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CAPITAL PUNISHMENT IN INDIA: AN ANALYSIS

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ABSTRACT

Capital punishment is a much-discussed issue worldwide. It is legal, however in India it has rarely been voted for. The punishment imposition is not really supplemented by a chance of life sentence commutation. If people look at Auto Shankar from 1995, it's only applied in four different ways, names: 2004, 2004, 2004, 2012, Afzal Guru and 2015, 2015. Dhananjay Chatterjee. While several countries prohibit capital punishment, there has been no international agreement on its legality so far. The Indian legal system also did struggle with either the constitutionality and the situation of the death penalty. This article analyzes the constitutional validity and indeed the circumstances in which it can be granted by means of specific cases and the 'scarce' test imposed in the Bachan Singh case by the Supreme Court. The paper concludes by observing that the Indian supreme court is leaving capital punishment because more emphasis is placed upon the alternative methods of punishment and existing international developments it against death penalty.

1. Introduction

Punishment is indeed the force being used execute the 'property statute, a cornerstone of modern civilization. For order to uphold safety and order it is the State's responsibility to punish criminals. No particular law or order was previously developed for this kind of crimes and even the degree and quantity of punishment depended largely upon this King. Current punishment ideas have been established over time because our rights and powers to uphold peace

and order have willingly been submitted to the government. The 'capital punishment' is now the most severe or the strongest penalty we can claim in today's times. The death sentence is regarded as the "death sentence" and the act in which the death penalty is carried out is classified as the "execution."

Capital punishment, also known as the death penalty, the execution by a jury of a criminal act by an inmate convicted of murder after conviction. This must be differentiated from extrajudicial executions without due process of law that the death sentence is performed out. It may be used different terms with the death penalty, but the punitive penalty is also not executed (even when appealed) because it is possible to commit to life imprisonment. The death penalty isn't being used interchangeable terms. While the campaign to eliminate the death penalty has been resisted in many countries, some countries further expanded its scope. The manufacture and ownership to sell such drugs was declared a criminal offense by more than 30 nations. The nation impose automatic death sentences for possessing comparatively small quantities of illicit substance. Iran, Singapore, Indonesia and the Philippines. Around three-Fourths of persons executed in 2000 have been convicted of drug offenses in Singapore, which is also the highest per capita execution frequency in any region. About twenty countries have set death sentences on similar financial crimes including fraud and corruption by officials, abuse of public funds, theft of huge amounts of money and money and monetary policy. In around two dozen countries, more so than most Muslim states, sexual crimes of all kinds were indeed punishable by imprisonment. Or more 50 capital offenses took place in language in the early 21st century. For several years about 30 nations carry out executions, given the vast number of capital crimes in some nations. There are about three-fourths also in United States. The death penalty was maintained either by federal and provincial governments in only six states — Texas, Virginia, Florida, Missouri, Louisiana but instead Oklahoma (when the Supreme Court affirmed innovative death penalty laws) since 1976. The figure of Chinese deaths was reported to even have fallen dramatically by some 1,000 annual executions (no credible statistical details published) before the first part of the 20th century. While there are years of global murders, other countries – including Belarus, Congo, Iran, Jordan, Nigeria, Saudi Arabia, Singapore , Taiwan, Vietnam & Yemen – routinely execute criminals. Japan and India have always maintained the death sentences and from moment to moment carried out executions.

In India, the death penalty remains formal. For either a serious offence, India offers the death penalty. India has by far the most detestable and serious crimes under the death penalty. The "protection of character and daily freedom" of Article 21 of the Indian Constitution. This article says: "no person shall, except and per the procedure prescribed by statute, be deprivation for his life or personal freedom." Under this article, that each citizen in India is guaranteed the right to life. For criminal penalties, including criminal conspiracy, murder, war against by the government, mob-blowing, killing dacoity including counter-terrorism, the IPC provides a death sentence in India. The constitution has provided for mercy on the death penalty by the President.

Since 1995, there have already been twenty-two criminal sanctions in India. In "Mithu vs. Punjab State," the Supreme Court has reversed IPC Section 303, although grants a compulsory death penalty for convicted offenders as a condition of equality, fifty two death sentences are imposed in India. In India, a measure of the UN General Assembly demanding a complete ban was voted down. In the month of November 2012. India is once again continuing to stand up for death penalty besides voting and against Security Council resolution of the UN General Assembly on either the prohibition of the maximum sentence.

2. Capital Punishment In The Early 21st Century

India preserved the 1861 criminal code also for death penalty for assassination at the time of independence in 1947. Whilst several jurists presented the idea that the death penalty would be abolished mostly during drafting of both the Indian Constitution between 1947 and 1949, this mandate was not introduced in the Constitution. In both parliament building during the next 2 decades private proposals for abolishing death penalty have been presented but none have been adopted. It is claimed that between 1950 and 1980, between 3000 and 4000 murders took place. More difficult to quantify details upon this number of people convicted and punished between 1980 and also the middle of the 1990s. Two or three individuals were estimated to be hanged annually I. In the Bachan Singh[ii] judgment of 1980 the Supreme Court result of death penalty can only be used in the much more unusual cases but, according to the above National Crime Record Bureau (NCRB), it's not really clear what really is rarest of those rare A death sentence – is a typical one in India with 1.3030 capital punishment judgments for 2004-2013. Just four people in West Bengal, one in 2004, Maharashtra, (2012) one Delhi, (2013) have been assassinated during this time. India had seen seven-year stretch of execution free from 14 August 2004 to 2012, when the 42nd birthday of Dhananjay Chatterjee, whose been indicted for breach and murdered by an underage child, was hanged at Alipore Central Jail in West Bengal. The only assailant to survive the 2008 Mumbai terrorist incident, Mohammad Ajmal Amir Kasab, was hanged in the Pune Yerwada Prisons on 21 November 2012. Mohammed Afzal Guru was hanged in Delhi's Tihar Prison on the 9th of February 2013, a defendant in the parliamentary assault case 2001. Yakyub Menon was sentenced to Nagpur Central Prison in 1993 by Bombay Blast on 30 July 2015. Furthermore, during this time 3,751 prison terms were commuted to life imprisonment. The Death Penalty Center has issued Death Penalty India Report that further revealed that most people with no history of domestic violence in the capital punishment are backward, untrained and first-time abusers. Another result was that only 4.9 per cent (73 prisoners) of 1,486 death sentences levied on the courts of the tribunal stay with in death row despite the verdict of the appeal in the Supreme Court. India voted against a United Nations resolution on the creation of a death penalty prohibition in November 2016 saying it violated India's legislative law. In favor of the bill, 115 countries already voted.

The basic right of all citizens to life and equality is guaranteed in Article 21 of the Indian Constitution. That means that, except in conformity with the procedures set out in law, nobody is taken advantage of his life and personal

freedom. This has already been interpreted legally as meaning if there is a valid and interesting procedure, then the state can take one person's life by creating a law. The Supreme Court of Justice upheld the logical progression of the death penalty in *Jagmohan Singh vs State of Uttar Pradesh* (1973), then *Rajendra Prasad VS State of Uttar Pradesh* (1979). Nevertheless, and it is only in "rareest of" situations, that when a individual would be sent to the glows the courts will make "special grounds."

3. Rate Of Execution And Commutation Of Capital Punishment In India

The death penalty concept exists in India but only seven executions are taking place between 1998 and 2018. There have been a total of 1303 death sentences between 2004 and 2013, but only three death row inmates during that time have been executed. No single assassination was carried out between 2004 and 2012. A total of 3751 death sentences have been committed to life without parole over the past 20 years. Yakub and eleven others were sentenced to death in July 2007. In the 1993 bombing in Mumbai, which destroyed almost 260 people and wounded many others through a special court for preparing or acting out. In March 2013, Memon's death sentence was maintained by the SC while 10 others were sentenced to prison for years but one died.

The Indian Constitution A 161 & 72 empowers the Governor of any State or chief minister to grant or to postpone, pass or suspend the sentence of any person accused of any crime or to grant pardons, reproaches or adverse events. (a) in all cases in which the penalty or punishment is imposed in a Court Martial; (b) where it is an offense in any statute involving a matter protected by the Union / State executive powers, in any case at which decision is a verdict of death. (c) where the penalty is a conviction of death.

4. Execution Procedure

Hanging Method

Hanging is the method of execution in the civilian court system, according to the Indian Criminal Procedure Code.

Shooting

Under the 1950 Army Act, hanging as well as shooting are both listed as official methods of execution in the military courtmartial system.

5. Emergence Of Alternative Punishment To Capital Punishment

In recent years, as a response to problems posed by death cases, the Supreme Court has instituted the penalty for "real life" or life sentences of a certain period of months. In the *Swamy Shraddhanand* case, the Supreme Court has ruled through such a tri-judge decision[v]. The basis for this new punitive choice was given as follows: "The problem can be viewed from even a slightly different viewpoint. There are two facets to the topic of sentencing. A sentence may also be unreasonably strict and overly serious or exceptionally extreme. In the event of an appellant possessing death penalty issued by the court and upheld by the High Court, as in the present matter, this Court may consider the

case to be less than the unusual of the unusual category and might even be more resistant to approve the death penalty. However, at the same time, the Court strongly finds the essence of a criminal offense that it would have been highly unfair and insufficient to impose a life sentence prior to parole, typically for 14 years. So what is the Court supposed to do? If the method of the Court is severely restricted to only two penalties, one for all reasons of course and for not more than 14 years' imprisonment and that the other death, the Court may feel tented and be nudged to endorse the death penalty. Indeed, such a path is catastrophic. This would be so much more fair, rational and right to broaden the opportunities and take over the jurisdiction of the Court, including the immense gap between fourteen years' imprisonment until death. It is important to note that the Court must use the enhanced option mainly also because facts of the matter are that there will be no penalty for a term of 14 months imprisonment.

Moreover, except for an exceedingly few circumstances the formalization of a specific type of punishment is of great benefit that the death penalty is placed on a legal book but is generally enforced as rarely as practicable, except in the most rare cases "The remarks in *Swamy Shraddhanand*[vi] Case were observed in other cases also including *Haru Ghosh*.

6. Law Commission Of India's Report On Death Penalty

With its 262nd report (August 2015), the Law Commission of India proposed the abolition of death penalty for offences other than violent crimes and war. The report's full suggestions are as described:

- The Commission recommended whether steps could be adopted by the government expeditiously, including police reforms, witnesses' protection mechanisms and offender mitigation schemes.
- The march with our own jurisprudence – from having removed the necessity that in 1973, the death penalty was strictly limited to rare cases by either the Supreme Court to specific reasons for impose a life sentence, to providing extra reasons again for death penalty – shows the way in which we must go. The Commission also thought it is the moment for India to step towards the emancipation, told by the enlarged and enhanced scope and horizons of the Right to Life and reinforced the criteria for effective processes in the encounters between the State and the individual.
- Although no clear legal rationale exists again for prosecution of terrorism other than other offenses, there has often been fear also that elimination of the death penalty for criminal acts and warfare would threaten national security. Despite the concerns of the lawmakers, however, the Commission saw no need to wait longer for the first stage in the abolition of the death penalty for any and all offenses except for acts of terrorism.
- Therefore, for any and all crimes except for terrorist and waging war, the Commission recommends the abolition of slavery.
- However, the Commission genuinely wishes to see a rapid and permanent step more toward the absolute elimination.

7. Conclusion

Whenever an accused is awarded a death sentence it is more of a punishment, in the name of justice or law we stop or kill a individual. The assassination of a human being is unethical and reveals a lack of regard for human life. And against the death penalty means nobody supports the defendant. Because when death penalty is granted it reduces the possibility of change that might have altered a person's life, that's why democracies from around world advocate reformist punishment theory and remove the dissuasive punishment theory. "Even the vilest perpetrator persists a individual with a collective human dignity" so that all and everyone is valued. We are not a person to determine who lives and who dies on either the basis of our own laws and regulations. Criminals will definitely be punished for their crimes, but as civilisations, we prefer to eradicate the crime rather than the unlawful one. It is the primary differentiation between humans and animals. "We 're a guy" and murdering every living being falsifies the very intent of humanity. We 're supposed a precious donation. But we destroy every human being, in their name of justice, we consider ourselves a 'civilized society.' The death penalty principle is based upon dissuasive theory, which generically exemplifies others' minds, but there are some other ways to set a leading example, such as reform theory. It should be eliminated because it requires murdering the evil human being because life matters and death will never fail to be reversed. The definition of capital punishment is primitive and cruel. Democracy should evolve more in reform theory than in dissuasive theory, as it provides an opportunity for progress which might change a person's life and give him or her a chance to return to humanity and, thus, reform theory benefits from dissuasive theory. After reviewing all the figures and the study, we can see that China is still a long way from abolishing the definition of the corporal punishment.

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