



CONSTITUTIONALITY OF CAPITAL PUNISHMENT IN INDIA

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Abstract; - This article explores concept of Capital Punishment and its validity under the Indian Constitution. The main purpose of law is to provide social security and to maintain law and order in the society. Punishments under the law are imposed so as to avoid the repetition of crime in future.

I. Introduction; -

In the realm of legal and ethical debates, the constitutionality of capital punishment in India stands as a contentious issue that has sparked heated discussions among scholars, policymakers, and the general public. The practice of capital punishment, also known as the death penalty, has been a subject of scrutiny due to its irreversible nature and the potential for miscarriages of justice. When delving into the intricacies of this topic, it is crucial to analyze the constitutional framework in India, examine relevant case laws, consider international perspectives, and evaluate the moral and practical implications of retaining or abolishing capital punishment.

II. Capital punishment

Capital punishment, also known as the death penalty, is a government-sanctioned practice whereby a person is sentenced to death by the state as a punishment for an offence committed. This severe form of punishment involves the execution of the individual convicted of a capital offence, after trial and fulfillment of due process. Capital punishment is often reserved for gruesome crimes of extreme heinous nature, considered to be the most serious, such as murder, rape, waging war against the state, etc.

The rationale behind capital punishment varies across different legal systems and societies. It is argued that it serves as a deterrent against violent crimes, ensures justice for victims and their families, and upholds the moral principle of retribution. It is viewed as a necessary form of punishment for particularly heinous crimes that warrant the ultimate penalty.

The legality and acceptance of capital punishment vary widely around the world, with some countries abolishing it altogether, others retaining it for exceptional cases, and a few actively carrying out executions as a routine part of their justice system. International human rights standards increasingly advocate for the

abolition of the death penalty, citing concerns about its inhumane nature, lack of proven deterrence effect, and potential for violating the right to life and freedom.

III. Theories advocating capital punishment

The issue of capital punishment is a subject of intense debate, in regards to its efficacy, morality, and legality. Multiple theories have been put forth to support the practice of capital punishment, each rooted in different philosophical, legal, and ethical principles. A few key theories which advocate the use of capital punishment are:

1. **Retributive Theory:** This theory proposes that, offenders who have committed heinous crimes deserve to be punished proportionally to the harm they have caused. It is argued that capital punishment is a fitting response to crimes such as murder, as it serves to balance the scales of justice and upholds moral order in society. According to this theory, the severity of the punishment should reflect the severity of the crime.
2. **Deterrence Theory:** One of the most commonly cited reasons in support of capital punishment is its deterrent effect on potential offenders. The deterrence theory suggests that the threat of facing the death penalty acts as a powerful deterrent against individuals contemplating commission of serious crimes. The fear of death can dissuade individuals from engaging in criminal behavior, thereby contributing to public safety.
3. **Utilitarianism:** Utilitarianism is a moral theory that emphasizes the greatest good for the greatest number of people. Proponents of utilitarianism argue that capital punishment can be justified if it leads to overall societal benefits, such as deterring crime, promoting public safety, or preventing future harm. From a utilitarian perspective, the potential positive outcomes of implementing the death penalty may outweigh the ethical concerns associated with it.

IV. Right to life under Constitution of India

To begin with, understanding the constitutional provisions related to capital punishment in India is essential. The Indian Constitution guarantees the right to life and personal liberty as a fundamental right under Article 21, which has been interpreted by the judiciary to encompass the right to not be deprived of life, except by the procedure established by law.

V. Constitutionality of capital punishment in India

The legality and constitutionality of capital punishment in India hinge on whether the imposition of the death penalty adheres to the due process of law and is in consonance with constitutional principles.

In the context of Indian jurisprudence, landmark cases such as **Bachan Singh v. State of Punjab**¹ and **Mithu v. State of Punjab**² have shaped the legal landscape surrounding capital punishment. The Supreme Court of India, in the Bachan Singh's case (supra), upheld the constitutional validity of the death penalty while introducing the 'rarest of rare' doctrine, which mandates that capital punishment should only be imposed in the most exceptional cases involving extreme culpability; cases where the alternative option of life imprisonment would be unquestionably inadequate. The judgment laid down guidelines for the imposition of the death penalty, emphasizing the need for a careful consideration of aggravating and mitigating circumstances in each case. Subsequent judgments have further refined the application of this doctrine, emphasizing the need for individualized sentencing and consideration of mitigating factors, as was also stated in Mithu's case (supra).

In the case of, **Machhi Singh v. State of Punjab**³, the Supreme Court further clarified the principles laid down in Bachan Singh's case (supra) regarding the application of the death penalty. The court reiterated the 'rarest of rare' doctrine and provided a framework for evaluating the circumstances that warrant the imposition of capital punishment. The judgment emphasized the importance of considering the specific facts and circumstances of each case before sentencing an individual to death. The case of **Rajendra Prasad v. State of Uttar Pradesh**⁴ highlighted the importance of procedural safeguards in death penalty cases. Herein, the Apex Court emphasized upon the need for strict adherence to due process and fair trial standards in capital punishment proceedings.

The constitutional validity of capital punishment was in particular looked into in the case of **Jagmohan Singh v. State of Uttar Pradesh**⁵. The contention raised was that the capital punishment is violative of Article 19 and 21 of the Constitution of India as it did not provide any procedure, and the procedure provided under the Criminal Procedure Code was limited to finding of guilt and not awarding death sentence. The Apex Court, herein, observed that, the choice of death was in accordance to law and the choice between life imprisonment and death penalty can be made by the judge in regards to the facts, circumstances and nature of the offence committed. The constitutional bench gave an unanimous decision and upheld the validity of death penalty and that it does not violate Articles 14, 19 and 21 of the Constitution of India.

A constitutional bench of the Apex Court, in the case of **Smt. Shashi Nayar v. Union of India and Ors.**⁶ at length discussed the constitutionality of death penalty and upheld its validity. In the instant case, the petitioner contended that capital punishment was violative of Article 21 of the Constitution of India, as it absolutely

¹ (1980) 2 SCC 684

² AIR 1983 SC 413

³ 1983 AIR 957: 1983 SCC (3) 470

⁴ 1973 SCC (3) 646

⁵ (1973) 1 SCC 20

⁶ 1992 AIR 395

prohibits deprivation of a person's life. She argued that the punishment did not serve any social purpose and the barbaric penalty of death should not be awarded to any person as it had no deterrent effect; that the penalty of death sentence had a dehumanizing effect on the close relations of the victims and it deprived them of their fundamental rights under Article 21 of the Constitution, to a meaningful life. While dismissing the petition, the Apex Court observed that;

"1. The capital punishment as provided by the law is to be awarded in rarest of the rare cases. The procedure established by law for awarding the death penalty is reasonable and it does not in any way violate the mandate of Article 21 of the Constitution. Hanging by neck was a scientific and one of the least painful methods of execution of the death sentence.

2. The death penalty has a deterrent effect and it does serve a social purpose, having regard to the social conditions in our country the stage was not ripe for taking a risk of abolishing it.

3. A judicial notice can be taken of the fact that the law and order situation in the country has not only not improved since 1967 but has deteriorated over the years and is fast worsening today."

In its recent judgment, in 2009, in the case of **Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra**⁷, the Supreme Court reaffirmed the 'rarest of rare' doctrine and reiterated that the death penalty should be reserved for exceptional cases involving the most heinous crimes. The judgment emphasized the need for consistency and transparency in the application of capital punishment and stressed upon the importance of weighing the gravity of the offence and the culpability of the offender.

The Supreme Court on multiple instances has upheld the constitutionality of capital punishment in India and has re-affirmed that the punishment is subject to 'rarest of rare cases' doctrine and is not to be imposed in a half-hazard manner, but with proper care and caution and only when no other punishment or remedy would be appropriate for the offence committed.

'Rarest of Rare Cases' doctrine

This doctrine sets out specific guidelines for determining the circumstances under which capital punishment can be justified and emphasizes the exceptional nature of cases warranting the ultimate penalty of death. The key elements of the 'rarest of rare' doctrine laid down by the Supreme Court of India are as follows:

1. **Judicial Discretion:** The doctrine recognizes that the decision to impose the death penalty is a matter of judicial discretion and should be exercised with utmost care and caution. Judges are required to consider the unique facts and circumstances of each case before determining whether the offence qualifies as one of the 'rarest of rare' cases deserving of the death penalty.
2. **Aggravating Circumstances:** The court outlined that the death penalty should be reserved for cases where the crime is of an exceptionally grave nature, involving extreme brutality, depravity, or premeditation. The presence of aggravating factors such as the heinousness of the offence, the manner

⁷ (2009) 6 SCC 498

in which the crime was committed, and the impact on 'society at large' are to be considered in determining the rareness of the case.

3. Mitigating Circumstances: While assessing whether a case falls within the ambit of the 'rarest of rare' category, the court also takes into account any mitigating factors that may argue against the imposition of the death penalty. Factors such as the offender's age, mental health, socioeconomic background, and the possibility of reform or rehabilitation are considered to balance the scales of justice and ensure a fair sentencing decision.
4. Balancing Test: The 'rarest of rare' doctrine requires judges to conduct a careful and balanced evaluation of both the aggravating and mitigating factors present in a case. The court must weigh the gravity of the offence against the culpability of the offender and assess whether the imposition of the death penalty is the only appropriate response to the crime committed.
5. Exceptional Circumstances: The doctrine emphasizes that the death penalty should be imposed only in exceptional cases where the alternative of life imprisonment would be manifestly inadequate to address the gravity of the offence.

The 'rarest of rare cases' doctrine serves as a guiding principle for courts in India to ensure that the death penalty is reserved for the most egregious and exceptional cases that demand the highest form of punishment.

VI. Relation between 'Capital Punishment' and doctrine of 'Ubi Jus Ibi Remedium'

The maxim 'Ubi Jus Ibi Remedium' means 'where there is a right, there is a remedy.' This maxim marks as a fundamental principle of jurisprudence underlining that every right should have a corresponding remedy for its protection and enforcement. Imposition of death penalty poses a tough challenge before this doctrine. Such a punishment leads to ultimate deprivation of one's fundamental right to life. In this regard, whether or not there can be a meaningful or just remedy for the irreversible action of taking away life through state machinery for completion of sanction imposed is a tough question to answer. This is in particular because of the finality and irreversibility of the death sentence imposed and acted upon. Action upon capital punishment leaves no room for rectification in case of error and may lead to blatant miscarriage of justice. On execution there is no room to undo the harm caused by wrongful imposition.

VII. Striking a balance between individual right and societal interest

A balance between individual right and societal interest can be achieved only by ensuring strict compliance of legal procedure, including right to fair trial, legal representation, fair hearing, reasoned decision and provision for appeal; in order to safeguard the rights of the accused. The impact on the society of the capital punishment also needs to be considered thoroughly, including its effectiveness and potential to address public concerns.

For striking balance between the two, it is important that following points are considered:

1. The imposition of death penalty should be fair and in a consistent manner, irrespective of regards as to caste, creed, ethnicity or socio-economic status.
2. Stringent legal safeguards must be undertaken in order to make sure that no innocent is executed and wrongful conviction and executions are prevented.
3. Primary focus must be placed upon alternative approaches of addressing crimes such as rehabilitation of offenders and reintegration programs for offenders.
4. The root cause of crime must be *prima facie* addressed and provisions be provided to support individual as aid in turning their lives around; thereby preventing future crimes and promoting public safety.
5. Ethical, legal and practical implications of this practice must be carefully considered.

VIII. International Perspective

India's stance on the death penalty aligns with a minority of countries that retain capital punishment, despite increasing global momentum towards its abolition. The United Nations and various human rights organizations have called for the worldwide abolition of the death penalty, citing concerns about its discriminatory application, irreversibility, and lack of proven deterrence effect.

When weighing the moral and practical implications of capital punishment, one must grapple with complex ethical dilemmas and societal considerations. Advocates of capital punishment argue that the death penalty serves as a deterrent against heinous crimes and provides a sense of justice to victims and their families.

IX. Conclusion

The constitutionality of capital punishment in India is a multifaceted issue that demands a nuanced examination of legal, ethical, and social perspectives. As the debate continues to evolve, it is imperative for policymakers, legal experts, and civil society to engage in thoughtful dialogue and consider the broader implications of retaining or abolishing the death penalty within the Indian constitutional framework. Proponents of capital punishment often highlight the importance of providing closure and a sense of justice to the families of victims. The execution of the offender is viewed as a form of retribution that offers a degree of emotional satisfaction and vindication to those who have suffered loss and trauma as a result of the crime.

The Constitution of India provides for sufficient amount of remedies to the offenders for protection of their rights. It is a well-established interpretation that right to life is not absolute and is subject to procedure established by law. In exercise of powers vested and through compliance of the procedure established by law, it can thus be said that the judges can impose capital punishment in cases where the offender has committed a gruesome crime, of such level that it shook the conscience of the public at large.