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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RATIONALE BEHIND DEATH PENALTY IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

Capital punishment or the death penalty is the most extensive level of discipline that can be granted to a person under any reformatory regulation in force in any area of the planet. The state's legal procedure for using its power to kill someone is known as capital punishment. Since the beginning of the state itself, it has existed. During the British era, numerous instances of Indians being hanged prior to or after a trial have occurred. India's judicial System entered a new era at the dawn of Independence. It was as a conspicuous difference to the English legal framework where the Indians barely had any admittance to equity, or the hour of realms and realms before it when the leader of a specific state or realm was its definitive power and the wellspring Of all equity wherein the assertions word for word, were taken on as the rule that everyone must follow. As a result, the rural could execute any man, regardless of his or her status, at any time.

After 1947, India turned into a popularity based state, and the procedure for granting capital punishments too changed definitely. In accordance with the Indian Constitution, the Indian Penal Code authorized the execution of certain individuals for specific offences.

Article 21 states that "No person shall be deprived of his life or personal liberty except according to the procedure established by the law," is an express assertion in Article 21, which ensures the principal right to life to each resident. This means that the state has a right to take your life if it deems it appropriate, meaning that you're right to life will never be taken away from you except through the legal procedure. The majority of law enforcement agencies do not seek the death penalty for any offense; instead, only the most heinous crimes are eligible for it.

The inherent principle of "Innocent until proven guilty" serves as the foundation for the Indian justice system's deterrent and reformative measures. As a result, in India, abstaining from the use

of the death penalty is a peculiarity that is inconsistent. It should come as no surprise that when it is used, not only local media outlets but also global media tycoons pay attention.

Keywords: Capital punishment, death penalty, legislation, capital offences, crimes.

INTRODUCTION

The assumption that there must be a penalty for wrongdoing underpins all penalties. There are two primary purposes behind causing the discipline. One is the idea that a person who has done wrong should suffer for it, which is both just and right. The second is the idea that punishing wrongdoers makes others less likely to commit crimes. Like other punishments, capital punishment is based on the same idea.

Considering the circumstances of the present, the debate over capital punishment is the most universally relevant one. The Indian criminal justice system incorporates capital punishment as an essential component. The existence of capital punishment is questioned as immoral, as the human rights movement grows in India. Anyway, this is an odd contention as keeping one individual alive at the expense of the existence of various individuals or expected casualties in the general public is amazing and as a matter of fact, that is ethically off – base. The execution of a person who has been found guilty of a crime and sentenced to death by a court of law is known as capital punishment or the death penalty. The death penalty ought to be recognized from extra judicial executions done without fair treatment of regulation. Although the imposition of death penalty is not always followed by execution (Even when it is upheld on appeal), due to the possibility of commutation to the life imprisonment, Sometimes, the terms "capital punishment" and "the death penalty" are used in opposite contexts. India is a country which comprise of huge number of violations and law breakers. In India, all punishments are based on why the wrongdoer should be punished. The first is the wrongdoer should suffer, and the second is that punishing wrongdoers discourages the others from doing wrong. These are the two primary reasons for imposing punishment. In India, a person can be punished in a variety of ways depending on the crime they committed, including the death penalty, imprisonment, life imprisonment, fined imprisonment, and so on.

There are numerous basic liberties development in India which says that the dead penalty is shameless. It is argued by the human rights group that one person's right is affected by the capital

punishment. Capital punishment refers that sentence in criminology jury students, and the penal system. The Constitution additionally gave powers to president and the lead representative to suspend or acquit capital punishment. In India the most serious and grievous crimes are the given the death penalty. The death penalty is given for homicide, burglary with murder, taking up arms against the public authority and abetting mutiny, etc. The death sentence is only given when court comes to an end that life imprisonment is insufficient, based on the situation of the case.

RESEARCH METHODOLOGY

The research methodology used in the research paper is doctrinaire relies on secondary sources. Online websites, research papers, books based on the Indian Penal Code, reports from well-known authorities, newspapers, and legal databases that help us give an interpretation to various cases are examples of secondary sources of information.

DEFINITION OF DEATH PENALTY

Their penalty, also known as the capital punishment, is the execution of a criminal who has been sentenced to death by a court of law for a serious felony. It is known as the most extreme type of punishment. It serves as punishment for the most heinous common grievous, and abhorrent crimes against humanity. The death penalty has always been the result of such crimes, despite the fact that the definition and scope of these crimes vary by nation, state, and age.

HISTORICAL BACKGROUND

Every nation in the world has used the death penalty at some point. The official history of capital punishment has a legally binding statute dates to the 18th century. The death penalty had been codified for approximately 25 different types of crimes by Babylonian King Hammurabi. Additionally, it played a significant role in the 14th century Hittite Code; In accordance with Athens' barbaric laws, the only form of punishment for any kind was death. The structures wherein capital punishment occurred exceptionally severe, for example, suffocating, consuming alive, and being pounding into the ground and so on.

One of the best old lawyers, Manu, also said that the act of capital punishment should be done in public to scare people away from doing horrifying crimes. Without the training, the condition of rebellion will wean, and people will eat each other up like fish do in water - the more grounded

they are, the more fragile they are.

INDIAN HISTORY

The practice of capital punishment in India is as old as Indian culture. The death penalty has been upheld since ancient times, as evidenced by its mention in early legal documents and codes. The unpredictability of execution sentence accompanied the act of execution. The King Ashoka did not forbid the use of death penalty during the Buddha era when Ahimsa was the standard of conduct. The Mahabharata also points to the possibility of the capital punishment, which states that if killing an individual or a family publicly is seen as a serious and dangerous crime, it should be done for the benefit of the people.

Kalidasa exemplified the need for the death penalty in a beautiful way. The Ramayana and the Mahabharata, epics from mythology and history, have both argued in favor of the death penalty, stating that the king's top priority is to protect society from all kinds of threats by executing the wrongdoer. Moreover, both Katyayana and Manu upheld capital punishment.

INDIA'S ATTEMPT TO REMOVE DEATH PENALTY

A few attempts to abolish the death penalty in India were unsuccessful. In 1931, prior to independence, a private bill was introduced in the Legislative Assembly to repeal the death penalty for offences that the British Home Secretary had dismissed.

The Free Indian Government prevented the meeting from securing a bill to repeal the death penalty when the previous Lok Sabha meeting was coordinated. The efforts made at the 1958 and 1961 Rajya Sabha meetings had also failed. The Law Commission's reports were based on the assumption that the death penalty would prevail and the executives would need to be able to show mercy. This report had been presented to the public authority and the Lok Sabha, in 1967 and 1971 independently.

THE DOCTRINE OF RAREST OF RARE

The presentation of the guideline of most uncommon of intriguing was begotten in the legal executive after the conveyance of a milestone judgment 'Bacchan Singh V. Province of Punjab'¹.

¹ Bacchan Singh V. Province of Punjab, AIR [(1980) SCC 684]

The landmark case *Macchi Singh V. State of Punjab*² clarified this doctrine. Although the doctrine of Rarest of Rare does not have a specific legal definition, it states that the accused should only be given the death penalty in exceptional or rare cases where society is in danger from the criminal's life. The magnitude of the crime, the nature of the crime and the criminal, the victim of the crime, the motive reason behind the commission of the crime and the method of commission of the crime must all be taken into consideration before this doctrine can be applied. Only if each of these factors is supported by evidence can the death penalty be applied. The argument that this punishment was used improperly is completely groundless.

CRIMES PUNISHABLE BY DEATH PENALTY IN INDIA

The Indian Penal code, 1860:

The Indian Penal Code contains several kinds that include the death penalty. They are discussed as follows:

1. Waging or attempting to wage war against India is one of the crimes linked to the death penalty. **Section 121** of the Indian Penal Code provides a specific definition of the crime of "waging war against a country"
2. Mutiny suppression has also been linked to the death penalty. As per **section 132** of IPC, anybody who supports the commission of a revolt by an officer or, fighter, Marine, or pilot in the military, naval force, or flying corps of the Public Authority of India, so that rebellion will be committed because of that complicity, can be punished by death. Disobedience by an official or individual from the military, naval force or flying corps is indicated.
3. **Section 194** of the IPC has been added to the queue of crimes punishable by death. According to section 194, fabricating evidence is punishable by third degree punishment if it is done to obtain a capital conviction for a crime. A person who commits such a crime can face a death penalty.
4. **Section 302** of the IPC imposes the death penalty for a person who commits some murder.
5. The death penalty has been linked to helping or supporting a minor commit suicide. **Section 305** of the IPC lays out the penalties for helping a person under the age of 18 or an intellectually disabled person commit suicide. This means that anyone who does it could get the death penalty.

² *Macchi Singh V. State of Punjab* 1983, AIR 1983 SCR (3) 413

6. This year's crime of kidnapping for ransom or other purposes carries the death penalty. Grabbing an individual with the expectation to cause them damage or demise is determined under segment **364A** of IPC. The death penalty is available to anyone who commits this crime.
7. **Section 376A** specifies the death penalty for rape that results in death or permanent vegetative state of a person.
8. Under **Section 376E**, repeat rape offenders may face the death penalty.
9. **Section 396** also provides death penalty in cases of dacoity with murder.

The Convention of Sati (Prevention) Act, 1987:

Any individual engaged with the commission of Sati straight forwardly or in roundabout way dependent upon capital punishment under the commission of Sati (Prevention) Act, 1987

Narcotic Drugs and Psychotropic Substances Act, 1985:

In the view of past convictions, **section 31A** of NDPS Act has presented Capital Punishment for offering monetary help or partaking in the creation or sale of narcotics or psychoactive substances in a predetermined amount (e.g., opium 10 kg, cocaine 500 grams).

The Scheduled Castes and Scheduled Tribes Act, 1989:

The Act imposes the death penalty for forging evidence that leads to the conviction and execution of scheduled caste.

Army Act, 1950; Air Force Act, 1950; and Navy Act, 1957: Variety of offenses committed by military personnel in violation of military laws like the Army Act of 1950; The Navy Act of 1957 and the Air Force Act of 1950, have death penalty provisions.

OFFENDERS EXEMPTED FROM DEATH PENALTY

Minors:

In accordance with Indian law, a person under the age of 18 who has committed a crime cannot be executed. Because they believed that anyone who hasn't reached adulthood has room for improvement and might be able to learn from his mistakes if given the right environment and education, lawmakers decided to include minors in the group of offenders exempt from the death penalty. Additionally, we have a separate law, the Juvenile Justice Act, 2015, that applies only two cases involving minors because Theme criminal such as to improve.

Pregnant woman:

Pregnant women were added to the list of criminals who are rejected from capital punishment. Section 416 of the CrPC states that a woman who has been given the death penalty can have it postponed or reduced to life in prison if the high court determines that she is pregnant. This is because hanging a pregnant woman kills both the woman and the child she is carrying. The unborn child in the woman's womb has not perpetrated any bad behavior and doesn't have the right beyond words toward the woman did. As a result, pregnant women may thus fall under the category of criminals who are excluded from the death penalty.

CLEMENCY POWERS

Articles 72 and 161 of the Indian Constitution grant the president of India and the governor of India special clemency powers. When the wrongdoer has exhausted all available legal remedies, he or she may file a mercy petition with the Indian president and the state governor.

Subsequently they are otherwise called 'court after all other options have run out'. They have abilities that they can give which go as follows: Remission (reducing the term of the sentence) Commutation (a punishment that is less rigorous than the previous punishment), Complete Pardon, Reprieve, or Respite.

More often than one absolute pardon can be recorded. These rules help at making it sure that the charge is being repelled for the death penalty just after it has been exhibited that there are no errors for the circumstance and the law is absolutely obligated.

INSTANCES OF PAST EXECUTIONS IN INDIA

Capital punishment is executed at an exceptionally low rate in India. Mukesh Singh Vinay Sharma, Pawan Gupta, and Akshay Takur were the four convicts who were hanged together on 20 March 2020 in the Nirbhaya assault and murder case. However, since 2000, there only have been 8 executions, including them. There are many verdicts for the death penalty, but only a few are carried out. There were approximately 1500 verdicts for capital punishment from 2004 to 2015, but only four people were hanged.

Mohammed Ajmal Amir Kasab V. State of Maharashtra (2012)³: In this case, Kasab and nine other terrorists carried out a series of well - planned bombing and shooting attacks throughout Mumbai in the infamous 26/11 attack. The fear – monger assault at CST station, which was carried out by Ajmal Kasab and Ismail Khan, targeted major landmarks and left up to 58 people dead and over 100 injured. Special court handed down Kasab’s death sentence in May 2010. Despite Kasab’s Attorney pleading for mercy and claiming that his client had been brainwashed by terrorist group (Lashkar – e – Taiba) and should be rehabilitated, on May 7th, trial judge ML Tahaliyani said, “he should be hanged by the neck until his death.” He also said that he had lost his right to “humanitarian treatment”. In February 2011, the Mumbai High Court rejected Kasab’s appeal of the decision. Kasab appealed the death sentence to the Supreme Court in July 2011.

State V. Mohd. Afzal & Ors. (2013)⁴: In this case, the facts started on December 13th, 2001, when five armed individuals opened fire on parliament, killing many of the security guards on duty. The gun battle resulted in the deaths of the five terrorists who attempted to enter parliament while it was in session. The terrorists killed 9 people, including aid security guards and one gardener. There were 16 harmed individuals, including 13 security faculty. The president denied Afzal Guru requested for mercy on February 3rd 2013 and it was rejected. On February 9th 2013 Afzal Guru was hanged in Delhi’s Tihar jail.

Ediga Anamma V. the State of Andhra Pradesh⁵: In this case, the Supreme Court established the principle that for murder, life in prison is the norm and the death penalty is reserved for exceptional circumstances. Additionally, the court stated that if the court decides to impose the death penalty, a special explanation must be provided.

Hyderabad Veterinarian Case⁶: In this case, the female doctor was all alone in the scooter which she packed to the Shamdabad Plaza and from where she took the taxi to the workplace where she planned to work. In the meantime four accused were checking her and which drove them to penetrate her bike in her absence. Her scooter had been punctured when she returned from work. In the interim, these four accused came and began raping her, assaulting her, burning her body. The case called for the death penalty, but the police encountered the accused, which raised

³ Mohammed Ajmal Amir Kasab V. State of Maharashtra (2012) 9 SCC 1

⁴ State V. Mohd. Afzal & Ors. (2013) AIR 107 (2003) DLT 385

⁵ Ediga Anamma V. the State of Andhra Pradesh AIR 1974 SCR (3) 329

⁶ <https://blog.ipleaders.in>

questions about our Indian Criminal Justice System.

Jagmohan Singh V. State of Uttar Pradesh 1973⁷: This case was important because it challenged the Constitutionality of the death penalty. The Supreme Court stated that while analyzing article 21 and Article 72 from the Constitution, it cannot be said that capital sentence was regarded per se or reasonable or not in the public interest. Thus, Supreme Court upheld that the death penalty can be attributed to various crimes. However, CrPC was amended to make the death penalty an exception rather than the norm.

Future of Capital Punishment in India:

Chhannulal Verma V. State of Chattisgarh ⁸: Justice Kurian Joseph as he would see it communicates different worries over the conflicting utilization of the standards set down in Bachan Singh. In these case, he opined that the Constitutional Regulation of the death penalty attempted in Bachan Singh has failed to achieve any constitutionally valid penological goals.

CONCLUSION

Capital punishment is one of the most questionable subjects of Indian culture. It has been around since ancient times and is still prevalent in some major nations, including India. In India, death punishment is given only in rarest of the rare cases but what is the exact meaning of the phrase 'rarest of the rare cases' has caused much controversy. The ultimate aim to give punishment anywhere is to reduce the crime and to impose some penalty on the name of justice. India follows a similar peculiarity however according to the Indian Constitution, it is the infringement of the arrangements after right to life and respect given in Article 21, and still it is constitutionally valid. An overview of India's capital punishment is provided in this paper. It also explains the history and various cases on the death penalty. The study observed that all the judgments pronounced in heinous offenses were keeping in mind people in general at large. This ultimately settled that the granting of the death penalty in the most uncommon of the intriguing case is simple and fair. Article 6 of the International Covenant on Civil and Political rights lays out crucial protections that signatories will still practice the death penalty must uphold; but nowhere does it abolish its use. The controversy which Nirbhaya's case has, both the International Commission of Jurists and the Amnesty International India convicted the executions. The death penalty is used for

⁷ Jagmohan Singh V. State of Uttar Pradesh AIR 1973 SCR (2) 541

⁸ <https://legalserviceindia.com/legal/article-8656-capital-punishment-in-india-critical-analysis.html>

murder and rape in both Australian and American law, with the exception of India.

The use of capital punishment is recognized as an effective deterrent to society as well as a form of retributive and preventive punishment. Many contend that it violates fundamental rights and is no longer an effective deterrent. It can be argued in favor of the death penalty in the Indian context that some crimes are so monstrous and horrifying in nature that the societal conscience is so profoundly injured that no discipline not exactly capital punishment can be viewed as fair or equity. As Justice ML Tahaliyani observed in the case of Ajmal Kasab, “he lost his right to humanitarian treatment,” similarly, for committing such barbaric acts, offenders lose their right to humanitarian treatment. Death warrants are only ever issued in the most exceptional of circumstances in India. Subsequently, abrogating capital punishment altogether would put the country at more serious gamble on the grounds that the state would not be able to make the fundamental move when the most uncommon of interesting cases emerge.

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