cannot give life, so he should not have the right to take life. For the time being, this topic still remains controversial. Between ideological conflicts, Capital punishment is valid in almost all countries while some countries have abolished death sentence. The death penalty is considered a more effective deterrent than life imprisonment as it is fully capable of instilling fear of the law among others. There are some crimes in which society does not accept atonement, abandonment or compensation but prefers to see the culprit dead. In this situation, capital punishment is considered the most appropriate means. The execution of death sentence given by the courts through its decision is done in different ways in different states. Except for the methods involving inhuman and horrific torture of ancient times, some practices are legally recognized such as hanging, causing death by the flow of lethal gas, injecting poison into the body of the offender etc. The main reason for recognizing these modes of execution is that by these manners the offender dies easily and he does not have to suffer for a long time. But those who reject the death penalty have also been describing these modes as inhuman who believe that the death penalty itself is horrific, without suffering a lot of pain death cannot be possible, so there can be no way of execution which is completely free from suffering pain or torture. On the whole, it can be said that the death penalty should be abolished or a category of offenses should be fixed in which capital punishment should be given without commenting on the nature of this punishment, there cannot be a common acceptance on this issue.

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Methodology

Through this paper, the death penalty in India has been discussed and the study of rare cases is also included in the light of judicial decisions. Through this research, an attempt has been made to arrive at a conclusion that what is the nature of the cases in which capital punishment can be given and which are the cases in which the courts should consider carefully before awarding the death sentence.

Capital punishment in India

In the context of death penalty, there were some major and effective changes in the penal system of India. Under *Criminal procedure code 1898*, death penalty for causing death was a general rule while life imprisonment was given as an exception. According to section 367(5) of the code, when a court wanted to punish an accused of murder other than with death, it was obligatory for him to state in writing the reasons on which he did not wish to impose capital punishment. This section was in practice till 1955. In the same year, Section 367(5) was repealed. Thus the courts were empowered to impose any punishment either death sentence or life imprisonment at their discretion.

By 1962, many controversies had arisen regarding the death penalty. Therefore, the dispute regarding the death penalty was referred to the Law Commission. The Law Commission, in its 35th report, while presenting its opinion against the abolition of capital punishment, mentioned the reasons as follows

“Having regards, however, to the condition in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the value of its area, to the diversity of its population and to the paramount need of maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of experiment”

The effect of the introduction of the new *Code of Criminal Procedure, 1973* was that life imprisonment became the general rule and the death penalty an exception in the offense of murder. Therefore, according to section 354(3) of the new code, if the court gives the death sentence in the trial of murder, then it is necessary to record the reasons thereof.

Efforts were also made in India to abolish the death penalty, which continues even today. The question of constitutionality of death penalty is being raised before the Supreme Court. The death penalty is considered as a devourer of fundamental rights under Articles 14, 19 and 21 of the Constitution. But the Supreme Court never showed its interest in abolishing the death penalty. It has always been in favor of it. The Supreme Court has upheld the death penalty in the ruthless cases of murder.

Judicial approach

In *Jagmohan Singh Vs State of Uttar Pradesh* ^[1], a number of arguments were raised before the Supreme Court in favor of abolishing the death penalty, but the Court did not agree on any point and upheld the system of death penalty. The Supreme Court stated a very significant assertion in this case - *If a person is deprived of his life according to the procedure established by law, then it will be considered constitutional.*

Justice Krishna Iyer is one of the critics of the death penalty. However, he has adopted a humanistic and philosophical approach, advocating for the abolition of the death penalty.

In the case of *Rameshwar v State of Uttar Pradesh* ^[2], He has strongly criticized the death penalty.

In another leading case *Rajendra Prasad v State of Uttar Pradesh* ^[3] again the question regarding the legality of death penalty was raised before the Supreme Court. In this case also, the court justified the death penalty and said that *the death penalty can be given in cases where the very existence of the society is in danger.* According to the Supreme Court, *Section 302 of the Indian Penal Code and Section 354(3) of the Code of Criminal Procedure, 1973 should be read with Parts 3 and 4 of the Constitution. Death penalty should be given in well planned crimes, white collar criminals, adulteration convicts, hardened killers, where officers of law have been murdered etc. Also, the special reasons mentioned by the court in support of the death penalty should also be related to the offender and not only to the offence.*

Thus, even in this famous case, the Supreme Court upheld its approach to the death penalty. In fact, the view of the court was that the death penalty itself cannot be said to be an encroachment on the right to liberty because the right to life can be suspended in public interest.

Rarest of rare cases

Rarest of rare case means those offenses of murder which come under the category of rare offenses but the manner of its commission, the circumstances in which it is committed, the relation of the murderer with the deceased, etc, make those offenses rarest, are considered to be the rarest cases.

By now, it had been established that the death penalty could not be awarded in all cases of murder. As provided in the Code of Criminal Procedure 1973, the punishment for life imprisonment for murder is the general rule and the death penalty depends on the exceptional circumstances. So now, questions raised that what can be those cases in which it would be appropriate to give the death penalty? Who is empowered to decide whether death sentence should be given or life imprisonment in a particular case?

Bachan Singh Vs State of Punjab ^[4] is the most significant case in which the Supreme Court proposed the concept of rarest of rare cases under the offence of murder. In order to identify the rarest of rare cases, the Supreme Court has also mentioned some points in this case which the courts should consider before passing the death sentence. The points suggested by the Court in this case certainly have the potential to help the judges in arriving at a conclusion as to whether the circumstances under consideration exist in a case of murder on the basis of which the offender should be sentenced to death in place of life imprisonment. Thus, the Supreme Court once again upheld its stand on the question of whether death penalty should be awarded or not as in its previous judgments and went a step ahead in this case and also mentioned the guiding points which are the following –

- Where the murder is committed as a result of pre-planning or with extreme brutality
- Where the murder was committed in a gross immoral manner or exceptional depravity

Where a member of the Indian Army, a member of the police force or a public servant in the performance of his duties has been murdered

- Where the murder is committed by any person who is performing his duty under section 43 of the Code of

Criminal Procedure, 1973 or assisting the police or magistrate

Apart from this, the Supreme Court has also drawn attention to those things on the basis of which the death penalty cannot be justified, they are as follows

- where the offense is the result of gross emotional disturbance or impulse
- where the offender is too young or extreme old
- Where there is a likelihood that the offender will not commit such acts of violence as may cause continued danger to society
- Where there is a possibility that reform and social rehabilitation of the offender is possible

Another major case relating to the rarest of rare cases is *Machi Singh vs State of Punjab* [5]. In this case also, the Supreme Court has set five points with a view to determine the nature of murder

- Where the murder has been committed with such cruelty, ruthlessness or brutality that the society considers it the most heinous. like setting fire to someone's residence for the purpose of burning alive, cutting the dead body into pieces
- Where the grisly immoral motive is hidden behind the murder. Such as the murder committed for the inheritance of property, the murder committed by hired assassins, the murder committed while betraying the motherland.
- Murder committed due to anti-social or racial discrimination etc. like killing of wife for dowry, killing of a scheduled caste person
- The murder of all the members of the family, the killings of many people living in a particular place or village, belong to a particular caste or community
- Personality of the person killed. Such as the murder of an innocent child, a helpless woman or a popular leader's assassination

General understandings

Both the above historical cases have suppressed the unnecessary question of constitutionality of capital punishment in India. Each time the Supreme Court favored the death penalty and also highlighted circumstances in which capital punishment would be necessary as a form of absolute justice. By studying the points of the Supreme Court, one thing becomes clear that the society and its interest is on the top. There are also some cases of murder which have a negative effect on the society, the culprit becomes a threat to the society.

There are some cases of murder where the criminal act before the murder makes them heinous. For example, murder due to non-receipt of ransom after kidnapping, murder after rape, murder committed during religious violence, killing of a historical or social personality etc. These are the points which are required to be considered by the judiciary. Ultimately, it is the task of the judge to draw this conclusion, for which he determines by the study of the guiding principles and in his discretion.

Conclusion

The Indian judiciary has made it clear that it is in support of the death penalty. On many occasions, efforts were made to abolish the death penalty like many other countries, but they

all failed. The need for capital punishment was explained by the 35th report of Law Commission long back in the context of India. After that the Supreme Court also stamped the legality of the death penalty.

Death penalty cannot be awarded in all cases of murder. If this is done then it will be inhuman and unjust in reality, but those cases of murder which can threaten the society, weaker section of the society, women, national interest, public health, internal security or those murders which are immoral, inhuman, is committed or in pursuance of any other serious offence, in conjunction with that grave offence, it shall be justified to impose the death penalty.

Even today, considering the points suggested by the Supreme Court, the Indian criminal courts are punishing the accused with the death penalty in the rarest of cases of homicide. If there is any lapse from the courts, then provisions have been given in the law for that also. There are many such legal remedies for a convicted person.

The rarest of rare cases are not only as pointed out by the Supreme Court in the case of *Bachan Singh and Machi Singh*, but other points can also be added from time to time by the courts, scholars of law, as may appear appropriate in different circumstances.

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