
STUDY ON THE CAPITAL PUNISHMENT IN INDIA

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ABSTRACT

India is a well developing country at the same time lots of crime rates were increasing nowadays. There are lots of legislation in India to stop and control crimes, even though the crime rates are increasing because the punishments are not sufficient for the crimes. The punishment should be severe to reduce the crime rate. All punishments are based on the same motive to give penalty for the wrongdoer. There are different kinds of punishment in India such as capital punishment, life imprisonment, imprisonment etc. Capital punishment is known as the most severe form of punishment. This paper says about the status of capital punishment all around the world and also defines the concept of capital offence. It also explains about the modes of capital punishment in India. This paper explains two major theories to capital punishment, namely reformatory theory and preventive theory. In this paper the researcher also explained about rarest of rare cases. This paper mentioned about abolitionist and retentionist countries, also capital punishment in ancient India. This paper has a detailed view about the capital punishment in India and also the methods of execution in India.

Keywords: *Capital Punishment, Death Punishment, Imprisonment, Punishment*

1. INTRODUCTION

India is a country which contains of big number of crimes and offenders. In India all punishments are based on the motive to give consequence for the criminal. There are two main reasons for imposing the punishment, one is the perpetrator should suffer and other one is inflicting punishment on wrongdoers discourages other from doing wrong. There are several sorts of punishment in India based on their offence such as capital punishment, imprisonment, life imprisonment, imprisonment with fine, fine, etc.. In this research the researcher focused on capital punishment or death sentence. Capital Punishment is one of the key part of Indian criminal justice system. Crimes culminating in death punishment are known as capital crimes or capital offences. The term capital punishment is taken from the Latin word “capitalis” means “regarding the head”. The term death penalty is also known as capital punishment. Capital Punishment is a method by a person is

put to death by a state for their criminal offence. Capital punishment or death penalty denotes the culprit sentenced to death by the court of law for a criminal offence. Capital penalty which has been inflicted for the most serious crimes against humanity . Death punishment changes from place to place, state to state and country to country. There are several human rights movements in India which says capital penalty is unethical. The human rights organizations are contended that capital punishment impact one person's right. In jurisprudence, criminology and penalty, capital punishment means a sentence of death. Indian criminal jurisprudence is founded on the mixture of two doctrines. The constitution also gave authorities to president and governor to suspend or pardon death sentence. In India capital punishment is awarded for the most heinous and grievous offences. Capital punishment is administered for murder, robbery with murder, waging war against the government and abetting mutiny, etc.,. The death sentence is delivered only when the court gets to an end that life imprisonment is insufficient, based on situation of the case.

2. OBJECTIVES OF THE STUDY

The Main purpose of this study:

- To study about the capital punishment in India.
- To study about the criminological approach of capital punishment.

3. RESEARCH METHODOLOGY

The doctrinal type pattern serves as the foundation for this research. Research in doctrinal matters is also sometimes referred to as traditional research. There are many sub-methods to choose from when conducting doctrinal research, including analytical and descriptive approaches. This research is based on information that has already been made available, and an analysis of those facts has been done in order to produce an advancement in this research. The use of secondary data is essential to this investigation. The majority of the research for this study was conducted through scholarly sources such as books, articles, journals, etc.

CASES DEALING WITH DEATH PENALTY IN INDIA

MITHU VS STATE OF PUNJAB (1983)

In this case the Supreme Court struck down Section 303 of the Indian Penal Code, which provided for mandatory death sentence for offenders.

BACHAN SINGH VS STATE OF PUNJAB

In this case the Supreme Court says that capital punishment was given only to the rarest of rare cases.

4. EXECUTION METHOD IN INDIA

In Indian the capital punishment is executed by hanging or shooting.

Hanging

All capital punishment in India is implemented by hanging. After Independence, In Mahatma Gandhi case Godse was the first person to be executed by capital punishment in India. The SC of India suggested capital punishment must be given only to the rarest of rare cases in India.

Shooting

In India the Army Act and Air Force Act also provide implementation of capital punishment in India. In Air Force Act, 1950, section 34 allows the court material to thrust the death sentence for the unlawful act mentioned in Section 34(a) to (o) of the Air Force Act, 1950. In India the government mostly used hanging method to execute capital punishment.

CRIMINOLOGICAL APPROACH OF CAPITAL PUNISHMENT IN INDIA

There are two types of theories of punishment in capital punishment

Reformative theory

Preventive Theory

REFORMATIVE THEORY

According to Mahatma Gandhi, "an eye for an eye will turn the whole world blind." This idea forms the core of the reformative approach to the study of punishment. Every theory starts with the fundamental idea of trying to change the criminal. The reformation of the criminal through the use of individualized treatment is the primary goal of all of these different theories. The primary objective of the reformative theory is for the offender to undergo self-directed self-education and transformation. The penalty meted out to a criminal is ultimately for the offender's own good. This notion has received support from a variety of different angles. The field of criminology is supported by reformative theory. According to criminology, every crime is a pathological phenomena that can be thought of as a mild sort of insanity. The fields of criminal anthropology, criminal sociology, and psychoanalysis all provide their support to the Reformative paradigm. This

philosophy intends to rehabilitate the minds of criminals so that they can behave appropriately and live a life similar to that of a normal citizen. This ideology has a negative stance against all forms of physical discipline.

1. The Modern Approach to Criminal Anthropology According to the contemporary approach to criminal anthropology, crime is an illness. According to the theory of criminal anthropology, rather than punishing a criminal, it is vital to treat them. When it comes to reducing crime, hospitals and welfare homes are better adoption places than jails and prisons. Normal people are capable of committing certain types of crimes when they deliberately break ethical norms and standards. Sometimes criminal behavior is the result of a mental or physical impairment in the offender.

2. Criminal sociology: According to criminal sociology, rather than punishing criminals, it is more effective to improve social and economic conditions in order to eliminate inequality. The criminal behavior cannot be altered by punishment, but it is possible to alter criminal behavior through the application of justice and equality.

3. Psychoanalysis: Criminal anthropology and criminal sociology are both tied to psychoanalysis. The reformatory theory is supported by psychoanalysis. Education and psychoanalytic treatment are what are needed for the purpose of crime prevention rather than punishment. Among the various ideas of punishment, the reformatory doctrine is the most effective one.

Certain crimes contribute more to the development of preventative theory than others.

PREVENTIVE THEORY

“Prevention is better than cure”

The exclusion of the criminal from society is the primary objective of this preventative approach to crime. According to the preventive view, the primary objective of punishment is to serve as an example for other people and deter them from engaging in illegal behaviors. According to this interpretation, those who commit crimes should be sentenced to the death penalty or life in prison. As a result of preventive theory's capacity to humanize penal law, it garnered the support of a significant number of law reformers. In the opinion of many advocates for social change, the preventative hypothesis does have an actual impact on criminals. The primary goal of preventive theory is to ensure that the accused individual does not commit the offence once they have experienced the positive effects of their punishment. This argument emphasises that the death penalty is the most harsh type of punishment due to the detrimental effect that it has on offenders. One man has been

responsible for the death of another man. Therefore, it is his fault that he will not be allowed to live. In India, they adopt what's known as the preventative theory.

RETENTIONIST AND ABOLITIONIST COUNTRIES

Many countries all around the world have abolished death penalty and some countries abolished death penalty for some crimes. In this topic the researcher clearly explained about the international status regarding the capital punishment .Death Penalty status are classified into 4 categories :

- Abolitionist for all crimes
- Abolitionist for ordinary crimes
- Abolitionist de facto
- Retentionist

There are 98 countries were abolitionist death penalty for all crimes, 7 countries were abolitionist death penalty for ordinary crimes only, and 35 were abolitionist death penalty in practice and 140 countries in the world abolitionist capital punishment in law. only a minority of countries use the capital Punishment in practice. The country which follows capital punishment including India, China, Indonesia and the United States.

	number of countries
1.Abolished death penalty for all crimes	97
2.Abolished death penalty only for ordinary crimes	8
3.Abolished death penalty in practice	35
4.Retentionist countries	58

CLEMENCY POWERS

A prisoner may petition the President of India and the Governor of the State for clemency in the event that the Supreme Court decides to bring an appeal challenging the legality of the death penalty. The Constitution gives the President and the Governors the authority "to award pardons, reprieves, respites, or remissions of punishment." This authority is outlined in Articles 72 and 161. There are a great number of requests for

compassion that have been submitted by criminals to the president or governor for their offence. The ability to grant a pardon is vested in either the president or the governor. The president granted the maximum number of petitions their approval. The criminal has the right to file a curative petition after having their mercy petition rejected by the President of the United States.

5. CONCLUSION

The use of the death penalty has a long history in India, dating back to ancient times. The death penalty has been abolished in a number of countries. When we look at the crime statistics for our nation as a whole, we see that the death penalty has not shown to be an effective deterrent for people who commit crimes, and the crime rates are only rising. It is imperative that we change our laws, particularly those that pertain to the death sentence in India. Our legal system is in need of an overhaul, and any punishment handed down should be severe enough to serve as a lesson to others who witnessed the offender's illegal behaviour. There is a sanction that is even more severe than the death penalty. Force the offender into a never-ending conversation about the capital Punishment and the demanding conditions of jail life are far more degrading than the death penalty. The perpetrator of the crime need to experience the repercussions of his actions each day and night. The use of the death penalty does not result in a significant drop in overall crime rates. Therefore, the null hypothesis was proven correct.

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