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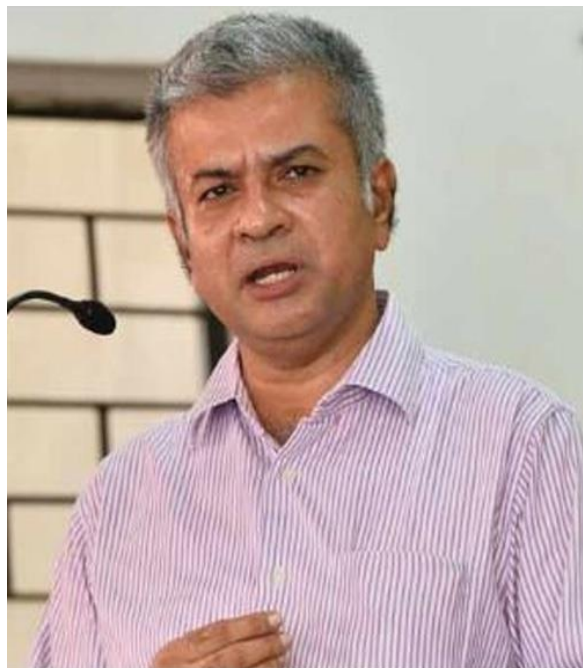
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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

Capital punishment in India

Authored By-Mohit Gourisariya

Arguments: For And Against

Those who are in the favour of death penalty argue that it should be given in the most heinous and rarest of the rare crimes, for example Delhi gang rape case in which the demand for death penalty for the accused was raised. The people who are against the capital punishment argue on the religious, moral and ethical grounds and declare it inhuman and a callous investment. It is also suggested that it should be replaced with life imprisonment or any other substitute. However, contemporary arguments for and against capital punishment, fall under three general headings namely.

Moral Arguments

Supporters of the death penalty believe that those who commit murder, because they have taken the life of another, have forfeited their own right to life. Opponents of capital punishment, argue that, by legitimizing the very behaviour that the law seeks to repress, killing; capital punishment is counterproductive in the moral message it conveys. Moreover, they state that when it is used for lesser crimes, capital punishment is immoral because it is wholly disproportionate to the harm done. Abolitionists also claim that capital punishment violates the condemned person's right to life and is fundamentally inhuman and degrading.

Utilitarian Arguments

Supporters of capital punishment also claim that it has a uniquely potent deterrent effect on potentially violent offenders for whom the threat of imprisonment is not a sufficient restraint. Opponents, however, point to research that has demonstrated that death penalty is not an effective deterrent than the long-term imprisonment.

Practical Arguments

There also are disputes about whether capital punishment can be administered in a manner consistent with justice. Those who support capital punishment believe that it is possible to fashion laws and procedures that ensure that only those who are really deserving of death are executed. By contrast, opponents maintain that the historical application of capital punishment shows that any attempt to single out certain kinds of crime as deserving of death will inevitably be arbitrary and discriminatory.

They also point to other factors that they think preclude the possibility that capital punishment can be fairly applied, arguing that the poor and ethnic and religious minorities often do not have access to good legal assistance, that also enhances racial prejudice. Finally, they argue that, because the appeals process for death sentences is protracted, those condemned to death are often cruelly forced to endure long periods of uncertainty about their fate.

Judicial opinions on Constitutionality of capital punishment

In the case of **Rajendra Prasad vs State of U.P**, Justice Krishna Iyer empathetically stressed that death penalty is violative of articles 14, 19 and 21. He further said that to impose death penalty two things are required that should be fulfilled;

- The special reason should be recorded for imposing death penalty in a case.
- The death penalty must be imposed only in extraordinary circumstances

Further, the Supreme Court in **Machhi Singh vs State of Punjab**, laid down broad outlines of the circumstances when death penalty should be imposed. Justice Thakkar speaking for the Court held that five categories of cases may be regarded as rarest of rare cases deserving extreme penalty. They are:

- The Manner of Commission of Murder. When the murder is committed in the most brutal manner so as to give rise to intense and extreme indignation
- When the murder is committed for a motive which speaks of enmity or depravity.

- Where a person from scheduled caste or minority community is murdered and his/her murder can be said to have a socially abhorrent nature or an anti-social nature.
- Magnitude of the crime must be considered. For example, multiple murders of family members or a particular caste or community.
- Lastly, the personality of the victim of murder must be taken into account

In **Deena vs Union of India**, the Court held that:

section 303 of the IPC, which prescribed hanging as mode of execution as fair, just and reasonable procedure adhering to the meaning of Article 21 of the Indian Constitution and hence, constitutional.

In Mithu Vs State Of Punjab:

Section 303 of the IPC was struck down as violative of Article 21 and 14 of the Constitution of India, as the offence under the section was punishable only with capital punishment and deprived the judiciary of its discretionary power and thus, results in an unfair and unjust procedure that costed a man his life. Justice A.K Ganguly of the Supreme Court has termed the award of death sentence as:

barbaric, anti-life, undemocratic and irresponsible which is legal in the prevailing judicial system. The doctrine of the crime falling in the rarest of rare category in awarding the death penalty was a grey area as its interpretation depended on individual judges. He cautioned that before giving death penalty, a judge must be extremely careful and weigh mitigating and aggravating circumstances.

Justice Sarkaria, in his elaborate majority judgement stressed on one aspect saying that I fail to see why too much importance should be attached to the life of an individual who has been found guilty of a heinous offence when the interests of the society demand that death penalty should be awarded to him. Often in the event of a riot, the police are required to open fire in the interests of society, if other methods fail. In such a firing, even an innocent soul can be injured or killed.

So, shall we infer from this that the police should never resort to such drastic measures in order to disperse an unlawful assembly, merely because there is danger to the life of an

innocent? No one will ever ask this question or say that. If so, then why should we have a sudden change of conscience for awarding death penalty.

In **Sher Singh vs State of Punjab**, the Supreme Court held that the death penalty is constitutionally valid and permissible within the constraints of the rule in Bachchan Singh. This has to be accepted as the law of the land. In the case of **State of U.P vs Satish**, the Supreme Court held that: the consequences would be serious if the courts became lenient in delivering punishment for grave crimes, and so, therefore, death penalty for a rape of a six-year-old girl seems constitutional and appropriate.

In the famous case of Ajmal Kasab, the Mumbai Special Court convicted Ajmal Kasab for murder, waging war on India, possessing explosives and other charges and after three days from his conviction sentenced him to death. Furthermore, this decision was upheld by the Bombay High Court stating that he was guilty of 80 offences in total and the only punishment fit for killing 166 people in 26/11 attacks in Mumbai, seems to be death penalty. His death sentence was upheld by the Supreme Court also.

The Apex Court in **Shankar Kisanrao Khade vs State of Maharashtra**, requested assistance of the Law Commission. The Law Commission in its 262nd report, answered the question by observing that the death penalty does not serve any penological goal of deterrence any more than life imprisonment in all matters and recommended the abolition of death penalty in all matters except terrorism. It expressly highlighted that the focus of debate on the death penalty ignores the pertinent and more important problems ailing the criminal system like poor defective investigation, crime prevention, victims' rights, ineffective prosecution and poor legal aid.

Conclusion

Many countries have abolished death penalty or capital punishment by providing justification that it is barbaric and inhumane in nature and violates the right to life and liberty given to the citizens of the countries. However, if a valid opinion is to be taken, it would be right to say that capital punishment even in its brutal nature is effective in reducing criminal offences and discouraging offenders to some extent.

Moreover, if we are to talk about the right to life, it would be correct to stipulate that the Constitution of India provides enough remedies and defences to the person of offenders such as right to legal aid, right to treatment etc. And right to life is not an absolute right in case of a convicted felon who was charged for some heinous crime against an individual or the country at large.

Therefore, in my opinion, capital punishment is constitutionally valid and reasonable provided it is given in cases of grievous and extreme nature. Furthermore, in my opinion, a person, who neither values the life of others nor values the integrity of his/her own nation, should not be treated with empathy. Even though it is hard to quantify the crimes in terms of which crime deserves capital punishment, still, crimes of grievous nature like rape, terrorism and murder should always be awarded with capital punishment or death penalty.