

Examining Capital Punishment in India: Perspectives and Progress

Nidhi Kumari

LLM student

Abstract:

Generally speaking, punishment is the imposition of an undesirable or disagreeable consequence on a group or individual by an authority figure. There are different theories of punishment all over the world. The practice of punishment of crime is called penology. As per section 53 of Indian penal code, 1860 there five punishment and according to section 4 of the Bharatiya Nyaya Sanhita, 2023 bill there are six kinds of punishment. Capital punishment is one of kind of punishment which means the criminal should be hanged with death. Many European countries have abolished capital punishment but in India it is given in rare of rarest cases as per the judgment of Bachan Singh v. union of India case. A death punishment is a lawful decree that stipulates a criminal must be punished in this way; the act of carrying out the punishment is referred to as an execution.

Keywords: Punishment, Death Penalty, Capital, Supreme Court, Cases, Sentence

Introduction

The state can cope with the crime in three possible ways which is, inducing punishments, treating the offender and preventing crime through manipulation of the factors that produce it the imposition of unwanted and undesirable outcome on a group or individual is called punishment. There are different theories of punishment all over the world. The practice of punishment of crime is called penology. As per section 53 of Indian penal code, 1860 there five punishment and according to section 4 of the Bharatiya Nyaya Sanhita, 2023 bill there are six kinds of punishment. Capital punishment is one of kind of punishment which means the criminal should be hanged with death. Many European countries have abolished capital punishment but in India it is given in rare of rarest cases as per the judgment of Bachan Singh v. union of India case. The IPC gives capital punishment under section 121,132, 302 and many more.

This research paper talks about what is punishment, theories of punishment and kinds of punishment in first chapter. Second chapter deals with capital punishment, capital punishment in India, mode of execution, exceptions under capital punishment and many more and this paper ends with different cases of capital punishment.

Literature Review

These are the literature reviewed in this paper:

1. The Constitution of India, as amended by The Constitution (One Hundred and Fifth Amendment) Act, 2021.

2. The Indian Penal Code, 1860, Section 53, 121, 132, 300, 302 etc., by the Criminal Law (Amendment) act, 2018 (22 of 2018) (India). Section 300 talks about murder and section 302 about punishment of murder.
3. Dr. J.N.Pandey, Constitutional Law of India, pg. no., CLA fifty sixth edition 2019.
4. Prof. Dr. Manoj Kumar Sinha, Comparative Public Law, pg. no., Bharti Publication, first edition 2021.
5. Bachan Singh v. State of Punjab, AIR 1980 SC 898
6. Machhi Singh v. State of Punjab, AIR 1983 973
7. Jagmohan Singh v. State of Uttar Pradesh, (1973) 1 SCC 20
8. Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498
9. Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1
10. Mohd Aqib Aslam, Concept Of Punishments Under Law Of Crime And Compensation To The Victims Of Crime, www.legalserviceindia.com/legal/article , (last visited on March 1, 2024).
11. Capital Punishment in India, <https://blog.ipleader.in/capital-punishment-in-india-2/> , (Last Visited on March 06, 2024).
12. Nidhi Kumari, Comparative analysis of capital punishment in India with other countries, <https://lawpanch.com/comparative-analysis-of-capital-punishment-in-india-with-other-countries/>, (last visited on March 4, 2024).

Aims and Objective of Research

Followings are my aims and objectives from this paper:

1. To know about capital Punishment.
2. Want to go through the recent judgments related to capital punishment

Hypothesis

Hypothesis of this research is,

“No one is exempted under section 53 (1) that is capital punishment of Indian penal code, 1860”.

Methodology

The research methodology used in this paper is majorly of doctrinal type, which involves primary source of data collection. At some point doctrinal method is also applied like reference of bare acts and legislations. The information used in this research paper is with help of data given in books, case laws, bare acts, legislations, research papers and articles from online source.

Chapter 1: Introduction

What is Punishment?

Generally speaking, punishment is the imposition of an undesirable or disagreeable consequence on a group or individual by an authority figure. This can occur in a variety of circumstances, from criminal legislation to child discipline, and is meant to respond to and prevent a specific conduct or behavior that is regarded undesirable or unbearable.

There are two types of punishment used in psychology they are:

- Positive punishment: It is given to discourage behaviors, such as criticism or scolding, spanking, doing extra chores, or writing a phrase repeatedly on a piece of paper.

- Negative punishment: a consequence whereby an appealing stimulus is taken away from the wrongly-behaving person, such as by grounding or removing access to a favorite technology or pastime.

The purpose of sentence is to deter crime, and all forms of punishment are meant to have two main effects: first, to stop the offender from performing the same act or omission again and second, to stop other members of the community from committing similar crimes¹.

What are the Theories of Punishment?

Following are the theories of Punishment are:

1. **Retributive theory:** The tenets of "eye for eye" and "tooth for tooth" form its foundation. It is a form of primal retaliation against a wrongdoer.
2. **Deterrent theory:** According to this theory, the purpose of punishment is to discourage people from committing crimes because fear is an essential emotion for human existence.
3. **Preventive theory:** This theory, which seeks to deter crime by rendering the offender incapable of doing it, is also known as the theory of disablement. According to this theory, offenders face death, life in jail, or transportation of life as a kind of punishment to deter future crimes.
4. **Reformative theory:** The goal of this punishment is to help offenders change. According to this theory, crime is a mental illness brought on by several anti-social factors.

Kinds of Punishment

The practice of the punishment of crimes is well-known as penology. The motive behind imposition of punishment can be deterrence, rehabilitation, incapacitation, etc.

Following are some kinds of punishment which was followed round the world:

1. Retributive theory of punishment(eye for eye, etc)
2. Death penalty
3. Deportation
4. Corporal Punishment (flogging, modulation, torture, etc.)
5. Stoning
6. Simple Imprisonment
7. Solitary Confinement
8. Indeterminate Punishment

In ancient India retributive theory of punishment was only kind of punishment used .It was based on the theory of an eye for an eye and a tooth for a tooth. It has ancient nature of revenge against the wrong doer. In modern India there are five kinds of punishments as per section 53². They are:

1. Capital punishment,
2. Imprisonment for life,
3. Simple and Rigorous imprisonment,
4. Forfeiture of property and
5. Fine

¹ Mohd Aqib Aslam, Concept Of Punishments Under Law Of Crime And Compensation To The Victims Of Crime, www.legalserviceindia.com/legal/article , (last visited on March 1, 2024).

² The Indian Penal Code, 1860

Section 73 of the code provides for another type of punishment, that is solitary confinement.

Chapter 2: Capital Punishment as a Kind of Punishment

Capital punishment in pre and post-independence

It wasn't until 1931 that the issue of capital punishment was brought up in the British Indian legislative assembly by Bihar member Shri Gaya Prasad Singh in an attempt to introduce a bill that would have repealed the death sentence for offenses included by the Indian Penal Code. But after receiving a response from the then-home minister, the motion was rejected. Twice in legislative assembly debates prior to independence, the government stance on the death penalty in British India was made clear by the then-home minister, Sir John Thorne³. "For any crime for which it is currently authorized, the administration does not think it is prudent to repeal the death punishment."

The Indian Penal Code of 1860 and the Code of Criminal Procedure of 1898 are two examples of the colonial-era statutes that the Republic of India enacted after gaining its independence. Six penalties, including the death penalty, were imposed by the IPC.

What is Capital Punishment?

Capital punishment, traditionally known as judicial homicide, is the death penalty. It is a state-approved practice to execute a criminal as retribution, and it is typically followed by an approved, rule-governed procedure to determine that the offender is accountable for breaking the law. A death punishment is a lawful decree that stipulates a criminal must be punished in this way; the act of carrying out the punishment is referred to as an execution.

In the modern era, the death sentence is the harshest penalty available for heinous crimes. The validity of this is the most hotly contested question among contemporary penologists. The idea of punishment has evolved along with society's progress and development. In India, it is now granted under the Indian Penal Code, 1860 only in the "rarest of rare cases" following the historic *Bachan Singh v. Union of India* ruling.

The Indian Penal Code, 1860 specifies a number of crimes for which the court may impose the death penalty. It is available under:

- According to IPC section 121, waging or attempting to wage war against the Indian government
- Section 132: If mutiny is carried out, aiding and abetting it.
- Giving or fabricating false evidence that results in the death of an innocent person is covered under Section 194.
- Punishment for Murder, Section 302.
- Section 303: Life Sentence Murder.
- Section 305 pertains to the aiding and abetting of a minor, insane person, or inebriated individual in suicide.
- Section 307: If harm is caused, an attempt at murder by a person serving a life sentence is permitted.
- Section 364A: Ransom kidnapping, etc.
- Dacoity with Murder, Section 396.

³ Capital Punishment in India, <https://blog.ipleader.in/capital-punishment-in-india-2/>, (Last Visited on March 06, 2024).

Following the Criminal Law (Amendment) Act of 2013, a judge may impose the death penalty for the following offenses:

- Penalties under Section 376A: Death or lifelong vegetative condition for rape.
- Section 376E: Penalties for Repeat Rape Offenders.

The death penalty is a contentious issue in today's world, with many individuals, organizations, and religious groups having different opinions about whether or not it is ethically acceptable to murder someone. According to Amnesty International, "the right to life and the right to live free from torture or cruel, inhuman, or degrading treatment or punishment" are violated by the death sentence. The United Nations adopted the Universal Declaration of Human Rights in 1948, which guarantees these rights. The death penalty is forbidden for its member states by Article 2 of the European Union's Charter of Fundamental Rights.

Over 70% of nations worldwide have either outlawed the death penalty or reduced its use to a minimum. This information is provided by the Death Penalty Information Center. By the end of 2020, nearly all of the following countries had done away with the death penalty: 1. 108 countries had done away with the death penalty for all offenses; 2. 144 countries had done away with the death penalty in both law and practice; 3. 28 countries had done away with the death penalty by not carrying out executions for the previous ten years; 4. Furthermore, this penalty is still in place for common offenses in 55 countries.

According to Amnesty International, there are 1,477 death sentences in 54 countries worldwide, with the majority of these executions occurring in nations like Egypt, Saudi Arabia, China, Iran, and Iraq.

Over the past two decades, numerous countries have abolished the death penalty, including Turkey, Albania, the Philippines, Bhutan, Armenia, Congo, Guinea, Chad, Burkina Faso, Gambia, Latvia, Bolivia, and numerous others. 2018 saw the abolition of the death sentence in Burkina Faso, and 2018 saw the repeal of the death penalty in Chad for all offenses both legally and in practice in 2020⁴.

Categories of criminals exempted under India for Capital Punishment

Minors

Indian law states that an individual who commits a crime before the age of eighteen, or while still a minor, is not subject to execution. Because they believed that everyone who hasn't reached adulthood had room for development and might be able to learn from his mistakes by being given the correct environment and education, the lawmakers opted to put children in the category of offenders exempt from the death penalty. Furthermore, our laws include a different statute called the Juvenile Justice Act (2015), which is only applied in cases involving juveniles. This is advantageous since it allows offenders to grow.

Pregnant Woman

A further category of offenders exempt from the death penalty now includes pregnant women. Section 416 of the CrPC states that a woman who has been given a death sentence may have her sentence postponed or reduced to life in imprisonment if the high court determines that the lady is pregnant. This is justified by the fact that a pregnant woman who is hanged kills both herself and the unborn child. The unborn kid in the mother's womb is innocent and does not deserve to perish as a result of the woman's

⁴ Nidhi Kumari, Comparative analysis of capital punishment in India with other countries, <https://lawpanch.com/comparative-analysis-of-capital-punishment-in-india-with-other-countries/>, (last visited on March 4, 2024).

actions. Thus, pregnant women might be included in the group of criminals who are not subject to the death penalty.

Intellectually Disabled

As per the legal provisions, those who are cognitively challenged or retarded may qualify as exempt from capital punishment. It is sometimes said that a person who commits a significant crime has an intellectual disability if they are unable to understand the nature of their actions and the repercussions of them. Someone with a criminal record may not know the details of their crime because of their intellectual handicap. As a result, lawmakers expanded the list of criminals who were spared the death penalty to include those who are mentally challenged.

Process after the imposition of the Capital Punishment

Verification by the Supreme Court

After the punishment is imposed, the session's court, in compliance with Section 366 of the CrPC, shall present the case proceeds to the high court of the appropriate state for confirmation of the sentence. Until the High Court validates the sentence, the court that passes the sentence must place the guilty party under arrest and issue a warrant.

Investigation and more proof

As per the CrPC's Section 367, the high court has the authority to mandate an extension of the inquiry into the occurrence or the gathering of supplementary evidence if it becomes relevant to the guilt or innocence of the convicted individual.

Authority of a high court to validate sentences or overturn convictions

Section 368 of the CrPC grants the high court the authority to modify the charges and order a new trial, as well as to uphold a conviction and inflict any other sentence the court sees fit. The sentence cannot be confirmed by the court until the deadline for submitting an appeal has passed.

Verification of the newly formed phrase

As per the provisions of Section 369 of the CrPC, a minimum of two judges must accept and sign any order or sentence, whether it is a fresh sentence or one that the High Court has already passed, before it may be submitted for confirmation.

Sending a copy of the order to the session court

Section 371 of the CrPC states that the Honorable High Court's confirmation of a sentence or any other order it may issue shall be delivered right away to the Court of Session, sealed with the High Court's seal and authenticated by an official High Court official signature.

Execution procedure of Capital Punishment in India

Hanging

According to Section 354(5) of the CrPC, hanging is the only mode of execution that is allowed in India for a civilian, and it is the method used in the civilian court system.

Shooting

Shooting is another type of execution practiced in India. A prisoner who has been sentenced to death may be put to death by a member of the firing squad. The Army, Air Force, and Navy are the only organizations that are able to carry out the death penalty in this way. The Army Act of 1950 states that hanging and gunshot are both acceptable means of death in the army court-martial system.

Chapter 3: Cases

Here are some of the most significant case laws on capital punishment in India:

Bachan Singh v. State of Punjab⁵ is among the most significant death sentence cases in Indian courts. The Indian Supreme Court maintained the validity of the death penalty in this case, but it also established strict requirements that must be satisfied in order for someone to get a death sentence. The court ruled that a fair and impartial trial must come before the death penalty could be applied, which it can only do in the most extreme circumstances.

Machhi Singh v. State of Punjab⁶ is yet another significant case involving the death penalty in India. In this case, the Indian Supreme Court established particular standards that have to be taken into account prior to the imposition of the death sentence. The court ruled that a crime can only be punished with the death penalty if it is of a kind that shocks society's conscience and if life in prison is clearly not a sufficient option.

Jagmohan Singh v. State of Uttar Pradesh⁷ was among the first capital cases in India after independence. In this instance, the Indian Supreme Court ruled that the death sentence is permissible for the most egregious and serious crimes and does not violate the Indian Constitution. The court further ruled that the punishment must be appropriate for the offense committed and that the death penalty cannot be applied without first requiring a fair and impartial trial.

Judge Krishna Iyer stated in **Rajendra Prasad v. State of Uttar Pradesh (1979)** that the death sentence was obviously against Articles 14, 19, and 21 of our Constitution. In this instance, two prerequisites for applying the death penalty to any perpetrator were underlined. First, it is necessary to document the precise reason(s) or situation(s) for why the offender received this penalty. Secondly, it is limited to use in exceptional situations.

Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra⁸ is a key case law on the death penalty in India because it established precise rules that have to be adhered to while applying the death penalty. The Indian Supreme Court ruled that the sentencing judge had to note his or her justification for applying the death penalty in addition to taking the case's aggravating and mitigating circumstances into account.

Shatrughan Chauhan v. Union of India⁹ is a significant case regarding the death sentence in India since it questioned the lawfulness of the death punishment there. The Indian Supreme Court maintained the death penalty's validity in this case, but it also acknowledged death row inmates' rights to a decent and dignified death.

Hypothesis Test

Hypothesis of this research was,

⁵ AIR 1980 SC 898

⁶ AIR 1983 973

⁷ (1973) 1 SCC 20

⁸ (2009) 6 SCC 498

⁹ (2014) 3 SCC 1

“No one is exempted under section 53 (1) that is capital punishment of Indian penal code, 1860”. Hence at the end of the study the hypothesis assumed is not proved because there few offenders who are exempted under section 53 (1) that is capital punishment of Indian penal code, 1860. Minors, pregnant women and intellectually disabled are some of the criminals whom the exceptional benefit is given.

Conclusion

When the punishment is meted out shortly after the offense, deterrence is most effective. The punishment will likely be less effective as deterrence the more the legal system separates it from the offense, either in terms of time or certainty. The capital sentence has lost some of its impact because of the excessive delay in carrying out the punishment, and India is currently waiting for the execution of Nirbhaya's rapists. This explains why a sizable portion of the public applauded the Hyderabad police encounter in Disha's case. To maintain the public's confidence in our judicial system, it is necessary in this situation to speed investigations conducted by a well-trained and equipped police apparatus, ably supported by fast-track trials.

Bibliography

Statutory Authority

1. The Constitution of India, as amended by The Constitution (One Hundred and Fifth Amendment) Act, 2021.
2. The Indian Penal Code, 1860, Section 53, 121, 132, 300, 302 etc., by the Criminal Law (Amendment) act, 2018 (22 of 2018) (India). Section 300 talks about murder and section 302 about punishment of murder.
3. The Bharatiya Nyaya Sanhita bill, 2023, Section 4, 99, 101, etc., Bill no. 121 of 2023 (India). Section 99 talks about murder and section 101 about punishment of murder.

Book Referred

1. Dr. J.N.Pandey, Constitutional Law of India, pg. no., CLA fifty sixth edition 2019.
2. Prof. Dr. Manoj Kumar Sinha, Comparative Public Law, pg. no., Bharti Publication, first edition 2021.

Research Paper

1. Mohd Aqib Aslam, Concept Of Punishments Under Law Of Crime And Compensation To The Victims Of Crime, www.legalserviceindia.com/legal/article , (last visited on March 1, 2024).
2. Capital Punishment in India, <https://blog.ipleader.in/capital-punishment-in-india-2/> , (Last Visited on March 06, 2024).
3. Nidhi Kumari, Comparative analysis of capital punishment in India with other countries, <https://lawpanch.com/comparative-analysis-of-capital-punishment-in-india-with-other-countries/>, (last visited on March 4, 2024).

Cases Referred

1. Bachan Singh v. State of Punjab, AIR 1980 SC 898
2. Machhi Singh v. State of Punjab, AIR 1983 973
3. Jagmohan Singh v. State of Uttar Pradesh, (1973) 1 SCC 20
4. Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498
5. Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1