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OPINION RELATING TO THE CONSTITUTIONALITY OF CAPITAL PUNISHMENT

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Abstract:

"Introducing the Death Penalty, it is not Revenge, it is the Highest Degree of Social Protection," claims Vladimir Antyufeyev. The death penalty was instituted for the benefit of the nation and to protect the populace from harmful crime while also promoting peace and security. Any wrongdoing that has a severe impact on the victim's body and emotional health, such that the impact stays on with the public and produces a ripple effect among the other residents' emotions. Hence, the judge administers punishment to maintain peace. The most severe kind of punishment, known as capital punishment, is administered to place faith among the public regarding the seriousness of the crime and the power of law upon such crimes. Students who behave inappropriately are subject to disciplinary punishments right from their homes, school, etc... In such circumstances what happens when a person commits a crime in public and jeopardizes the safety and security of the populace? To tackle such a situation the civilization getting itself developed in various fields practiced the grant of death sentence since the monarch periods without any leisure. In this article, the author briefly discusses the concept of the death penalty, examines its constitutionality, and makes an effort to conclude the debate on the validity of the death penalty.

Keywords: Capital Punishment, Article 14, Article 21

Introduction:

The British era which stood as the major change over in India from a monarch rule to a democratic and republic country was also a follower of capital punishment for the rarest cases which was practiced since the monarchy rule in India. The reason for its extremity made it the talk of the country regarding its validity as per the law. There have been several bills approved, some of which will abolish this kind of punishment. The Indian Penal Code of 1860 divides punishments into five categories. One of which is capital punishment.

The Indian Penal Code outlines a total of five kinds of punishment as follows:

- Death Sentences
- Imprisonment for Life
- Rigorous or Simple Imprisonment
- Forfeiture of Property
- Fine¹

The Global Coalition, of NGOs, launched an initiative to end this practice by commemorating World Day Against the Death Penalty on October 10 of each year.

Reason for Granting Capital Punishment:

The legal grounds for the imposition of the death penalty are:

- waging war against the Indian government. In accordance with IPC Section 121
- Murder. In accordance with IPC Section 302
- Kidnapping for Ransom According to IPC Section 364-A
- Abetting Mutiny is prohibited under IPC Section 376-A.

¹ According to Section 53 of Indian Penal Code, 1860

- Rape which causes Death

There are several justifications for imposing this kind of punishment, according to Section 132 of the IPC. Some of them, which the author discusses in this article, are the ones already mentioned. The questionable term that the readers should notice is that every provision containing the death penalty as a punishment contains the term 'or' which stands as a disjunctive term and always keeps the way open for the judges to grant the alternative and to think twice and it gives more responsibility upon the judges who grant the capital punishment. It is their duty to interpret the provision in such a way that the object of the statute and the provision is satisfied to the full by its execution. It is also evident that the Supreme Court is very clear about its interpretation of this disjunctive term and holds the situation of rarest of rare cases².

The Rarest of Rare Doctrine can be divided into two parts. (i.e.) For Aggravating Circumstances and Mitigating Circumstances. The term Aggravating Circumstances makes an assault more relentless and worse. Whereas, the term Mitigating Circumstances, is the facts that lessen the Seriousness of an assault. In the case of Aggravating Circumstance, the Magistrate on his power grant capital punishment, and, on the other hand, in the case of mitigating circumstance capital punishment is not granted rather other rigorous punishments are ordered.

Constitutionality of Death Sentence:

The Successful Attempt made to bring about a synthesis between the concepts of Individual Freedom and Social Justice was a result of the formation of the Organic Document known as the Supreme Law of the Land 'The Constitution of India'. The constitution guarantees to its citizens certain Fundamental Rights (i.e.) the Right to Equality, Right to Freedom of Speech and Religion, Right to Property, and Right to Constitutional Remedies.

Article 14 of the Indian Constitution, states that the state shall not deny any right to a person by way of discrimination and ensures that the laws stand equal to all and at the same time law is equally protected among all, it is popularly coined as 'equality before the law or the equal protection of the laws'. This Article is not meant to Perpetuate Illegality or Fraud. And it does not envisage any negative equality rather it has only a positive aspect.

² Bachan Singh Vs State of Punjab (1980) 2 SCC 684

Article 21 of the Indian Constitution states that “No Person shall be deprived of ‘Right to Life and Liberty’”. This Article guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive and not from legislative action. The state could interfere with the liberty of citizens if it could support its action with a valid law. Thus Article 21 widens its scope by containing the term ‘Liberty’ and includes privacy, dignity, etc.

Apart from fundamental rights the Constitution provides a unique power to the President of India under Article. It gives the president the power to grant pardons, reprieves, respites, or remissions of punishment or to suspend, remit or reduce the sentence of any person who has been convicted of an offense. Though it stands as an interference by the Executive Head of the nation with the Judiciary, the constitution still holds it up to correct any judicial errors or to afford relief from any sentence if the President regards it as unduly harsh.

Though the constitution states equality and many other freedoms to citizens, the case relating to capital punishment has not been given. It is noted that capital punishment is given only to the rarest of rare cases. Thus, in special cases where heinous crime is made, severe punishment has to be given. As Capital Punishment is considered the highest level of punishment, it is pronounced and present to date. The Sessions Court have the power to order for death penalty only on the confirmation of the High Court. Meanwhile, the High Court and the Supreme Court can pass any order as authorized by law which also includes Capital Punishment.

Death Penalty as a form of Punishment violating Article 21 of the Constitution:

No Person shall be deprived of his life or personal liberty except according to procedure established by law.³ Article 21 confers on every person the right to life and personal liberty which has become an inexhaustible source for many others⁴. These Rights have been given paramount position by our courts⁵.

Right to Life:

- The right to life also includes a right to a holistic life. Holistic Life would have to include the right to a reformed life. Reformation, after all, is the approach the Indian

³ Article 21 of Indian Constitution

⁴ Bhagwati J. in Maneka Gandhi vs Union of India AIR 1978 SC 597

⁵ Kehar Singh vs Union of India AIR 1989 SC 653

Judiciary has undertaken. This Reformatory theory is implicit in both substantive and procedural laws. The Indian Penal Code, for example, prescribes the maximum punishment and not the minimum punishment. The accused is given a chance to state his mitigating factors, after the establishment of guilt and before passing of the sentence⁶. An offender who is sentenced to death loses his right to be given a chance to be reformed. Deprivation of the Right to be reformed violates Article 21 of the Indian Constitution. Hon'ble Supreme Court has held that Causing Death by Hanging via Rope is considered to be violative of Article 21 of the Indian Constitution as it is barbarous.⁷

Procedure Established by Law:

The Procedure in Article 21 has to be fair, just, Reasonable, and not fanciful, oppressive, or Arbitrary⁸. Article 21 is the counterpart of procedural due process in the United States⁹. So, a law that's unfair, unjust, unreasonable, fanciful, oppressive, and arbitrary would violate Article 21. There is nothing called a universally just, fair, or reasonable law. Concepts and ideas of justice, fairness, and reasonableness change with time. The same was recognized by Rudolf Stammler, the famous German Philosopher of Law. A Statute could have been held to be a valid piece of legislation keeping in view the societal condition of those times, but with the changes occurring therein both in the domestic as also and international arena, such a law can also be declared invalid¹⁰. The constitutionality of a provision will have to be judged keeping in view the interpretative changes of the statute affected by the passage of time¹¹. Capital Punishment has no place in the 21st century. Almost 92 countries have already abolished the death penalty as a form of punishment. Death Penalty is no longer considered Just, Fair, or reasonable. It is an unfair, inhumane, and cruel punishment that violates Article 21.

Death Row:

⁶ Section 235(2) of CrPC

⁷ Deena Dayal vs Union of India (1983) AIR 1155

⁸ Maneka Gandhi vs Union Of India AIR 1978 SC 597

⁹ Sunil Batra vs Delhi Administration AIR 1980 SC 1579

¹⁰ Anuj Garg vs Hotel Association of India and Ors 2007 INSC 1226

¹¹ John Vallamattom vs Union of India AIR 2003 SC 2902

Death Row is the area of a prison where those who have been sentenced to death are confined¹². The Death Penalty problem in India has to be framed in terms of the high number of years that prisoners unjustifiably spend under the sentence of death and the trauma and suffering that accompanies it¹³. The Supreme Court in the Case of *Shatrughan Chauhan vs Union of India*¹⁴, Observed that “Keeping a convict in suspense while consideration of his mercy petition by the president for many years is certainly an agony for him/her.” It creates adverse physical conditions and psychological stresses on the convict under the sentence of death. Since, it is well established that, Article 21 of the constitution does not end with the pronouncement of the sentence but, extends to the stage of execution as already asserted, prolonged delay in the execution of the sentence of death has a dehumanizing effect on the accused.

International Trend:

One Hundred and forty countries all over the world have abolished the Death Penalty, in law or Practice¹⁵. There is no evidence of a link between fighting insurgency, terror, or violent crime, and the need for the death penalty¹⁶. Several Countries have abolished the death penalty, or maintained moratoriums on executions, despite facing civil wars, threats of insurgency, or terrorist attacks¹⁷. A Country’s decision to abolish or retain the death penalty is not necessarily linked to its socioeconomic or development profile. Countries like South Africa have abolished the death penalty at a time when crime rates in the country were high¹⁸.

The Law Commission, in its 262nd Report published in August 2015 concluded that the death penalty serves no deterrent purpose. Official Reports show that the crime rates in abolitionist states of the USA are lesser than the crime rates in retentionist states¹⁹. So, the death penalty is abolished for all crimes other than terrorism-related offenses and waging war. Meanwhile, Death Penalty is not the appropriate remedy even in the case of terrorism. A terrorist doesn’t usually care about his life. Suicide bombers are ready to go to the extent of ending their lives in

¹² Black’s Law Dictionary: 9th Edition

¹³ NLU Krono’s Report on Death Penalty: Volume 1. Page 53

¹⁴ 2014(3) SCC 1

¹⁵ 262nd Report of the law Commission of India

¹⁶ 262nd Report of the law Commission of India, Page 70

¹⁷ 262nd Report of the law Commission of India, Page 71

¹⁸ 262nd Report of the law Commission of India, Page 71

¹⁹ Official Website of the Death Penalty Information Centre

the course of their mission. Thus, counter-terrorism measures, not the death penalty would be the appropriate method to tackle terrorism.

Case Laws Relating to Capital Punishment:

- The Appellant Mr. Jagmohan Singh was convicted under Section 302 of IPC. He was ordered to Death Penalty. Arguments were made that the Death Sentence was unconstitutional as it violates Articles 14, 19, and 21 of the Indian Constitution. The Five Judge Bench, after making an observation, stated that Courts have the potential to impose the Death Sentence after considering the vexatious factors. And also, the CrPC lays out the procedure for when to grant Death Sentence and the procedure for imposing it. Thus, the Death Penalty is Constitutional and does not violate Art. 14, 19, and 21 of the Indian Constitution.²⁰
- The Court awarded a death sentence to a woman named Shabnam who with her lover killed her family members as they did not allow her to marry him. She even killed her nephew who was 10 years old. She also pleaded for the president's Mercy, but it was rejected. This is the first case where a woman was awarded Death Sentence. She was hanged in the year of 2016.²¹
- Imposing the Death Penalty is violative of Articles 14, 19, and 21 of the Indian Constitution. Justice Krishna Iyer states that 2 reasons must be required for imposing Death Penalty.

That is:

- ✓ The Reason for imposing Death Penalty must be recorded according to Section 367(5) of CrPC.

²⁰ Jagmohan Singh Vs State of Uttar Pradesh 1973 AIR 947
Article 14: Equality Before Law and Equal Protection of Law
Article 19: Protection of Certain Rights
Article 21: Protection of Life and Personal Liberty

²¹ Shabnam Vs Union of India Writ petition (Cr) No. 88 of 2015

✓ Only in Extra-ordinary Circumstances, the death penalty has to be imposed²²

- The Accused raped, Killed, and ate 15 girls for which he was punished and sentenced to Death Penalty. But, later on, the punishment has been converted to Life Imprisonment by the Hon'ble Supreme Court.²³

Author's view For and Against the Death Penalty:

Viewpoint For Capital Punishment:

Capital Punishment is a necessity to punish the offenders. The Penalty will change based on the Aggravating and Mitigating Factors. So, Capital Punishment is awarded only if the aggravating factors are deliberate. And also, it does not violate the Fundamental Rights of the Person as the person already violates the peace of the general public. This is just a reflection of what crime he has committed.

The death penalty does not violate Article 21 of the Indian Constitution. Granting the Death Penalty, would deter like-minded people and reduces the crime rate in society. As he already commits a serious offense, he is held guilty, so punishment is a must and it should be serious. By Ordering the Death Sentence, people believe that their rights are protected, and provide peace of mind to them as the criminal is punished and prevents the other from committing a such crime in society.

Capital Punishment is given after many stages of scrutiny. The penalty is awarded after trial, which is held only in the sessions court. Other than the sessions court (i.e.) Higher Courts has the power for confirmation of the Sentence awarded in the lower court. Only a few sections in IPC are awarding the Death Sentence and even in those cases it is awarded in the Rarest of Rare Cases in the opinion of the sessions court. All the provisions which state the Punishment of the Death Penalty contain an alternative Punishment which is Imprisonment for Life. So, none of the Provisions in IPC contains only the Death Sentence as Punishment. After many

²² Rajendra Prasad vs State of U.P. (1979 AIR 916)

²³ Surendra Koli vs State of U.P.

considerations, the court is ordering capital punishment. So, it should not be avoided and it is unconstitutional, also it is not violative of any of the constitutional Provisions.

Viewpoint Against the Capital Punishment:

The death penalty is Considered a Cruel, Inhuman, Derogatory Punishment. No One has the Right to take other people's lives as mentioned under Article 21 of the Indian Constitution. It is considered to be an offensive act. If a person is committing a wrongful act and the death penalty is granted, then what is the difference between the criminal committing the crime and the act of Capital Punishment? Instead, he should be sentenced to life imprisonment and reformation has to be made. According to the Reformatory theory in IPC, the criminal has to undergo Rehabilitation. Because Reformatory activity is helpful for the criminal for curative purposes rather than to punish him with a cruel penalty. Moreover, granting Death Penalty does not make him or her realize the crime he or she has committed as they will not get any opportunity to think about the cruel act they have committed. And they will not feel Red-Handed.

They have to be awarded other serious punishments. On committing a serious crime again, the death penalty may be awarded. Counseling has to be made and it should be made understandable that committing a crime will corner them from society. For Example; the Prisoners in the Tihar Jail Located in India, make Incense Sticks and other sorts of products that adapt them to live in society. And doing these products is not considered a Serious offense when compared to capital punishment, it is a type of Rehabilitation Activity. Death Penalty is the Sudden Reflection of the Cause of Action Committed. And, there is no confirmation that the death penalty prohibits crime effectively in society.

Conclusion:

Life Imprisonment is Far Worse than the Death Penalty. The Author is inclined toward the opinion that, Death Penalty is not suitable. But in Certain Cases where Imprisonment or Fine is insufficient, and the death penalty has to be awarded, capital punishment must be granted.

Capital punishment though being a deterrent form of punishment that creates a threat to do the crime, results in ending a person's life, such that he is not given any further opportunity to change despite getting more probable good fortune but creates fear among the other upcoming

offenders to commit such a crime. The practice that the other countries have stopped following the punishment of the death penalty can alone not be a supportive statement for going against the practice of the death penalty. Meanwhile, there lies no proof for any person to support the fact that the person shall be reformed when a particular number of opportunities is given. Therefore, the author attempted to discuss the constitutional provisions and the validity of the death penalty under the Indian Constitution by bringing out the view on both, for and against capital punishment.

