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Is Capital Punishment the Solution?

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ABSTRACT

India is a fast emerging market, yet crime statistics are on the upswing. Despite the fact that crime statistics are rising due to inadequate repercussions, India has a profusion of rules aimed at preventing and controlling crime. The use of capital punishment varies widely around the world, with some countries retaining it while others have abolished it. The methods of execution used also vary, with hanging, firing squad, lethal injection, electrocution, gas chamber, beheading, and stoning being some of the types of capital punishment used across the globe. The punishments for crime should be severe in order to reduce the rate of crime. All sanctions have the same purpose in mind: to punish the wrongdoer. There are numerous punishments possible in India, including the death sentence, life imprisonment, and incarceration, among others. Capital Punishment is the most severe punitive measure. The current situation of capital punishment around the world is discussed in this paper, as well as the word "capital offence." It also goes into the various methods of capital punishment employed in India. The reformative and preventive views of capital punishment are discussed in this research article. In this article, reformist and retentionist countries were discussed, as well as capital punishment in Vedic Period. This research provides a comprehensive overview of the death penalty in India and around the globe as well as the procedures used to carry it out.

Keywords: IPC, Capital Punishment, Death Sentence, Murder.

INTRODUCTION:

India is a country with a huge number of offenders and crimes. All penalties in India are centred on the goal of punishing the perpetrator. The penalty is imposed for two major reasons: one, the criminal should suffer, and the other, punishing wrongdoers prevents others from committing wrong. In India, many types of punishment are available depending on the crime committed, including capital penalty, life imprisonment, and solitary confinement. The focus of this study was on capital punishment, sometimes known as the death penalty. The death penalty is an integral aspect of the Indian criminal justice system. Capital crimes or capital offences are crimes that result in the death sentence. The term "Capital Punishment" comes from the Latin word "*Capitalis*" which literally means "concerning the head." Capital punishment is another name for the death sentence. The process through which a state eliminates a person for committing a felony is known as Capital Punishment. A person who has been sentenced to death by a court of law for a criminal offence is referred to as "Capital Punishment" or "Death Penalty." The death sentence has been applied to some of humanity's most horrific crimes. The death sentence varies depending on where you are, what state you're in, and what country you are in.

Several human rights organisations in India believe the death sentence is unconstitutional. Humanitarian organizations argue that the death sentence violates an individual's right to life. In jurisprudence, criminology, and penal law, capital punishment is defined as a death sentence. The Indian criminal justice system is

built on a hybrid of two ideologies. Under the constitution, the president and governor have the power to delay or forgive death penalties. The death penalty is used in India to penalize the most grave and egregious misdeeds. Murder, robbery involving murder, waging war against the government, and aiding and abetting rebellion are all capital offences that carry the death penalty. A death sentence is only imposed when the judge determines that life without parole is inadequate in the scenarios.

RESEARCH METHODOLOGY:

The research is carried out using a doctrinal research approach, using data gathered from diverse sources such as case laws, online journal articles, books, research papers as well as online websites.

WHAT IS CAPITAL PUNISHMENT:

The term "Capital Punishment" refers to the harshest form of punishment that can be given. It is reserved for the most egregious, intolerable, and heinous crimes committed against humanity. While the definition and severity of these crimes may vary from country to country, state to state, or era to era, the consequence of capital punishment has always been the death penalty. The term is commonly used in the fields of jurisprudence, criminology, and penology to refer to a sentence of death. The purpose of this study is to examine the ways in which capital punishment can be used to protect the state.⁴⁶


Capital punishment, also known as the death penalty, is a legal process in which a person is sentenced to death as a punishment for a crime they have committed. The types of crimes that may result in capital punishment vary between countries, but typically include offenses such as murder, treason, and espionage. The use of capital punishment has been controversial for many years, with some arguing that it serves as a deterrent to crime,

while others argue that it is inhumane and violates human rights. Certain nations administer capital punishment via methods such as lethal injection, hanging, or firing squad, while others have abolished its use entirely. The determination to impose this punishment is typically made by either a judge or a jury, and the procedure may involve numerous appeals and legal disputes.

MODES OF CAPITAL PUNISHMENT USED IN INDIA:

HANGING:

Hanging is the method used for all executions in India. The first execution by hanging in independent India was in 1949 when Nathuram Godse, who assassinated Mahatma Gandhi, was put to death. The Supreme Court of India has advised that the death penalty should only be used in extremely exceptional cases. In the past decade, only two people have been executed in India, including Ajmal Kasab, the lone surviving terrorist from the 2008 Mumbai attacks, who was hanged in 2012 after his mercy plea was rejected by both the Supreme Court and the President of India. Another terrorist, Afzal Guru, was executed by hanging in 2013 for his involvement in the 2001 attack on the Indian parliament. The death penalty should only be applied in the rarest of rare cases, with special justifications required under the law.⁴⁷

 SHOOTING: In India, the Army Act and Air Force Act also provide for the implementation of capital punishment.⁴⁸ In Air Force Act, 1950, section 34 allows the court martial to thrust the death sentence for the unlawful act mentioned in section 34(A) to (O) of The Air Force Act, 1950. In Indian the government mostly used hanging method to execute capital punishment.⁴⁹

⁴⁷ Indian Express, New Delhi, dated 27/05/2015

⁴⁸ "Consultation paper on mode of execution of death sentence and incidental matters" (PDF). Law commission of India. Retrieved 29 July 2013.

⁴⁹ Muthusamy, S. (2018) *A critical study on capital punishment in India, A CRITICAL STUDY ON CAPITAL PUNISHMENT IN INDIA*. <http://www.acadpubl.eu/hub/>. Available at: <https://acadpubl.eu/hub/2018-120-5/1/98.pdf> (Accessed: February 1, 2023).

⁴⁶ Singh, Sushil & Verma, Arun. (2022). A Study of Capital Punishment in India.

IMPACT OF EXECUTION ON THE CRIME RATE OF INDIA:

Following the 2013 Nirbhaya gang rape case and the subsequent imposition of the death penalty on the convicted perpetrators, several atrocious crimes have been committed throughout the country. For instance, in April 2017, a dairy farmer named Pehlu Khan was mobbed and killed in Alwar. In January 2018, an eight-year-old was gang-raped and murdered in Kathua. In November 2019, a veterinarian was raped and burned to death by a group of thugs in Hyderabad, while in December 2019, a rape victim in the Unnao area was burned alive. In September 2020, a 19-year-old Dalit girl was brutally gang-raped and assaulted by four upper-caste men and subsequently died in Hathras. Furthermore, in April 2020, two saints and their driver were lynched by a mob in Palghar. These incidents, along with others, demonstrate that the death penalty does not act as a deterrent.⁵⁰

CASE LAWS:

1. *Mithu v. State of Punjab*⁵¹:

In this case, the Supreme Court declared that the imposition of the death penalty, as provided under Section 303 of the Indian Penal Code, is unconstitutional as it violates Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The case originated from a challenge to the death sentence imposed on Mithu, who had been convicted of murder under Section 302 of the Indian Penal Code. Mithu argued that the imposition of the death penalty under Section 303 was discriminatory, as it only applied to prisoners serving life sentences who were convicted of murder while in prison.

2. *Macchi Singh v. State of Punjab*⁵²:

This case established guidelines for determining whether a case falls under the "rarest of rare"

category, including factors such as the motive of the crime, the manner of commission, and the personality of the offender.

3. *Rajendra Prasad v. State of UP*⁵³:

In this case the apex court however stated that the question of whether capital punishment should be abolished to retain was a question of the Legislature and not for the Court to decide.

4. *Rajiv Gandhi Assassination Case*⁵⁴:

In this case, the accused were sentenced to death for their role in the assassination of former Indian Prime Minister Rajiv Gandhi. The case resulted in a public debate on the use of capital punishment in India.

CAPITAL PUNISHMENT ACROSS THE WORLD:

Since very early times, the death sentence has been used in numerous nations. According to ancient Roman law, the criminal was physically tortured before receiving the death punishment, making it much more agonising. This frequently occurred in public locations as a kind of intimidation, scaring off potential offenders. The death penalty was still used seldom throughout the Roman Republic; instead, it was reserved for punishment and exile.⁵⁵To ensure a torturous death for the patricide, he was placed in a bag together with a dog, a cat, and a snake. The bag was then tossed into the river. A person who has not made debt payments is tossed off a hill. In other nations, such as Yunan, the death penalty was also an option. After his skin was taken, the criminal was executed in plain sight. In Philistine society, the offender was punished by either being thrown onto a spear or stoned to death. Other nations, such as Australia and Germany, buried the culprit alive, then crushed them with a wheel and burned their eyes with hot iron rods. In India, if someone is found guilty, the judge must hear their case, and the death penalty is not always carried out - sometimes, it is reduced to life imprisonment. The Indian Constitution, specifically Part V, Chapter I, and Article 72, grants the President and the Governor

⁵⁰ Humd, Sana & Umar, Dr & Khan, Mohd. (2022). Abolition of Capital Punishment in India: The Need of the Hour. Society & Sustainability. 4. 40-48. 10.38157/ss.v4i2.517.

⁵¹ Mithu v. State of Punjab, (1980) 2 SCC 684

⁵² Machhi Singh And Others v. State Of Punjab, 1983 AIR 957 (Thakkar, M.P. (J)).

⁵³ Rajendra Prasad v. State of UP, 1979 AIR 916

⁵⁴ State v. Nalini, 1999 5 SCC 253

⁵⁵ Capital Punishment in India by Dr. Subash C. Gupta, 2000

of the state the authority to suspend, pardon, commute, or remit a death sentence. Additionally, the state is obligated to avoid actions that would undermine the purpose of the treaty.⁵⁶

Here are some of the types of capital punishment used across the globe:

- **Hanging:** This is the most common method of execution in many countries, including Afghanistan, Bangladesh, India, Iran, Iraq, Japan, Malaysia, Pakistan, Singapore, and Zimbabwe.
- **Firing squad:** This method involves a group of individuals who shoot at the condemned person. This method is still used in a few countries, such as North Korea and Yemen.
- **Lethal injection:** This is the most common method of execution in the United States, as well as in some other countries, including China and Thailand.
- **Electrocution:** This method involves the use of an electric chair to deliver a lethal electric shock to the condemned person. It is still used in some US states.
- **Gas chamber:** This method involves the use of a sealed chamber that is filled with a lethal gas, such as hydrogen cyanide. It is still used in a few US states.
- **Beheading:** This method involves the use of a sharp blade to sever the condemned person's head from their body. It is still used in some countries, such as Saudi Arabia.
- **Stoning:** This method involves the use of stones to kill the condemned person. It is still used in some countries, such as Iran.

It is important to note that many countries have abolished the death penalty, and some that still retain it have not carried out any executions for many years.

COUNTRIES WITH ABOLITIONIST AND RETENTIONIST POLICIES:

Many countries have abolished the death penalty, while others have abolished the death penalty for certain crimes. The researcher provided a detailed explanation of the worldwide situation of capital punishment in this area. There are four kinds of death penalty status:

1. For all offences, abolitionist
2. Abolitionist for minor offences
3. De facto abolitionist
4. Retentionist

The capital punishment has been abolished in 98 countries for all crimes, seven countries for various offences only, 35 countries in fact, and 140 countries in legislation. Only a few countries use the death sentence on a regular basis. The death penalty is used in India, China, Indonesia, and the United States, among other nations.

ABOLITIONIST THEORY OF DEATH PENALTY:

The abolitionist theory of the death penalty argues that the state should completely abolish the use of capital punishment, as it is inherently unjust and violates the fundamental human right to life. This theory is based on the belief that the death penalty is not an effective deterrent to crime, and that the risk of executing innocent people is too high. Abolitionists argue that the use of the death penalty is arbitrary and discriminatory, with certain groups, such as minorities and the poor, being disproportionately represented on death row. They also point out that the death penalty is often applied inconsistently, with similar crimes resulting in vastly different sentences.

Moreover, the abolitionist theory of the death penalty argues that the criminal justice system should focus on rehabilitation and reform, rather than retribution and punishment. Proponents of this theory believe that society should work to address the root causes of crime, such as poverty, inequality, and lack of education, rather than simply punishing offenders.

⁵⁶ Law commission of India report 2015. Pg 45

UN ON CAPITAL PUNISHMENT:

The United Nations has been a strong advocate for the abolition of capital punishment around the world. The organization's stance is based on the belief that the death penalty violates the right to life, as enshrined in the Universal Declaration of Human Rights (UDHR). The UN has repeatedly called on countries that retain the death penalty to impose strict limitations on its use, to ensure that it is applied only in the most exceptional cases and with due regard to international human rights standards. In particular, the UN has called for the abolition of the death penalty for crimes that do not involve intentional killing, such as drug offenses and political crimes. The UN has also expressed concern about the use of the death penalty against vulnerable groups, such as juveniles, people with mental disabilities, and minorities. The organization has urged countries to ensure that these groups are protected from the death penalty and are treated fairly in the criminal justice system.

Finally, the UN has called for the establishment of effective safeguards to prevent the wrongful conviction and execution of innocent people. The organization has highlighted the risk of error in capital cases and has called on countries to ensure that defendants have access to effective legal representation and a fair trial. Overall, the UN has played a leading role in the global movement to abolish the death penalty, and continues to work towards a world where capital punishment is no longer used as a form of punishment

CONCLUSION AND OPINIONS :

It can be inferred that in India, the death penalty has been in use since ancient times, with various methods being employed throughout history. Capital punishment is a longstanding form of punishment, and it is present in every country.⁵⁷ In India, the death penalty has never been deemed illegal, based on historical

records. It is crucial to consider the imposition of the death penalty as an essential element of justice. The death sentence is the most potent deterrent against all forms of crimes. The criminal perceives the legal system as being more oppressive if he knows that it will continue to execute him. He is therefore less likely to commit a break-in. He may not have any plans to kill anyone who robs them, but if he knew he will be put to death, he would be considerably more concerned about the potential. Therefore, there is a greater likelihood that he won't break and enter in the first place. This cannot be done for the surviving victims by a system of justice unless the killer is also put to death. If murder is the wilful deprivation of the victim's right to life, then the wilful deprivation of the court's right to have this right is a suitable penalty for the most serious crime that can be committed, even if it is overly strict. It might be claimed that without the death sentence, the judicial system does not respond to the crime of murder and does not provide justice for the victim.

⁵⁷ Capital Punishment in India by Dr. Subash C Gupta, 2000