



GLIMPSE OF CAPITAL PUNISHMENT IN INDIA

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ABSTRACT:

Aristotle the legendary Greek philosopher said, “Man is by nature a social animal; an individual who is unsocial naturally and not accidentally is either beneath our notice or more than human. Society is something that precedes the individual.” And by this definition he avows that men are inhumane in nature. Humans were considered as being selfish. It’s the society they live in renders it probable to lead an ordinary and peaceful life. To adhere to the social order state makes laws and lays down the list of crimes which affect the social order and their punishment. Out of the diverse form of punishments, we are going to delve into capital punishment which means to take the life of the accused person for the crime committed. And let’s proceed with the history of capital punishment and execution methods. In India the constitutionality of capital punishment was questioned as it violated fundamental right to life provided under Art 21 of the Indian Constitution. I hereby set forth my article with arguments for and against capital punishment.

ORIGIN:

The term stems from the Latin word *capitalis* denoting “regarding the head,” and originally insinuated to beheading.

HISTORY:

Let us discern by getting into the history of capital punishment. With the increase in

cruelty of crimes the government started taking actions which would instigate fear in the mind of people who dare committing such crimes.

Tracking the timeline of death penalty:

- Sixth King of Babylonian dynasty, Hammurabi, who reigned central Mesopotamia {present day Iraq} during 1792 to 1750 BC proclaimed Code of Hammurabi. And that code had 282 rules which defined penalties and punishment to deal with crimes. He codified death penalty as a punishment for 25 crimes.
- Hittite code {1650-1180 BC}: Hittite laws were composition of two hundred laws engraved in two Clay tablets. And the objective of the King Hittite was to provide justice and people could appeal personally to King to claim justice as their right. This code sentenced certain offences with capital punishment.
- Draconian laws {621 BC}: This traditional draconian law, first written Athenian laws, was introduced by Draco. These codes were most noteworthy for his harshness as death penalty was given for all of the criminal offences.
- Roman law of twelve tablets {451 BC}: Roman law focused more on relation with individuals and private laws, violation of which were given death penalty. Death sentences were carried out by way of crucifixion, drowning, beating to death and burning alive.
- By sixth century Torah {Jewish laws} laid down offences for which punishment was death. In this period execution of death penalty was rare as there were many contradictory arguments favouring and against death penalty. The Torah states that capital punishment should be used for some crimes:



*If anyone takes the life of a human being, he must be put to death. **Leviticus 24: 17***

The Torah suggests that punishment should be proportionate:

If there is a serious injury, you are to take life for life, eye for eye, and tooth for tooth.

Exodus 21:23-24¹

- From the tenth century BC hanging was considered as the method for execution of death penalty by the British. William the conqueror {1028-1087} who was the first Norman Monarch of England did not allow hanging except during the time of war. The number of offences punishable with death was increased during the 1700's and more than 222 offences were punished with death penalty. Especially during the rule of King Henry VIII it was estimated that more than 72000 people were executed with capital punishment.
- US were greatly influenced by the Britain, more than any country, to use death penalty.
- Islamic laws on capital punishment believed that capital punishment is a most severe sentence but one that may be commanded by a court for crimes of suitable severity. While there may be more profound punishment at the hands of God, there is also room for an earthly punishment. Islamic countries that practise a very strict Sharia law are associated with the use of capital punishment as retribution for the largest variety of crimes.

HISTORY OF CAPITAL PUNISHMENT IN INDIA:

- The belief of giving punishment for betterment of society is derived from the Manusmriti;
Manusmriti 7.17-20:
A powerful and rational penal system (Dand) is the true ruler. Dand is the propagator of Justice. Dand is the discipliner. Dand is the

administrator. Dand alone protects the 4 Varnas and 4 Phases of life.

*Dand protects the public and Dand keeps the nation awakened. That is why wise people proclaim that Dand is the Dharma.*²

- There is no such history on birth of capital punishment in India. It is believed to be immemorial.
- Capital punishment was first enacted in Indian legal system during British colonial rule in Indian Penal code in 1860 by the then Governor General of India.
- The first capital punishment in India as per record is the execution of Rasha alias Raghuraj Singh in 1947. There is no such record as to whether there was capital punishment prior or not but it is believed to exist from time immemorial.

EXECUTION TACKS:

The ancient methods of execution were most cruel to even envisage. Some modes of execution during ancient times: using animals [crushing with elephants, letting bitten by snake, etc.], boiling to death [prisoner put into a large cauldron filled with water, oil, or even molten lead, etc.], breaking wheel [wheel attached with sharp nail are rotated on the spine of the prisoner], burning [accused burnt alive], crucifixion [hands and legs of accused are nailed to wooden plank] and removing the skin when the accused is alive. These cruel methods were changed with time.

And now the modern method of execution includes:

- Lethal injection:
Lethal injection is the praxis of introducing one or more drugs into a person with the intention to cause rapid death of that person. This method was carried out by USA, China and Vietnam.



Composition of lethal injection includes

(1) Sodium Thiopental, is a chemical used as anaesthesia which can make a person unconscious within 20 seconds

(2) Pancuronium Bromide, is the chemical which causes paralysis

(3) Potassium Chloride, which induces irreversible cardiac arrest.

➤ **Electrocution :**

In this method person is killed by electric shock. This method was first adopted by New York in 1888 as quicker alternative for hanging. The method applies one or more high voltage electrical currents through electrodes attached to the head and legs of a condemned inmate, who sits strapped to a chair. Typical electrocution last for two minutes. Electric shock is repeatedly induced till the person is declared dead.

➤ **Lethal gas:**

This method is executed in U.S states, Oklahoma, Mississippi, Alabama, etc. Now even in US lethal injection is preferred to lethal gas. In this mode of execution the person is locked up in a room where lethal i.e. poisonous gas are released which would cause death of person by suffocation.

➤ **Beheading;**

This is a historic form of execution followed by Saudi Arabia wherein the person to be convicted is handcuffed blindfolded and often given some sedative. They will be taken somewhere closely to prison and the executors would sever the person's head usually with a sword. 'Crimes' punishable by death in Saudi Arabia include: adultery, blasphemy, fornication, homosexuality and sorcery.

➤ **Hanging :**

Countries like *Afghanistan, Bangladesh, Botswana, India, Iran, Iraq, Japan, Kuwait, Malaysia, Nigeria, Palestinian Authority (Hamas authorities, Gaza), Sudan* execute convict by this method.

This is the most familiar method in which the person is strangled to death with help of suspended noose. The person would be made to stand on a trapdoor and when the trap is released by the executor the rope around neck of the accused would prevent him from falling down. The person would die as a result of asphyxiation [i.e. the state or process of being deprived of oxygen]. In India, this familiar mode of hanging was introduced by British during their rule.

In India the convict's head face is covered with a black cover and the noose is tied in such manner that the flap of the cover is left free.

➤ **Shooting :**

Shooting is carried out in *China, Indonesia, North Korea, Saudi Arabia, Somalia, Taiwan, Yemen.*

The prisoner would be bound to sit on a chair or tied to a pole. The firing squad shoots aiming the prisoner's heart standing 20 feet away from the prisoner.

In India the convicts are executed by shooting only for offences under Army Act, Navy Act and Air Force Act.

CONSTITUTIONALITY OF DEATH PENALTY IN INDIA:

Ever since the formation of Indian constitution, a numerous encounters raised up on the constitutionality of capital punishment. India is one among the 78 retentionist countries which have retained



death penalty [i.e. capital punishment] to “rarest of rare cases”.

Earlier ‘Death Penalty was rule and Life Imprisonment was exception’ which was later changed as ‘Life Imprisonment is rule and Death penalty is exception’ by Supreme Court.

Supreme Court played important role, keeping in mind the principle of natural justice and felt right to life as a fundamental right under article 21 of the Indian Constitution by converting death penalty to be sentenced on only exceptional cases. Certain landmark judgements were provided by Supreme Court to ensure sufficient guidelines have been issued for the said purpose. I have annotated few landmark cases below.

In **Rajendra Prasad vs State of UP** the court held capital punishment to be violative of ‘right to life’ provided under article 14, 19 and 21 of the Indian Constitution. Two essential conditions to impose death penalty are:

- *Special reasons necessary for imposing death penalty must relate not to the crime as such but to the criminal.*
- *The Death penalty must be imposed only on extraordinary circumstances.*³

Decision made in Rajendra Prasad vs State of UP by Supreme Court was overruled in **Bachan Singh vs State Of Punjab on 9 May, 1980.**⁴

The right to life is not one of the fundamental rights mentioned in Article 19 (1) of the Constitution and the six fundamental

freedoms guaranteed under Article 19(1) are not absolute rights. The condition precedent for the applicability of Article 19 is that the activity which the impugned law prohibits and penalises must be within the purview of and protection of Article 19 (1).

The court also laid down a clear distinction between ‘law and order’ and ‘public order’. . There are several offences under the Indian Penal Code, such as, theft, cheating, ordinary assault, which do not violate or affect "public order", but only "law and order". These offences injure only specific individuals as distinguished from the public at large. It is now settled that "public order" means "even tempo of the life of the community".

The court held that death penalty as a punishment for murder is not unreasonable and not violative of Art 14,19 and 21 of the Indian Constitution.

In **Machhi Singh And Others vs State Of Punjab on 20 July, 1983** the Court framed guidelines mentioned below

- (1) *Manner of Commission of Murder: When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community*
- (2) *Motive for Commission of murder: When the murder is committed for a motive which evince total depravity and meanness.*
- (3) *Anti Social or Socially abhorrent nature of the crime When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath.*
- (4) *Magnitude of Crime: When the crime is enormous in proportion.*



(5) *Personality of Victim of murder: When the victim of murder is an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder a helpless woman or a person rendered helpless by old age or infirmity when the victim is a person vis a vis whom the murderer is in a position of domination or trust when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.*⁵

REMEDIES AVAILABLE TO CONVICT IN INDIA:

There are three remedies available for a person sentenced with capital punishment in India:

1. Review petition :
Any person aggrieved by a judgement or order can under section 114 of Civil Procedure code,
Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.
(b) by a decree or order from which no appeal is allowed by this Code, or
(c) by a decision on a reference from a Court of Small Causes,

*may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.*⁶

The provision under Criminal Procedure code states

366. *Sentence of death to be submitted by Court of session for confirmation.*

(1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

*(2) The Court passing the sentence shall commit the convicted person to jail custody under a warrant.*⁷

2. Curative petition:
After the dismissal of review petition, the aggrieved person can file curative petition. This petition was evolved by Supreme Court in **Rupa Ashok Hurra vs Ashok Hurra & Anr on 10 April, 2002**⁸

A petitioner is entitled to relief ex debito justitiae if he establishes (1) violation of principles of natural justice in that he was not a party to the lis but the judgement adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice and

(2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner.

The curative petition shall contain a certification by a Senior Advocate with regard to the fulfillment of the above requirements.

We are of the view that since the matter relates to re- examination of a final judgment of this Court, though on limited ground, the curative petition has to be first circulated to a Bench of the three senior-most Judges and



the Judges who passed the judgment complained of, if available.

This petition was evolved keeping in mind the principle of natural justice.

3. Mercy petition:

The mercy petition is filed by the convict. It is granted on the basis of mental or physical fitness and the financial condition of his family where the person convicted is the bread winner of the family.

It is not right of the person convicted.

President and governor have the right to pardon under article 72 and 161 of the Indian constitution respectively.

ARGUMENTS:

FOR:

- Capital punishment is always best supported for its deterrence effect. It is believed that if a person is being executed with capital punishment for a particular offense, any other person who ‘would-be’ offender will not commit that particular offence on fear of being executed with capital punishment.
- It is often argued that harsh punishments are required for criminal who commit heinous crimes.
- Capital punishment is needed as retributive for ‘an eye for an eye’, i.e. the punishment to be appropriate with the seriousness of offense.
- It was considered in favour of victim family who need not live in fear of when the criminal walks out of jail.
- It is believed that victim get justice on criminal getting death punishment.

AGAINST:

- Death penalty doesn’t have deterrent effect as perceived this is very evident from statistics that indicates the heinous crimes are committed at large.
- It is often argued that taking life of the criminal is so inhumane, cruel and even unconstitutional. Right to life is considered the most important right and it cannot be denied.
- On moral grounds the capital punishment is not right option because capital punishment is said to be judicial murder and killing is killing irrespective of reason.

CONCLUSION:

In my opinion to make capital punishment to be deterrent the need of speedy justice is required i.e. the criminal must have apprehension that if he has committed an offense punishable with capital punishment he would be facing death soon. Typically in country like India there is a hefty number of pending cases and trial procedure is slow which does not create fear in minds of criminal to give deterrent effect.

And I feel that as in India the death penalty is given on the basis of rarest of rare doctrine and there should be no need for remedies for convicted person favouring victim’s right of natural justice.

If we have a look on the cases where people have been given death penalty we would come across the most heinous crimes. The death penalty is given for cases like:

MUKESH KUMAR VS UNION OF INDIA AND OTHERS popularly known as Nirbhaya case where the victim was brutally gang raped in a bus as a consequence of



which the girl died in 2012 and the rapist was hanged to death on 2020.

In 1993 Bombay bombings where there were series of terrorist attack coordinated by Dawood Ibrahim through his subordinates Yakub Memon and Tiger Memon. The widespread riot which happened in December 1992 and January 1993 throughout the nation started with Babri Masjid demolition in Ayodhya. One among the rioter Gul Noor Mohammad Sheikh went to Pakistan to undergo training and returned to Mumbai in March 1993 who was detained by the police prior to their date of bombing in April on occasion of Shivatri. Gul's detention provoked Tiger Memon to pre-pone the bombarding to March 12. This one day serial blast claimed lives of 250 people and injured more than 1000. Yaktub Memon was executed by hanging in Nagpur jail in 2015.

These are the stances which provide a bird eye view on cases where death penalty have been given.

On having a look into the convicts who are awarded with death penalty in India, you may note that death penalty is awarded for those who commit heinous and worst offences like serial killings, bomb blast or terror attack, brutal rape and murder which claim lot of lives by its cruelest form in an inhumane manner and also affect the public peace and order [the fundamental right which are grossly violated in such cases]. On stating my view on capital punishment I would rather remove all the remedies available to those convict by taking trait of 'Principle of Natural Justice' of deceased's [whose life was pilfered by accused] dear ones loss [emotional, mental and physical]. We can't provide injustice to deceased's loss by simply

stating the convict has a right to life, we also have to perceive that even the deceased in such case also had to right to life which was clutched by the accused.

FOOTNOTES:

1. <https://www.bbc.co.uk/bitesize/guides/zhts4wx/revision/4#:~:text=The%20Talmud%20says%20capital%20punishment,should%20aim%20to%20protect%20society.>
2. <http://agniveer.com/manu-smriti-and-punishment/>
3. <https://main.sci.gov.in/judgment/judis/4874.pdf>
4. <https://main.sci.gov.in/jonew/judis/9886.pdf>
5. <https://indiankanoon.org/doc/545301/>
6. https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00051_190805_1523340333624§ionId=33455§ionno=114&orderno=123
7. https://www.indiacode.nic.in/bitstream/123456789/15272/1/the_code_of_criminal_procedure%2C_1973.pdf
8. <https://indiankanoon.org/doc/123456797/>
