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## LEGALITY OF CAPITAL PUNISHMENT

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### ABSTRACT

Capital Punishment is famously known as death penalty, it is considered as one of the Supreme punishment awarded to an offender. Death penalty is a punishment in which a person is deprived from his life by the due process established by law means its a lawful act by which a person's life is taken away and this crucial act is a consequences of his offence that has been committed by him. Many countries and societies still uses this punishment for punishing various offenders who has committed serious crimes while many countries have abolished this because they thought that it is an evil practice. There were many debates on the topic of capital punishment. Whether it is right or wrong, whether it is needed or not, capital punishment is an ancient phenomenon that has been going on for ages, and this punishment is used to deter individuals from doing offenses in society and to make peace, law, and order in society.

# 1. INTRODUCTION

## 1.1 OVERVIEW

Capital punishment is also known as the death penalty; this is the most severe punishment that can be awarded to a person for committing a crime. The death penalty is only given to those offenders who have committed a very heinous crime; otherwise, there are many other ways in which a person can be punished by the law. To maintain law and order in society, it's important to punish the offender according to the crime that he has committed. If the crime is not that grave in nature, then the offender may only be subjected to imprisonment or a fine, or in some cases, both can be awarded to the offender with respect to the circumstances of the case. Its a debatable topic whether capital punishment is immoral, unnecessary, or needed for securing society's interest when someone has performed an atrocious crime. There were many cases that came before the apex court of the nation about the constitutionality of capital punishment, and the court said that capital punishment is constitutionally a valid punishment, but it has to be served to the offender in the rarest of the rare scenarios. There were many crimes listed in many acts of our nation, and every crime has its own consequences according to the law when committed. Some of the crimes listed in the act's are not that grave in nature; they are more likely to be ordinary in nature, while some crimes that have been discussed in our penal code are of very high intensity, such as murder, rape, etc. The intensity of the crime here is the most important factor that is responsible for the punishment that has been awarded to the offender. If the offense that has been committed is ordinary in nature, then it will amount to a simple punishment such as a very short term of imprisonment, a fine, or both, but if the offense is severe in nature, then it is up to the courts to decide the intensity of the punishment with respect to the prevailing laws of the nation.

## 1.2 HISTORICAL BACKGROUND

When we talk about the historical background of capital punishment, it can be traced back to the eighteenth century B.C. in the Code of King Hammurabi of Babylon, wherein the king "Hammurabi" codified the death penalty for 25 different crimes. This is all the codification of capital punishment, made just to deter the public from committing various crimes that were taking place in Babylon at that time. The death penalty can also be outlined in the Draconian Code in Athens, which made the death penalty compulsory for all types of crimes committed. If we talk about the historical background of the death penalty with respect to India, then it can be traced back to the period where our present India is divided into many princely states and territories of various kingdoms. Each of the kingdoms has its own rules and regulations that help the kings govern their princely states. Many of the kingdoms have the death penalty, which is to be given to the offender in various ways, but after the invasion of Britishers, the scenario changed, and there was the establishment of the first law commission during colonial rule in India by the East India Company under the Charter Act of 1833. The first law commission was presided over by Lord "Thomas

Babington Macaulay." The first law commission drafted the Penal Code for India, which is Indian Penal Code 1860 Act Number 45 of 1860, which contains the codified provision of the death penalty. The death penalty is not a new punishment; it has been in the law for ages. Many rulers have various methods of giving the death penalty to those who have committed offenses that amount to capital punishment. Many people agree that it is an inhumane practice, while many others are in favor of it. The death penalty is a punishment that has a severe impact on society, as it is not an easy task to take someone's life, but on the other hand, it is important to punish the offender because there are crimes that are too severe in nature, such as genocide, terrorist attacks. Here, we can't compromise the security of the people living in society, and for delivering justice, it's important to implement harsh punishment on the offender who has performed a very serious crime.

## 2.LEGAL FRAME WORK

### 2.1 LAWS GOVERNING CAPITAL PUNISHMENT IN INDIA

Any type of punishment or penalty that is being imposed on the offender is imposed on him by the courts, and these courts impose the penalty or punishment according to the procedure established by law. There was much legislation passed by the parliament, and there was also much legislation being introduced by the British. The law that governs capital punishment in India is the I.P.C., while there are also many other laws that govern capital punishment in India. The capital punishments that are awarded by the courts in the orbit of the IPC are as follows:

1. 121 of IPC -: Treason for waging war against Government of India.
2. 132 of IPC Abetment of mutiny actually committed.
3. 194 of IPC Giving or fabricating false evidence with intent to procure a conviction of a capital offence.
4. 195A of IPC Threatening or inducing any person to produce or falsify evidence resulting in the conviction and death of an innocent person.
5. 302 of IPC Murder.
6. 305 of IPC Abetment of suicide of a minor or insane person.
7. 307 (2) of IPC Attempted murder by a serving life convict.
8. 364A of IPC Kidnapping for ransom.
9. 376A of IPC Rape and injury which causes death or leaves a woman in a Persistent Vegetative State.
10. 376AB of IPC Rape of a child below 12 years of age.
11. 376DB of IPC Gang rape of a child below 12 years of age.

12. 376E of IPC Certain repeat offences in the context of rape.

13. 396 of IPC Dacoity with murder – in cases where a group of five or more individuals commit dacoity and one of them commits murder in the course of that crime, all members of the group are liable for the death penalty.

Capital Punishment being awarded by the courts while working outside the orbit of IPC -:

1. The Organized Crime Act, 2001 Section-3 (1) Organized crime resulting in death of person.
2. Army Act, 1950 Section-34 Offences in relation to enemy and punishable with death.
4. Army Act, 1950 Section-37 Mutiny.
5. Army Act, 1950 Section-38 (1) Desertion.
6. Assam Rifles Act, 2006 Section-21 Offences in relation to enemy and punishable with death.
7. Assam Rifles Act, 2006 Section-24 Mutiny.
8. Assam Rifles Act, 2006 Section-25 (1) (a) Desertion.
9. Assam Rifles Act, 2006 Section-55 Civil offences.
10. Bombay Prohibition (Gujarat Amendment) Act, 2009 Section-65A (2) Death caused by the consumption of Laththa.
11. Border Security Force Act, 1968 Section-14 Offences in relation to the enemy and punishable with death.
12. Border Security Force Act, 1968 Section-17 Mutiny.
13. Border Security Force Act, 1968 Section-18 (1) (a) Desertion.
14. Border Security Force Act, 1968 Section-46 Civil offences.
15. Coast Guard Act, 1978 Section-17 Mutiny.
16. Coast Guard Act, 1978 Section-49 Civil offences.
17. The Commission of Sati (Prevention) Act, 1987 Section-41 Abetment of sati.
18. The Defence of India, Act, 1971 Section-5 Person contravening with intent to wage war or assist external aggression or any violation of provision made under S.3.
19. The Explosive Substances Act, 1908 Section-3 (b) Punishment for special category of offences relating to explosive substances, likely to danger life or cause serious harm.

20. The Indo-Tibetan Border Police Force, Act 1992 Section- 16 Offences in relation to enemy or terrorist.
21. The Indo-Tibetan Border Police Force, Act 1992 Section- 19 Mutiny.
22. The Indo-Tibetan Border Police Force, Act 1992 Section-20 (1) (a) Desertion.
23. The Indo-Tibetan Border Police Force, Act 1992 Section-49 Civil offences.
24. The Karnataka Control of Organised Crime Act, 2000 Section-3 (1) (i) Organized crime resulting in death of person.
25. The Maharashtra Control of Organised Crime Act, 1999 Section-3 (1) (i) Organized crime resulting in death of person.
26. The Narcotics Drugs and Psychotropic Substances Act, 1985 Section-31A (1) Repeated commission of offences involving commercial quantity of any narcotic drug or psychotropic substance.

## 2.2 INTERNATIONAL LEGAL PERSPECTIVE

When we talk about the international legal perspective on capital punishment, we can see that there are many countries that are using the death penalty as a supreme punishment, while many countries out there have already abolished the act of the death penalty from their legislation. As many countries find the death penalty an inhumane act, and according to various countries, they think that taking away someone's life is not a solution, we should move towards shaping an offender into a better person by changing his criminal ideology through various methods. Many countries believe that awarding someone the death penalty is a cruel act in itself, and this should not be a solution to the problem. So there are various countries that have abolished the practice of the death penalty, while others are still using it as a supreme punishment. Although Article 6 of the ICCPR (International Covenant on Civil and Political Rights) permits the use of the death penalty in limited circumstances, it also provides that "nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any state party to the present Covenant. There are many countries in the world, and all of them are somehow different from each other in various aspects, such as culture or society. So there are variations in thinking among the people living in their respected areas. So some countries believe that there should be a crucial punishment that has to be given to those individuals who have committed a higher intensity of crime, while others believe that we are all human beings and we should believe in humanity, and taking someone's life is not the right step. However, there are some countries that follow strict laws where the death penalty is common, and the reason behind implementing these harsh laws is to suppress the crime rate in society because many societies believe that fear of punishment will help prevent criminal activities from happening.

### 3. CONSTITUTIONAL CONSIDERATIONS

#### 3.1 Examination of constitutional provisions related to capital punishment

Capital punishment in India is a lawful punishment under the law, but it should be done within the scope of the law, which means it should be done by procedures established by law. Capital punishment can be defined as the lawful execution of an offender who was sentenced to death after conviction by the criminal court. The apex law of our nation provides us with fundamental rights. Article 21 of the Indian Constitution provides us with the right to life, which means that any person who is living or residing in India shall not be deprived of his or her life, but this right can be waived off when the execution of the person is done by the procedure established by law. Extrajudicial executions, which are carried out without due process of law, are not legally valid.

##### 3.1.1 ARGUMENTS: FOR AND AGAINST

Those who are in the favour of the death penalty. Argue that it should be given in the most heinous crimes, whereas those who are against argue that death penalty should be substituted by life imprisonment because it is an inhuman treatment to the offender.

##### 3.1.2 MORAL ARGUMENTS

Supporters of the death penalty believe that those individuals who have taken away someone's life or have committed a high intensity crime, which is immoral and affects the public at large, because the person has taken away any other person's right to life in instance to this, he has also forfeited his right to life, which means now it is valid to execute the offender with the help of due process established by law. Opponents of capital punishment argue that the main function of law is to maintain peace, law, and order in society, whereas by giving the death penalty, we are not just taking away any other person's right to life; it is also a cruel act when seen from a humanitarian perspective.

#### 3.2 COURT RULINGS AND INTERPRETATIONS

There were many instances, when cases related to capital punishment came in front of courts and their significance really matters a lot. The interpretation of these cases by the courts helps us to understand the concept of death penalty and furthermore it also provides us clarification on capital punishment.

Cases that interpreted capital punishment -:

1. Jagmohan Singh V. State of Uttar Pradesh -:

The question raised here was whether the death penalty is constitutionally right or wrong, because it was believed by many that the death penalty is a clear violation of Articles 19 and 21, as the right to life is a fundamental right under Article 21, and the death penalty is violating this right. This case was argued before a five-judge bench. It was contended by the counsel that the procedure prescribed by C.R.P.C. (Criminal Procedure Code 1973) was confined to only findings of guilt and not awarding a death sentence. The Supreme Court held that the choice of giving the death penalty or life imprisonment totally depends on the circumstances of the cases and the discretion of the judge. The Supreme Court held the constitutionality of the death penalty in this case and hence made it constitutionally valid.

## 2. Bacchan Singh v. State of Punjab :-

The apex court of our country, the Supreme Court, in this case upheld the constitutional validity of the death penalty, saying that the death penalty is a legal punishment when it is to be given by due process of law. But in this case, the Supreme Court included the doctrine of "rarest of rare," which means that the death penalty is legal but should be given only in the rarest of the rare cases; it should not be given as a punishment to any offender. The death penalty as a punishment award always depends upon the circumstances of the cases, and the judge should give the death penalty only when it is necessary and required, although it should be given only in the rarest of the rare cases.

## 4. CONCLUSION

Justification of death penalty remains a sensitive and important issue to be discussed. First its to think about the ideology that the government/law has the ultimate right to decide over someone's life and death. After all all are humans and they should deserve a second chance to prove themselves. Also using death penalty to punish someone upholds the use of violence to deal with problems when as a society we condemns this idea. Also any punishment would not be effective if its root-deepened cause and factors affecting it are not treated. In an adverse way sometimes its a necessity evil as it won't kill crime but it instils a sense of fear of consequences in an individual to discourage people from committing further crimes. In current scenario some cases have arise that shows people knowingly committing crimes to either have a sort of comfort life in prison as they get bed, food, tv, shelter of friends or to seek a secure space in order to be saved from some other individuals they might be threatened from. So with strict and harsh rules these kind of people might take law seriously. With the support of above argument it can be concluded that death penalty should exist to balance a society and showcase fear but to a limited extent. It should be used in rare circumstances that a case extends to. The important thing to contemplate here is some innocent people gets pulled in crimes they did not commit and suffer the worst. It's the utmost responsibility of law keepers to handle this issue

deliberately and identify the accountable individual whether he's worth changing or remains an offender after a quite time.

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