



MRITYU DANDA: IN MODERN INDIA

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ABSTRACT

“An eye for an eye makes the whole world blind.”

-Mahatma Gandhi

India being a developing country has been facing a problem of an increase in crime rates. In India, there are numbers of legislations which have been in force to prevent the commission of crimes. On 31st August 2015, the law commission of India submitted its report to the government which recommended the capital punishment should be abolished for all crimes in India except the war waging crime or crime related to terrorism¹. Various kinds of punishment have also been attached with such legislations {i.e. imprisonment, life imprisonment, fine, the death penalty (capital punishment)}. Capital punishment is a carrying out of a legal sentence of death as punishment for crime. The Supreme Court of India has recently gave the order that capital punishment is not unconstitutional as a result the courts are free to use capital punishment for grievous offences committed or in rarest to rarest cases. This research says about the status of capital punishment in India and also defines the concept of capital offence and also the modes of capital punishment in India, also explains the two major theories related to capital punishment

in namely retributive theory and preventive theory and also explains about the rarest of rare cases. The research article has also shown that the influence of news media, public pressure on lawmakers and study about the present status of capital punishment present in India and the changing scenario of the public in the country and why it is still necessary for India.

Keywords: Punishment, Crime, Legislation, Capital offences.

INTRODUCTION

In 1931 Benjamin Cardozo predicted that perhaps the whole business of the retention of the death penalty will seem to be the later generation, as it seem too many even now, anachronism too discordant to be suffered, mocking will gruesome reproach of all our clamorous professions of the sanctity of life.² India is a country where a large number of crime and criminals are increasing on an everyday basis and many legislations have been amended to impose the punishment rigorously maximum of the punishment in India are based on the motive to give penalty for the wrong doer the reason behind imposing these rigorous punishment one being that the wrongdoer must suffer and other one the suffering of wrongdoer discouraging others from further doing any such offences. Maintenance of law and order has been one of the primary functions of state prescribe law which provides punishment for doing offences one of them being capital punishment or death penalty the term capital is derived from Latin term capitals means head referring to execution

¹ Law commission of India, “The Death penalty”, 2015 (law com report No.262).

² Benjamin N. Cardozo, *Law and Literature* (1931) 93-94



by beheading capital punishment is said to be justified only in extreme cases in which high degree of culpability is involved causing grave danger to society. While awarding capital punishment personal attribute of convict circumstances in which offence was committed gravity of offences etc. are taken into consideration. Death sentences have been given occasionally in the past having a retributive effect and the contention being presented for such retributive justice are based on the principle of *lex talionis*, meaning “eye for an eye and tooth for a tooth”. Legal vengeance solidifies social solidarity against lawbreakers and probably is the only alternative to the disruptive private revenge if those who feel harmed³. The Constitution of India also gives power to the governor under Article 156 and to the president under Article 72 for pardoning of capital punishment to a wrongdoer on his discretion.

CAPITAL PUNISHMENT IN INDIA

The capital punishment is not a contemporary concept for Indian justice delivering system it has been prevailing in India since ancient time the ancient lawgiver *Manu* has also emphasised on the use of fear for the judicial phenomenon he propounded that to stop people from committing such sinful offences the death penalty was a necessary instrument otherwise the society will not be in harmony, and a barbaric society will be in action where the powerful people will be suppressing the weaker section.

In Modern India, the provision of the death penalty is also prevalent and is awarded for most heinous and grievous offences. Article

21 of the Constitution of India provides “no person shall be deprived of his life except by the procedure established by law” this article provides that every person has a right to live with dignity and that this right of his can only be altered by the just procedure established by the law of the land. The Indian penal code of India also provides death sentences in the form of punishment for various crimes which are of the different manner in commission:

1. Waging war against the state.
2. Abetment of mutiny.
3. Giving or fabricating false evidence leading to procure one’s conviction for a capital offence
4. Murder
5. Abetment of suicide committed by child or insane
6. Kidnapping for ransom
7. Dacoity with murder

Although the aforesaid offences are provided for the death penalty, but there has been an alternate punishment (i.e. life imprisonment) for all of the above-mentioned offences have also been provided so this is left on the discretion of the court to decide whether to give death penalty is the last option to serve the end of justice. Further in that also the judge also has to provide for the special reasons for why the alternate punishment cannot be awarded. Further, the Supreme Court of India in its judgment said that capital punishment should only be given in rarest to rare cases only.⁴

METHODS OF EXECUTION IN INDIA

³ Ernest van den Haag: Is Capital punishment just? p.406

⁴ Bachan Singh v. state of Punjab, 1[1980], MANU/SC/0111.



From the ancient time in India, there has been a different method for execution for capital punishment such as crucifying, drowning, burning, beheading, throwing before wild beast hanging the offender by the neck till death in public places, shooting by gun, starving him till death. All the above-mentioned modes were considered to be the barbaric modes and are not prevailing in present scenario due to the humanitarian approach to penology.

In India there are two modes through which the execution of capital offenders takes place:

Hanging : All capital punishment in India have been executed by hanging the convict by the neck till death after independence the first person to be executed by this method was they murderer of Mahatma Gandhi (ie.godse).

Shooting: In India, The Army Act and Air force Act also give the method of execution shot till death to convict. The Air force Act, 1950 also allows the court-martial to thrust the death sentence for the unlawful act.

CORROBORATION OF DEATH SENTENCES

The Code of Criminal Procedure, 1973 provides that the death sentences can be only passed by session judge or an additional session's judge⁵. Further, the code also specifies that the sentence passed by the session judge shall be subject to

confirmation proceeding before the high court exercise jurisdiction over it.⁷

The Supreme Court of India has also provided in its judgment that these provisions ensure that the entire evidential material bearing on the innocence as or guilt of the accused and the question of sentences must be scrutinised with utmost caution and care by a Superior Court⁸ further the Indian penal code also provides many of the provisions which provide death penalty as a form of punishment (i.e. Section 121,132,194,302,305,307,364-A, 396).⁹

PARDONING POWER OF PRESIDENT AND GOVERNOR

The pardoning powers have always been provided to the highest authority in society for example in ancient times, this power was conferred to kings who can grant pardon to the convict in same way in Modern India the Constitution of India has also provided the power to pardon the death sentence in the hands of executive heads of state to president of India where it provides that the president of India and governor of state shall have the power to grant pardons, reprieves, respite or remission any punishment or to suspend, remit or commute the sentences of any convict of capital offence.¹⁰

1. In all such cases where the punishment or sentence is by a court-martial.

⁷Code of criminal procedure 1973, Section 366 to 371.

⁸ Bachan Singh v. state of Punjab, [1980], MANU/SC/0111.

⁹The Indian penal code, 1860.

¹⁰ The Constitution of India, 1950, part-v Article-72,161.

⁵The Air force Act 1950, Section 34(a) to (o), 163.

⁶Code of criminal procedure 1973, Section 28(2).



2. In such cases where the punishment is of the death sentence.
3. In these types of cases where the punishment or sentence is for an offence against any law relating to the matter to which the executive power of the Union extends.

The Supreme Court of India quashed an order of the governor pardoning a person convicted of murder on the basis that the governor had not been advised properly with all the relevant materials. The court further spelt out specifically the consideration that need to be taken in account of while exercising the power of pardon, namely the period of sentence in fact undergone by the said convict as well as his conduct and behaviour while he underwent the sentence the court further stated “not being aware of such material facts would tend to make an order of granting pardon arbitrarily and irrational.”¹¹

CRIMINOLOGICAL APPROACH OF CAPITAL PUNISHMENT IN INDIA

There have been two major theories prevailing in India for capital punishment which are:

1. Retributive theory
2. Preventive theory

Retributive theory: *“Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or civil society. Instead it must in all cases be imposed on him only on the grounds that he has committed a crime; for a human being can never be manipulated*

*merely as a means to the purpose of someone else.”*¹²

Further it can be said that this theory of retributive is an end in itself and based on the concept of evil should be returned with evil where it can be clearly said that this is based on the concept where the whole theory is related to the vengeance or revenge and the contention given is that the pain faced by convict should be more than the good he has gained from committing that crime.

Preventive theory: Prevention is better than cure; the main aim of this preventive theory is to keep the offender away from society. According to this theory the main aim of punishment is to set an example for others and prevent them from committing further criminal activity. This theory further promotes that a convict who has undergone the imprisonment will not be committing any further crimes as being aware of the severest form of imprisonment he has faced in the past. In this theory the death penalty is considered to be the most severe form of punishment where it ends the life of a convict as he has also taken the life of another man.

JUDICIAL TRENDS IN CAPITAL PUNISHMENT

The Supreme Court of India in a case has struck down Section 303 of the Indian Penal Code, which provided for mandatory death punishment for offenders serving life sentences.¹³

¹¹Satpal v. state of Haryana MANU/SC/0318/2000.

¹²Emanuel Kant “Meta physics of morals” 1797 part - 1.

¹³Mithu Singh v. State of Punjab [1983], SCR (2)690.



As the Supreme Court has also led down guidelines that only in rarest to rare cases the capital punishment can be given which has shaken the collective conscience of society.

Further it has also been provided in another judgment of Supreme Court of India where it has provided that death sentence act as deterrence but as token of emphatic disapproval of the crime by the society, where the murder is diabolical in conception and cruel in execution and that such murderers cannot be simply wished away by finding alibis in the social maladjustment of the murderer¹⁴

Justice V.R Krishna Iyer was of opinion of not imposing death penalty in one of the judgement of Supreme Court of India where he quoted Benjamin Cardozo from the nature of the judicial process by saying that *“if a judge has woefully misinterpreted the mores of their day, or if the mores of their day are no longer those of ours, they ought not to tie, in helpless submission, their hands of their successors.”*¹⁵

LAW COMMISSION REPORT ON CAPITAL PUNISHMENT

The Law Commission of India presented its report in which it was provided that the objective of capital punishment is the society's rage against criminals rather than their feelings of revenge. Therefore, maintaining capital punishment in law and further the report provided:

¹⁴ Jagnohan Singh v. state of Uttar Pradesh [1991],3,SCC-471.

¹⁵ Rajendra Prasad v. State of Uttar Pradesh AIR1979,SC,916.

1. If at the generation of the crime the age of criminal is less than 18 years, he should not be granted capital punishment.
2. Being women is no reason to escape from capital punishment.
3. In India, the attempt to commit suicide should not be considered as a capital crime.
4. The death penalty does not provide the penological goal of deterrence any more than life imprisonment. Further, life imprisonment under act means imprisonment for the whole of life subject to just remissions which, in many states in cases of heinous crimes, are granted only after many years of imprisonment which range from 30-60 years.
5. Retribution has an crucial role to play in punishment. However, it cannot be reduced to vengeance. The notion of *“an eye for an eye, tooth for a tooth”* has no place in our constitutionally mediated criminal justice system. Capital Punishment fails to enact any constitutionally valid penological goals.
6. The Commission accordingly recommends that the death penalty is abolished for all crimes other than terrorism-related offences & waging war.¹⁶

INFLUENCE OF NEWS MEDIA

The best source of information for any social topic the society receives the news from media & such information whether fake or does not leave an influence on the general mass. Especially the issues like capital punishment which is a big social issue in the media play a prominent role in developing the presumption of mass towards such

¹⁶ Law commission of India, “The Death penalty”, 2015(law commission report No.262).



convict or accused of capital offences which means that the role of media is not just to provide mass with the facts & reports of cases, but generally it sometimes make people what they want them to believe in. The result of which is that though the cases of capital punishment is statistically rare in India still they get so much attention of news media which can sometimes affect the reality in which the people believes in this can be considered as another reason as to why there is sometimes high demand & from society to give capital punishment to those who commit offences which are not acceptable by the society.

CONCLUSION

The capital punishment in India has been a debatable issue from last few decades, and till now there has been a lot of development in the process of deciding about the cases in which the death penalty should be given. The Supreme Court in its recent judgement has led down that capital punishment is constitutional although different views can be seen in the bench while giving the verdict. The law commission has also led down in its report that capital punishment has lost its influence as an effective tool to deterrent the criminal to commit capital offences; thus it can be concluded from the above research that capital punishment should be abolished and different means of punishment should be thought of having rigorous impact on criminal to change his thinking not taking his life only the pain he should be suffering must not be physical only but emotional too. Like the movie, “*Shawshank Redemption*” has provided that life in prison thinking about the crime committed by them is much more painful than the death they have to face the

punishment. Thus it can be said that life imprisonment is much worse than capital punishment as a penalty for the commission of a capital offence.

SUGGESTIONS

- Capital punishment should be abolished.
- The reformatory approach should be taken while dealing with the convict of capital offences.
- The media should not be permitted to propagate any view about the accused of capital offences.

