CONSTITUTIONALITY OF THE CAPITAL PUNISHMENT

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Abstract: All sanctions are based on the same premise that there must be a punishment for misconduct. Many religious or ethical systems teach that bad behavior leads to bad outcomes. There are two key explanations that deter people from doing wrong by imposing penalties on wrongdoers. The death penalty is also based on the same claim as other penalties. It is also more open to discussion about its justice, appropriateness and efficacy than other punishments, because of its extreme and irrevocable existence. Death penalty supporters think it is an efficient way to deter crime. As a deterrent or something that prevents or leaves violence, they insist on the death penalty. They agree that the death penalty gives the perpetrator of a heinous crime the most justice. Since time immemorial, the death penalty has been a method of punishment. Over the years, the reasons for and against have not changed much. Crimes are well connected with the society and form of civilization from which they originate, as is the mode of punishment. At this point in time when the problem [whether or not capital punishment must be abolished] is still raging, it would be fitting to remind ourselves how each time it has come up before them, the legislatures and the Supreme Court have dealt with this issue. The degree of judicial discretion is another concern.

Keywords: Crimes, Death Penalty, Deterrent, Punishment, Religious, Constitution.

INTRODUCTION

Ever since 1898, capital punishment has been part of the Indian Penal Code. The Supreme Court of India awarded the death penalty to 162 persons in 2018 - the highest number in the last twenty years. India is also one of the 58 countries worldwide that has not fully repealed or instituted a moratorium on the law on capital punishment. This begs the question: does capital punishment still have a place in penological law in a country with a constitution so strong and dedicated to the protection of human rights and freedom? A variety of challenges to the constitutionality of the death penalty have arisen through Supreme Court appeals since the creation of the Indian Constitution. In the landmark judgment of Bachan Singh vs State of Punjab (1980), which held that the death penalty is still lawful, the matter was seen as 'settled'. The decision, however, also promulgated the 'Rarest of Rare' Doctrine, holding that only unusual or rare cases should be awarded the death penalty. In essence, this paper aims to bring litigation against the death penalty and the rarest of rare doctrines, alleging that it is both ineffective and that it violates the principles enshrined in the Constitution, in particular those of Articles 14, 19 and 21.

HISTORY AND SCOPE OF DEATH PENALTY

There are seven offences for which the death penalty can be punishable by criminals. These include: I assassination, (ii) dacoity followed by murder, (iii) abetment of a minor or insane or intoxicated person to commit suicide. In 1973, Jagmohan Singh v. State of Uttar Pradesh brought the first challenge to the death penalty [2]. According to Articles 14, 91 and 21, I the judges had the discretionary power to enforce the death penalty, (ii) the death penalty annihilated all fundamental freedoms under Article 19, and (iii) there was no equal sentencing process with respect to the death penalty. The Bench disagreed with the arguments in this judgment, maintaining that the death penalty did not violate any fundamental rights or freedoms, and that it was lawful in fact. The next evolution in the control of capital punishment came from Maneka Gandhi v. the Union of India, which offered two important safeguards: first, not all human rights are different from each other [3]. This meant that it was not excluded from operation within the scheme of other fundamental rights only because a law met the criteria of one fundamental right. In particular, a law was required to pass the test of Articles 14, 19, and 21 jointly, in order to be considered constitutional. Furthermore, this judgment asserted that any process laid down under Article 21 had to be 'fair, fair and rational' and could not be 'imaginative, coercive and arbitrary.' It was under this context that, through Bachan Singh vs State of Punjab, the five judge Bench considered the seminal challenge to capital punishment in 1980.
Execution of Death Sentence

In India, the execution of the death penalty is carried out in two ways, namely by hanging by the neck until death and by firing squad execution [4].

(a) Hanging

The Criminal Procedure Code (1898) called for the hanging method of execution. In the Code of Criminal Procedure, the same approach was implemented (1973). "When any person is sentenced to death, the sentence shall direct that the person be hanged by the neck till the person is dead. When any person is sentenced to death, the sentence shall order the person to be hanged by the neck till the person is dead."

(b) Shooting

The Army Act and the Air Force Act both allow for the death penalty to be executed. Section 34 of the 1950 Air Force Act empowers the court martial to execute a death penalty for the offences referred to in points (a) to (o) of Section 34 of the 1950 Air Force Act. The form of the sentence of death is provided for in Section 163 of the Act as:

"In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead or shall suffer death by being shot to death"

This provides for the Court Martial's discretion to either allow for the death penalty to be imposed by hanging or by being shot to death. The Army Act of 1950 and the Navy Act of 1957 both provide for requirements similar to those laid down in the Air Force Act of 1950.

Rights-Based Critique

In the Bachan Singh judgment and the promulgation of the 'rarest of rare' doctrine, largely based on Articles 14 and 21 of the Constitution, this section basically seeks to criticize various fallacies. At the beginning, the fact that the Constitution should not be read simply as a didactic, scholastic document is important to take into account. It is also a representation of the different ideals and beliefs that society cherishes, and at the heart of its project is to protect and promote the integrity of the individual [5]. Therefore, the Constitution has enacted fundamental rights which guarantee the person a certain social and judicial security, limiting the power of the State and its institutions. The Directive's State Policy Principles are also committed to the development of a society which ensures social, economic and political justice and protection for individuals. Therefore, the Constitution does not necessarily guarantee that law and order prevail. At the heart of the document is the commitment to the defense of the individual's civil rights and liberties. Capital punishment takes this basic concept away [6].

Constitutional validity of death penalty in India

More than once, the issue of the statutory legitimacy of the death penalty has been brought before the Supreme Court of India. In the case of Jagmohan Singh v. State of Uttar Pradesh, by a unanimous decision of the five judges making up the Bench, the Supreme Court upheld the constitutional validity of the death penalty.

Krishna Iyer J. in the case of Rajender Prasad v. Uttar Pradesh State. The Commission claimed that the death penalty specifically affects the lives of individuals guaranteed under Article 21 of the Constitution. But it has been provided for by statute, and in Article 21, there is nothing like due law [7]. It is, therefore, valid. He further claimed that the two things would be sufficient to enforce the death penalty:

- The special reasons for enforcing the death penalty in a case should be registered.
- Except under exceptional cases must the death penalty be enforced.

In the case of Bachan Singh v. State of Punjab, the issue was again considered by a five-judge bench, particularly in view of some comments by Krishna Iyer J. In the case of Bachan Singh, judges considered the social, ethical and even spiritual aspect of the death penalty while maintaining its constitutional validity. The "rarest of rare" doctrine was later advocated by the Supreme Court and since then, the law is life imprisonment and the exception
is the death sentence. In Machhi Singh vs Punjab State, the Supreme Court laid down the general outlines of the circumstances in which the death penalty could be enforced.

The legislative definition of "rarest of rare" does not exist. It depends on the facts and circumstances of a specific event, the crime’s brutality, the offender's conduct, the prior history of his participation in the crime, the likelihood of reforming and incorporating him into society, etc.

Test for “rarest of rare”

When sentencing a prisoner to death, the commonly applicable test is whether the existence of an ordered society involves the extinction of the life of the person who committed the crime and whether failure to impose a death sentence on him will render the death sentence provided for in Section 302 of the IPC to nothing [8].

The pre-planned, vicious, cold-blooded and sordid nature of a crime, without giving the victim any chance, is normally taken into consideration in determining if a specific case falls within the "rarest of rare" criteria. However, the way in which the death penalty is enforced in a vast number of cases poses a significant concern [9]. In India, are trial courts giving way to the 'rarest of uncommon' doctrine? The problem is becoming all the more critical since not all death penalty convicts are executed in India. Despite the "rarest of rare" doctrine that restricts the scope of awarding capital punishment, the number of death sentences pronounced has been very high [10].

CONCLUSION

On the ground of constitutionality, the delay in the execution of capital punishment has always been a debatable problem. Many reasons for and against the problem have been put forward. The Apex Court was always in two minds on the question as well. It can be assumed that in deciding on the constitutionality of the question, all these decisions are of very little significance. If the problem is viewed objectively from the point of view of the Indian Constitution and other laws and regulations, it is clear that no particular time has ever been referred to as necessary for the completion of the event. Nor is the President or the Governor bound by the rules for a particular period of time to act on a mercy petition. It illustrates that on the basis of delay in implementation, one does not question the constitutionality of the decision in itself. The challenge to compliance under Article 21 of the Constitution is also highly refutable, and the Apex Court has often been double-minded on that issue. In the absence of any deadline given by the Indian Constitution, it can be claimed that the delay can be questioned on the basis of morality and humanity. Yet morality in itself does not make it illegal unless it is forbidden by the law in itself. The word unconstitutional is described by the Oxford Dictionary as not in compliance with the political constitution or procedural laws. It is highly refutable that the question of the execution of the death penalty after delay is illegal, i.e. not on the basis of Article 21 of the Indian Constitution and others, and the Apex Court has also never been consistent in the matter.

However, as far as the canons of moral jurisprudence are concerned, it is extremely beneficial to bring about these structural improvements. There is definitely a need to place some blame on some of those causing the delay. For the disposal of the cases and the mercy requests, a fair timetable should be attached. The Home Ministry must be responsible for it in the event that the timetable is not followed. In addition, a mechanism should be incorporated where the President is responsible for the delay and he should work with certain legal experts for a better and faster disposal of demands for clemency, as the delay obviously leads to tremendous mental trauma of the aggrieved people, which is against humanity and is subject to infringement of human rights. It may therefore be claimed that rendering the execution of the death penalty unconstitutional on the ground of delay is very vague and debatable, and the delay in itself does not render the execution unconstitutional per se, but it is important to take suggested steps in the direction of the question.
REFERENCES


