
SOCIETY AND ITS RELATION WITH CAPITAL PUNISHMENT

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Abstract

Capital punishment is briefly defined as execution of a person liable for any particular offence regarded as a criminal offense after the conviction by a 'court of law'. It is a cursory definition as it is minimal in terms of providing the relevant method of sentencing someone to death. The origin of it can be traced in the laws of Draconian era. But the question persists and prevails of whether the concept of 'eye for an eye' still stands right in today's world full of people choosing different sides with their arguments on 'Right to Life' and 'Concept of Reformation'. In India both the theories namely 'the deterrent theory' and 'the reformatory theory' are utilized by the judiciary in its criminal jurisprudence. India is one of the 78 retentionist countries which have retained death penalty on the ground that it will be awarded only in the 'rarest of the rare case' or 'special reasons' has not been answered either by the legislature or by the Supreme court.¹ Death penalty has been a mode of punishment since time immemorial. Though there are several contradicting opinions in the modern world on capital punishment and its place in the legal system which either debate on the ground of morality, humanity, reformation over death penalty or vengeance and justice on the basis of the concept of equal pain inflicted to the culprit.

I. DEATH PENALTY- A SOCIETY CENTRIC PUNISHMENT:

At present, the law prevailing is the law laid down by the Supreme Court, that is the doctrine of the **rarest of the rare case**. This along with a list of aggravating and mitigating factors is used to determine whether a person should be given such sentence or not. Even the mode of execution that must be used by the state is a matter of debate and such mode which is decided must be as per the International norms 'quick and painless'. In the Judgment of *Bachan Singh v/s State of Punjab*², 1980, the Supreme Court ruled that death penalty should only be awarded in the cases where the theory of 'rarest of rare'

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¹ <http://lawlex.org/lex-bulletin/constitutional-validity-of-death-penalty-in-india/1458>

² AIR 1982 SC 1325

is applicable, but does not give a firm and rigid definition as to what ‘rarest of rare’ means. But the dependency of this test is on the society and its perception. In other words, it is **society centric** and **not Judge centric**. Hence, the court has to look into variant factors in accordance to match the standards and wishes of the society. The factors include the level of brutality in that crime, against whom it is committed (sexual assault, crime against minor or physically/intellectually challenged etc. can be considered more heinous crimes in the society).

In the case of *Macchi Singh v. State of Punjab*³ certain factors were kept in mind to award the death penalty for murder:

1. The brutality and grotesque manner of commission of murder.
2. Motive for commission of murder that evidences total depravity and meanness.
3. Anti-social or socially abhorrent nature of crime or murder.
4. High magnitude with multiple murders committed.

But the most importantly the ‘mitigating’ and ‘aggravating’ factors are to be considered and compared to have a balance between the weightage of the both the circumstances in the case to award the execution accordingly.

If the trial court awards a death sentence, it has to be mandatorily confirmed by the High Court. Then the given decision can be appealed to the Supreme Court of India, after this, a review petition can be filed, followed by a ‘curative’ and ‘mercy’ petitions. The Supreme Court has also said that “the order for the execution of a person cannot be given before the person has exhausted all available remedies.”

II. ARGUMENTS, CONTROVERSIES AND REASONING:

There is always stage for heated argument when it comes to the validity of awarding death penalty to the convicted person.

The Death Penalty India Report (DPIR) launched on 6th May 2016 contained the findings of the death penalty given to the economically vulnerable prisoners and non-vulnerable prisoners of the society which was 74.1% and 25.9% respectively. Kerala had the highest proportion of economically

³ AIR 1983 SC 957

vulnerable prisoners according to their occupation and landholding sentenced to death with 14 out of 15 prisoners (93.3%) falling in this category.⁴ This report also stated that how the majority of them fall under the circumference of less or no educational qualifications, religious minority or backward and lower caste.

This can be based on two circumstances either the low literacy level leads in commission of such heinous crime which resulted in such a deterrent punishment of death penalty or their impoverished conditions leading to inferiority in front of court of law. The superiority can be witnessed in the *Manu Sharma v. State (NCT of Delhi)*⁵ also known as JESSICA LAL MURDER CASE where the offender Manu Sharma was punished with life imprisonment and fine and plea for his death sentence was rejected on the grounds that the murder, though intentional, was not premeditated and hence he was not considered as threat to the society. He was also granted Parole 2-3 times where he was found partying and enjoying in night clubs.

Further the “liberals” also argue with the urge to declare capital punishment as redundant in India with the impressive data of Switzerland and other Scandinavian countries (has forbidden capital punishment) by decreased crime rates. Also according to the report of **Amnesty International**, at the end of 2018, 106 countries had abolished the death penalty in law for all crimes and 142 countries had abolished the death penalty in law or practice.

According to **United Nations** latest data released on **21st January 2020**, Switzerland has a total population of around **85.7 lakhs** which consists of **74.1 % of the population is urban** (6,408,840 people in 2020). It ranks number **101** in the list of countries (and dependencies) by population⁶.
<https://m.gulf-times.com/story/628336/Qatar-sees-big-fall-in-crime-rates-in-2018>

Whereas India's 2020 population is estimated **1.38 billion** people at mid-year of 2019 according to UN data. India ranks number **2** in the list of countries (and dependencies) by population. **35.0 % of the population is urban** (483,098,640 people in 2020)⁷.

Moreover, one data report⁸ conveyed the assumed and concluded figures according to previous crime rates and population size of the countries for 2020, the Crime Index of 123 countries with India on

⁴ <https://www.project39a.com/dpir>

⁵ *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1

⁶ <https://population.un.org/wpp/Graphs/Probabilistic/PopPerc/756>

⁷ abid

⁸ https://www.numbeo.com/crime/rankings_by_country.jsp

68th with increased percentage from 42.38% (mid-term 2019 Crime Index report) to 43.32%. On the other hand, Qatar was with lowest Crime rate in 2019 of 12%. According to Ministry of Interior (MOI), Qatar is amongst the safest countries in the world. Major crimes were 98.3% lower than the global average and 88% of all crimes recorded in 2018 were of a minor nature⁹.

Qatar holds the death penalty, primarily for espionage, or other threats against national security. Apostasy, homosexuality, blasphemy, murder, violent robbery, arson, torture, kidnapping, terrorism, rape, drug trafficking, extortion by threat of accusation of a crime of honor, perjury causing wrongful execution and treason also carry a possible death sentence as well. The way in which usually done by a firing squad.

Even inhuman punishments like Corporal punishment commonly ‘Flogging’ is used in Qatar as a punishment for alcohol consumption or illicit sexual relations which is related to the criminal activity termed illegal in Sharia law. According to Amnesty International, in 2012 at least six foreign nationals were sentenced to floggings of either 40 or 100 lashes.¹⁰

Other argument put forward is that ‘hanging by rope’ leads to violation of Article 21 of the Constitution and this was asserted in *Deena v. Union of India*¹¹, on the grounds that hanging by rope was considered barbarous and inhuman act. The demand to the State was to provide a humane and compassionate method of execution which can be less deterrent and more dignified which can be in favor of Human rights. But the judges in this case declared that neither electrocution, nor lethal gas or shooting, nor even the lethal injection has “any distinct or advantage” over the system of hanging by rope.

A common question raised on the judgments of death penalty passed by the Apex court says that whether it gives a space to reasonable leniency or to vengeance towards the offender. This can be observed in the case of State *CBI/SIT v. Nalini*¹² where the offender (Nalini) was convicted on the grounds of being the part of criminal conspiracy in Rajiv Gandhi’s assassination. This was considered as an extreme wicked or diabolical crime committed and hence found to fall under the category of “rarest of rare case” by the court. However, the President of India commuted the death sentence (with

⁹ <https://m.gulf-times.com/story/628336/Qatar-sees-big-fall-in-crime-rates-in-2018>

¹⁰ <https://www.amnesty.org/en/countries/#section-27-6>

¹¹ (1983) 4 SCC 645

¹² [1999] INSC 194

a majority of 2:1) of Nalini to life imprisonment on humanitarian ground as she was mother of an infant child.

The other example of reasonable leniency on the part of the court was in *Attorney-General of India v. Lachma Devi*¹³, where it has been held that the execution of death sentence by public hanging is barbaric and violative of Article 21 of the Constitution. It is true that the crime of which the accused have been found to be guilty is barbaric, but a barbaric crime does not have to be visited with a barbaric penalty such as public hanging.¹⁴

III. SHOULD RAPE AND SEXUAL ASSAULT CASES DEMAND DEATH PENALTY?

It is very well known that every major rape in India attract lots of attention and rage from public against the offenders. The epitome of rampage by society was the Delhi rape case where the offenders are awarded with death penalty. Recently, there were these hashtags trending on twitter #Hang Rapists and #PunishRapistsinPublic after the infamous Hyderabad rape case. The point of these hashtags was to spread the vibe of justice in the society with a violent revolt for strict punishment to the rapists. This is due to the assumed and obvious logic applied by any common man that it would deter other people of criminal mind from committing the similar heinous crime.

According to a report published by NLU Delhi, “Death sentence for rape-murder in 2019 counts for the highest numbers in past 4 years in India. It said that 17 out of 26 cases of capital punishment provided by High Courts were related to sexual offences. Also, the trial courts imposed 102 death sentences in 2019, which amounts to drop from 162 death sentences in 2018. But the percentage of sexual offences stipulated from 41.35% in 2018 to 52.94% in 2019. The honorable SC of India in 2019 dealt with 27 capital punishment cases which are also highest since 2001 under former Chief Justice Ranjan Gogoi’s tenure.

The report also dealt with the keen observation that the amendment to **Protection of Children from Sexual Offences (POCSO) Act**, introduced stringent minimum punishments and death penalty for sexual offences against children. It also added that the “rampancy and impunity of sexual violence and

¹³ AIR 1986 SC 467

¹⁴ Jn pandey

the fractures within the criminal justice system perpetuating this cycle has led to a public outcry for harsher punishments”¹⁵.

But according to the paper published by Jeffrey Fagan (a well-known professor of Law at Columbia Law School) on capital punishment it was tough to prove the obvious logic of awarding death as a penalty to avoid any type of crime. He said, “We’re very hard pressed to find really strong evidence of deterrence [from capital punishment].” One more study undertaken by Daniel Nagin [Professor and Criminologist at Carnegie Mellon University] had similar conclusions as above. He also said, “It’s the certainty of apprehension that’s been demonstrated consistently to be an effective deterrent, not severity of the ensuing consequences”. The research also suggested that criminals are mainly concerned about whether they will be caught, not what happens to them afterward. Hence, death penalty might not be a severity for the accused initially.

To get the numbers who endorse the idea of “rapists should be lynched”, the twitter account of TIMES NOW on 2nd December 2019 took a poll on the opinions of the public with a hashtag of #LynchRapistsDemand. Some of the activists put forward the ‘Ryan school murder case’ where the police wrongfully arrested the school bus conductor Ashok Kumar as the accused who sexually assaulted and murdered the boy after their investigation. Later, the court acquitted him and CBI found a class 11 student who killed Pradyuman (deceased victim) because he wanted to postpone the exams. This concludes that a rigid and a proper trial is required to avoid an innocent getting the harsh punishment. Hence, every person needs a fair trial and right to defend himself/herself. Right to a fair trial is a concept which is essentially embodied in the Constitution of India. In a democratic country like India, even an accused cannot be denied his right to life and personal liberty. Indian Constitution through its **Article 21 renders the fair trial a part of life and personal liberty**¹⁶. The person cannot be lynched due to the uncontrolled anger of the society. This kind of act can bring everyone back to a much uncivilized society.

IV. HOW AND FOR WHAT JUDICIARY AND POLICE DEPARTMENT IS HELD RESPONSIBLE?

¹⁵ www-thehindu-com.cdn.ampproject.org

¹⁶ <https://lawtimesjournal.in/fair-trial-and-its-principles>

The burden that weighs down the Judiciary and Police department is not just because of its lumbering judicial processes alone, as it is often made out. The chronic shortage of judges and officers with severe understaffing of the courts and police stations they preside over are significant reasons.

According to an article published by the Economic Times on 7th July 2019, “A whopping 5.28 lakh police posts are lying vacant in the country of which nearly 1.29 lakh are in Uttar Pradesh, 50,000 in Bihar and 49,000 in West Bengal. There are 23, 79,728 sanctioned posts in police forces of all states of which 18, 51,332 were occupied as on January 1, 2018, according to Home Ministry statistics.”

On March 31, 2018, it was revealed in the Rajya Sabha that nearly a quarter of the total number of posts in the subordinate courts remained vacant. Vacancies in the higher judiciary and police force threaten every aspect of the justice delivery system, and very seldom the government owns the blame for any shortfall in justice.

The percentage of pendency in cases are around 2.8 crore in the courts of India out of which around 70 Lakh have been pending for more than 5 years. In the most infamous case of *Nathuram Godse v. Crown*¹⁷, the judgment was delivered within 2 years of the murder. This revealed the fact that Justice can be delivered in a reasonable time, if all the legal system of our nation works sincerely and in well-being of the society.

One of the inevitable problems is the pending list of convicts who are in death row, though not executed for a long period of unreasonable time. According to the Law Commission of India 2015 report, “Death row prisoners continue to face long delays in trials, appeals and thereafter in executive clemency”. In the Nirbhaya’s gang rape and murder case the convicts are repeatedly seeking some or other kind of review of the Supreme Court’s verdict of death penalty. The mother of the deceased victim spoke about the grief and struggle to obtain justice. According to The DECCAN CHRONICLE report, she said “there have been times when my faith in law and justice is restored but as the court hearings get deferred by, I feel extremely hopeless.”

It was once quoted by **Martin Luther King Jr.**, “Injustice anywhere is a threat to justice everywhere.” It is so crucial for any legal system of the country to work according to the needs of the society, as it can lead to a “vendetta against the culprit” by the society with rage and vengeance. One of the case which determined this statement was the case of Akku Yadav who was a 32-year-old Indian rapist,

¹⁷ AIR 1949 East Punj 321

extortionist, and serial killer Following a decade of criminal activity and rape allegations, a bail hearing was scheduled for Yadav on 13 August 2004, in India's Nagpur District Court, and word spread through the adjoining neighborhood that he would be released. Hundreds of women marched from the slums to the courthouse carrying vegetable knives and chili powder. When Akku Yadav appeared, he saw a woman whom he had raped, and he shouted that he would rape her again. The woman started hitting him with her sandal. Yadav was then lynched by a mob of around 200 women from Kasturba Nagar, a slum of Nagpur. He was stabbed over seventy times, and chili powder and stones were thrown in his face. One of his alleged victims also hacked off his penis.¹⁸ The women who killed Yadav claimed that he had been raping and abusing local women with impunity for over a decade and that the local police had refused to help his victims or pursue charges because Yadav was bribing the police. Yadav had also reportedly murdered at least three people and dumped their bodies on local railroad tracks.¹⁹ This showed the exact impact of lack of justice in the society.

V. CONCLUSION:

Many reports concluded the astonishing decreasing crime rates of the countries which restrained the death penalty from their legal punishment but that does not amount to a tough conclusion of countries with the legality of capital punishment does not amount to decreasing number of crimes in their country. By comparing various arguments and their reasoning, it can be assured that there is existence of various other factors reaching from high illiteracy levels to over-population of the country responsible for the high crime rate. Some of the cases of Terrorism, Sexual assault offences, Rape and murder which involves society and its concerns are meant to be a part of “rarest of the rare case”. The paramount attention should be given to the improvement of judicial system within the country. Lastly, proper scrutiny must be undertaken before passing an order of death penalty as such punishment is permanent and irreversible and therefore it is predominant that all relevant facts are accounted for before such decision is made.

¹⁸ https://en.wikipedia.org/wiki/Akku_Yadav

¹⁹ <https://www.theguardian.com/world/2005/sep/16/india.gender>