



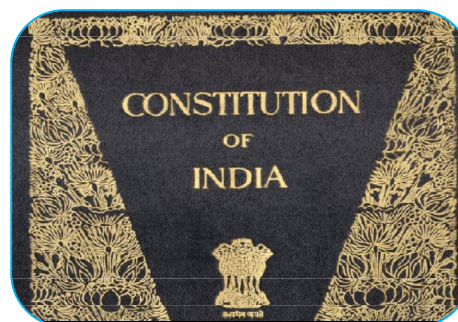
CONSTITUTIONALITY OF CAPITAL PUNISHMENT IN THE LIGHT OF ARTICLE 21 OF THE CONSTITUTION OF INDIA

Dr. Dipak H. Lokhande

**Associate Professor , Dr. Panjabrao Deshmukh College of Law,
Morshi Road, Amravati.**

ABSTRACT

In India, the issue about the death penalty should be considered from two distinct edges. Initially, we need to see whether the death penalty is constitutional in light of the fact that enthusiastically raised under the steady gaze of the Supreme Court right from the case of Jagmohan Singh v. State of U. P.¹ and secondly, regardless of whether the death penalty is constitutional the question is, whether it is under bothersome in all conditions and ought not be awarded even in the case of most serious and gravest crimes. The need of thought of the subject from the above two points additionally shows up on the grounds that the abolitionists in India contend that the death penalty isn't just bothersome but at the same time is ultra virus the Constitution of India. On the other hand, the one group of people contend that the death penalty as given in Indian Penal Code 1860 (IPC) and restricted by the Code of Criminal Procedure, 1973 (Cr. P. C) is completely constitutional and is important and desirable in the current pace of crime in the nation.



KEYWORDS: *women and children , ladies' bodies , pornography.*

INTRODUCTION

Taking into consideration the human nature, complete elimination of crimes from society isn't just inconceivable but also unimaginable. Criminals are a lot of part of our society and we need to change and correct them calm demeanor additionally needs to change towards the freaks with the goal that they do appreciate a few rights as normal citizens. However, it is realized that the State is reluctant to punish the offenders in the name of change and rectification, they may take the law in their own hands and they themselves may try to penalize the criminals and that will lead to lawlessness. Consequently, to maintain a strategic distance from this circumstance, there is an incredible requirement for prescribed and proportional punishment following Bentham's theory of punitive objectives that pain of the criminal ought to be higher than delight he appreciates by commission of the crime. In any case, the higher discipline must have proportionality and uniformity as well.

Debates relating to retention or annulment of the capital punishment are seething the world over amongst social activists, legal reformers, jurists, lawyers and administrators. Criminologists and Penologists are occupied with escalated study and research to know the answers of some questions

¹ AIR 1973 SC 947

relating to capital punishment. Firstly, Whether the death penalty serves the objectives of punishment? Secondly, Whether elimination of lawbreakers through the death penalty will wipe out crime from the society? Thirdly, Whether complete elimination of crime from the society is all conceivable or possible? Individuals are neither angels fit for doing just good nor they devils resolved to crush other even at the cost of self-destruction.

CONSTITUTIONAL VALIDITY OF CAPITAL PUNISHMENT:

Article 21 of the Constitution of India ensures the privilege to life and individual freedom to all. Article 21 provides that “No person shall be deprived of his right to life and personal liberty except according to the procedure established by law”. Therefore, the State may remove or curtail even right to life for the sake of law and public order observing the procedure established by law. But, the procedure must be “due process” as held in *Maneka Gandhi v. Union of India*². The procedure which removes the sacrosanct life of human being must be just, fair and reasonable.

In *Jagmohan Singh v. State of U. P.*³ the petitioner challenged the validity of death penalty on the ground that it was violative of Article 19 and 21 since it didn't provided any procedure. It was argued that the procedure given under Cr. P. C. was restricted distinctly to finding of guilt and not granting capital punishment. The SC held that the decision of granting capital punishment is done as per the procedure established by law. The judge makes the choice between capital punishment and imprisonment for life based on facts and circumstances of the case and nature of crime brought on the record during trial. The court held that death penalty was not violative of Article 14, 19 and 21 and consequently constitutionally valid. But, in *Rajendra Prasad v. State of U. P.*⁴ the court held that death penalty would not be supported except if it was indicated that criminal was hazardous to the society. The court held that offering discretion to the Judge to settle on decision between capital punishment and life imprisonment on special reasons under Section 354 (3) of Cr. P. C. would be violative of Article 14 which condemns arbitrariness.

However, in *Bachan Singh v. State of Punjab*⁵, the Supreme Court by 4:1 majority has overruled the decision given in Rajendra Prasad's case and has held that the provision of death penalty under Section 302 of IPC as an alternative punishment for murder is not violative of Article 21 of Constitution which recognized that State has power to deprive the life and personal liberty of person in accordance with fair, just and reasonable procedure established by valid law. Considering the Constitutional provision by no stretch of imagination it can be said that death penalty under section 302 of IPC either per se or because of its execution by hanging constitutes an irrational, barbarous or uncommon punishment. The capital punishment for the offence of murder does not violate the basic features of the Constitution of India.

ARGUMENTS FOR RETENTION OF CAPITAL PUNISHMENT:

There are two groups on the perspective on death penalty, one group contends in supporting the death penalty and another contends against it or in supporting the abrogation of the death penalty. The death penalty has been in force since the antiquated occasions. Most of the Penologists, Jurists and Legislators and so forth unequivocally favoured this punishment. Following are some of the arguments for holding of the death penalty.

1. **Social Need:** When a limb of the body of individual is damaged and ruined and becomes incapable to be treated, the Doctor operates it and eliminates that particular limb from the body. Similarly, when an individual has gotten hazardous to the general public, and he isn't in the situation to be changed, so no reason can be given to his terrible act and it become social need to eliminate such individual from the society. Thus, capital punishment is need of the society.

² 1978 AIR 597

³ AIR 1973 SC 947

⁴ AIR 1979 SC 916

⁵ AIR 1980 SC 898

2. **Chance of causing pollution in the Society:** In case of death penalty, there can't be a getaway in future and can't be disturbed the general public. On the other hand, if he is kept in the jail forever, there is possibility of getting away or making contamination other soft minded offenders. There is a great possibility of committing cruel and unlawful acts while he was on parole or even after his final acquittal. The death penalty stays away from such incidence of crimes.
3. **Legal Demand:** If a pitiless and brutal minded criminal isn't penalized and in the event that he is left free in the general public, he will destroy the very structure of the society. Human progress will turn into the Jungle Justice. No one will regard the law and order. Accordingly, the death penalty is a legitimate demand of the day to ensure rights and protection of general public.
4. **Rarest of the Rare Cases:** Capital punishment is awarded in grave and heinous crime. There are around 400 offenses under IPC yet out of these offenses there are few offenses for which the maximum punishment is capital punishment and it is an alternative punishment. So the death penalty is given in 'rarest of the rare' cases only.
5. **Reduction of crowded in Jails:** It is just strategy to wipe out perilous and habitual criminals and extraordinarily recidivist from the society for eternity. It diminishes the undesirable increase of crowded of crooks in the various prisons.

ARGUMENTS FOR ABOLITION OF CAPITAL PUNISHMENT:

Some Criminologists, Lawyers, Jurists, Penologists and so on criticize the death penalty. They contend that crime is disease and it ought to be cured and germs ought to be removed rather than to kill the person. Following are some of the major arguments for the abolition of death penalty.

1. **Capital Punishment cannot deter the Criminals:** The supporters of annulment of the death penalty contend that giving of the death penalty neither deflects the public nor criminals. For instance, in 18th and 19th century the death penalty was executed as 'public function'. The people used to go to such function in tremendous groups simply like attending of marriage function or watching of movies yet even after the execution of the death penalty in the public, the commission of grievous crimes are continue in the society. Therefore, the supporters of abrogation of the death penalty contend that in the event that the death penalty can discourage individuals and criminals, at that point such heinous crime might not be repeated in the society.
2. **Capital Punishment is Inhuman and Barbaric:** It is ridiculous contention that killing of criminal with less enduring is humanitarian thing. The jail life changes the criminal into a reprimanded individual. There are several examples which show that ninety percent prisoners regret for their commission of crimes. On the other hand, if a criminal is killed, there is probability to render the retribution by his family members and rehash similar offenses. There are exceptional persons who carry out offensive violations after their release, that excessively because of the mental disease. Such individual suffers mental disease and can be cured by appropriate treatment.
3. **Removal of Germs of Crime from Society:** The Germs of Crime are in the society and there are some reasons for these germs like financial problem, physical, social, mental causes and so forth. The current system of punishment ought to be changed. The State ought to give a wide range of reformative intends to the criminals. The structure of society should be redesigned and the entire deformity in the society should be annihilated. The weak minded individual will be dealt with psychologically under the supervision of efficient psychological experts and specialists. Trainings in technical profession should be given to the detainees so that after their release they should get independent work and carry on as a well behaved citizen and can be useful to the general public in his residual life.
4. **Against the Reformative Theory:** Reformative Theory is getting more famous in current remedial towards criminals and plans to deal with the criminals like the patient and to punish them with the least of so seriousness.
5. **Retributive in Nature:** Capital punishment may have been appropriated and advocated in the old and crude stage when the maxims of 'life for life', 'eye for eye', 'tooth for tooth', 'hand for hand' was the main rules of granting punishment.

6. **Against the Nature:** Famous criminologist 'Baccarats' said that State has no right to take away the life of its citizens. Baccarats said that society has started by men having the most elevated power at that point by what method would society be able to remove the life of a man who is a piece of it. Life is given by the nature hence it very well may be taken by the nature only and not by the State. Accordingly, execution of the death penalty is against the nature.

CONCLUSION:

Prima-facia, capital punishment is probably going to have a more strong impact as a deterrent to ordinary person than any other type of punishment however it is hard to unravel the inner most recesses of the mind of the potential murderers. It is discovered that some offences are so absurd for which society demands a satisfactory punishment in light of the fact that the guilty party deserve it independent of whether it creates deterrence or not. Retribution is as yet a socially acceptable function of punishment because the impulse or reprisal is of nature of man. Retribution and deterrence are not two disparate ends of the death penalty. They are joined objectives, which ultimately merge into one.

The concept of Fair Trial following the principle of natural justice and procedural law are the most significant when the death penalty is on the statute book. Therefore, our constitutional principles are on top of procedural necessities of Natural Laws which comprise the internal ethical quality of laws which incorporates that death penalty is to be utilized sparingly just in unique cases, the death penalty is treated as an exceptional punishment to be forced with extraordinary reasons, the offender has a right for hearing, there ought to be individualization of sentence considering about individual conditions, the death penalty must be affirmed by the High Court with the proper application of mind, there is right to appeal to the Supreme Court under Article 136 of the Constitution of India and under section 379 of Cr. P. C. The SC ought to inspect the issue to its own satisfaction. The accused has an option to speedy and fair trial under Article 21 and 22 of the Constitution. The accused under Article 21 and 22 has right not to be tormented and has freedom of speech and expression inside prison under Article 19 of the Constitution and has likewise option to be represented by properly qualified legal practitioner.

Capital punishment is not abnormal for the greater part of the countries in the world since they had already provision of death penalty in their statute book. Capital punishment eliminates the risk of committing the heinous offences and work for protecting the innocent citizens.

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