

# Concept and Forms of Punishment with Special Emphasis on Solitary Confinement and Capital Punishment

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## Abstract

Laws and Legislation are created and enacted to maintain a flawless and peaceful society. But sometimes, it has been violated and more crimes are occurring as a result of it the peace and harmonies of society have been disturbed. In order to bring orderly behaviour and to make the individual binding towards the law, punishments would be imposed on those who violate it. This theory or the concept of punishment can be traced back right from the ancient Vedic period. These punishments would be awarded based on the intensity of the crime which they have committed and there would be a clear mention or description of punishment for the crimes but now the laws are enacted to describe the punishment for the crime committed in a codified manner. Earlier, in the Vedic period, punishments would be imposed which is mentioned in Vedas and other legal textbooks which were prevalent in the Vedic period. The main context of this paper is to educate the readers with regard to punishments that were prevalent in the Vedic period and their application in the current period. It further specifies theories of punishment and their application to the present and a comparative study would be provided with regard to changes in society that might occur due to the implementation of strict and lighter punishments. A special focus would be addressed on solitary confinement and capital punishment like whether it was there during the Vedic period; and whether it violates the human rights principle all these things would be elaborated in the paper. Final emphasis would be given on providing suggestions for the drawbacks present in the existing punishments and whether any other punishment is necessary to be implemented in order to make the society run smoothly.

**Keywords:** Punishment, Intensity of the crime, Punishment in the Vedic period, Solitary Confinement, Capital Punishment.

## Statement of problem

The research aims to explore the alignment and relevance of ancient punitive measures with contemporary legal practices, focusing on three critical aspects. Firstly, it investigates whether the punishments prescribed during the Vedic period are in harmony with the current judicial punishments, examining the evolution of legal principles and societal values over time. Secondly, it delves into the necessity and ethical implications of solitary confinement and capital punishment in the modern justice system, questioning their compatibility with the principles of justice and human rights. Lastly, the study scrutinizes the role of capital punishment in the context of reformatory justice, evaluating whether it

serves as a deterrent or an impediment to the rehabilitation and reintegration of offenders. Through this comprehensive analysis, the research seeks to contribute to the ongoing discourse on the effectiveness, morality, and humaneness of punitive measures in achieving justice.

## **Introduction**

The Indian criminal legal system cannot be interpreted alone as a colonial system of punishment. While analyzing the aspects of various punishments and criminal legal trials in India the traces of Vedic and ancient works of literatures and their influence could be identified. The motto of ‘Sathyameva Jayathe’ (Truth alone will triumph) is taken from the Mundaka Upanishad<sup>1</sup>. Here the major aim of the legal system is to preserve the idea of truth at any cost. To deliver justice to the right part without any bias or discrimination, the essence of these values could be identified in legal texts inspired by ancient texts and works of literatures.

In the case of punishments, the system that was prevailing in the olden days was based on caste and class structure such as. After independence, this system is totally abolished and the modern system of punishment based on the concept of reformatory theory has been established. This theory focuses on the overall reformation of the criminal. The theory presumes that no one is a born criminal it is the circumstances that make a person a criminal. Hence it is justified to reform the person through punishments for a certain period of time and prevent him from conducting the crime again. Although the system of punishment aims for a reformation in this manner there is the presence of habitual offenders in society. The severity of the punishment increases with the repetition of the crime. The concept of Dharma has existed in ancient society for a long time. The major aim behind that was to create a sense of duty among individuals and create order in society through that. Hence most of the Dharma principles were concentrated on personalized traits and interpretations. Here the Dharma is one of the ancient ideologies developed for providing ‘Neeti’ (justice), which requires the strict and unadulterated implementation of the same. Dharma was also having a connection to personal ethics as well. Through the practice of following Dharma principles, the establishment of personalized control is also observed in society. In the concept of law during the ancient ages, the major focus was given to Hindu practices and traditions. These were considered as codified under the Hindu law such as laws of marriage, adoption, inheritance, etc. there was nothing existed in ancient society to regulate all of this. As the majority were following the Hindu traditions and customs that were developed from the Hindu texts, sruthi and smriti it was identified and considered as these customs, traditions, practices, etc. were part of the legal structure that existed then. Due to the existence of various forms of punishments that were depicted in various textbooks, it was necessary to group them together to implement uniformity. Hence these texts books were grouped together into a single structure known as ‘Dharmasatras’. The concept of Dharma mentioned here has given a wider meaning in the sense that, the rules comprise rules of morality, conduct and good behaviour, religious principles, legal precepts, and all that support the harmonious functioning of human relationships.

## **Scope and limitation of research**

The research focuses on primary factors that affect forms of punishment, the relevance of punishments like death penalty, solitary confinement

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<sup>1</sup> Chapter 7, retrieved on 27, 2024. [Legalaffairs.gov.in](http://Legalaffairs.gov.in)

The study doesn't arbitrarily make explicit arguments in favour or against the concepts but makes a comparative analysis on the same that the study is an attempt to improve the standard of vision on the same

### Research Questions

1. Whether the punishment mentioned in vedic period are in alliance with the current punishment
2. Whether the need of solitary confinement and capital punishment are necessary to align with the concept of justice and human rights
3. Whether capital punishment acts as a barrier to the concept of reformatory justice

### Research Methodology

The methodology used for the existing research paper is purely doctrinal. The data used for this research is based both on primary and secondary data where the primary data would be the texts and secondary data would be other reference materials such as literatures, articles associated with this topic

### Concept of punishment

The punishment system is understood as one of the oldest and still prevailing methods for controlling crimes in society. This could be evolved according to the concepts, ideas, and inventions. One of the major reasons for the changes in the method of punishment is because of these changes and their effect. There were variations in the attitude and reaction of the society. That was one of the reasons the laws are framed according to the societies. The laws that are made in ancient societies got changed when they became modern. Similarly, the crimes that occurred in ancient society are not similar to that those crimes in modern society. Hence the laws of punishments were also changed. Before technological development there was no concept of cyber crimes, it was according to the nature and invention of ideas the societal nature and attitude of human beings changed. Cultural factors can also influence the development of the societal structure. Hence the concept of punishment also will be influenced by the societal structure. The best example is the practice of untouchability which was prevailing in our country. This was prohibited through Article 17 of the constitution of India and through the legislation named the untouchability Prohibition Act 1955. Thus it is clearly stated that the practice of untouchability is a crime. The concept of punishment has the role of preventing social evils existing in the society. The major examples are the abolition of the sathi system, the abolition of devadasi system, etc.

### Forms of Punishments in ancient India

The major forms of punishments followed during that time were mainly based on the concepts mentioned in the Vedic textbooks and puranas. According to Manu, 'punishments have been prescribed by the sages, so that righteousness may not be outrages and unrighteousness may be cured'<sup>2</sup> Punishments for all major crimes were found in Vedic textbooks and works of literatures; hence it was prone to multiple interpretations. Hence the types of punishments were also varying according to the intensity of the crime.

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<sup>2</sup> Radha Krishna Chaudhary. Theory of punishment in ancient india. *JSTOR*, 2

**(i) DANDA**

This is a form of punishment under Hindu law. The punishment is a way that the ruler will decide what punishment he has to give the accused. This is mainly related to the traditions of Hindu Law. Danda is in another way considered the coercive power of the government. 'Dandaniti' the term accepted from the book ascribed to prajapathi is accepted from Mahabharata<sup>3</sup> the theory of Danda has a huge influence on the Dharma concept and there were instances when Danda was interpreted as Dharma. The works of literatures state the concept of dhanda is made by pranjapathi (lord siva). The Danda needs sanction; this could be read along with the concept of authority. In every legal system, there will be an independent authority with sovereign power. Danda can be exercised only by them. The form of punishment determination is in a way that along with the ruler, there will be legal officials as well they together refer to punishments analyzing the severity of the crime. The ruler has given absolute authority and liberty to decide what kind of punishment they have to give the accused. The ruler has given the opportunity to leave the person free as well this is known as atonement or prayachitha.

**(ii) Punishment of oath and ordeal**

This is another kind of punishment that existed then. This is the system when the right arguments fail the person will be convicted. The Vedic conception prevailing over this punishment as it is attributed from heaven<sup>4</sup> through the performance of this punishment it was presumed that the convicted person will be relieved from the sins that he has committed. The major aim of the punishments in the ancient Vedic texts was to expiate the person from sins. Much of the Vedic literature believes in the theory of the retributive principle. This is the concept of 'an eye for an eye'<sup>5</sup>. There are many leaders like Mahatma Gandhi who criticized this form of punishment. He stated that the 'concept of an eye for an eye will make the world blind'<sup>6</sup>

**(iii) Punishment based on the status**

The status of the person is determined by caste and position according to the social order. Here status played a major role in determining the punishment that can be awarded to the person. The caste structure that was prevalent in ancient India was the basis for this. Based on the position of a person who has committed the crime in the caste pyramid, if he falls in the category of the upper portion he will be awarded relatively lower punishment than others. If the person is falling under the lower part of the caste pyramid he will be awarded severe punishment. The major crimes that were falling under this category are related to defamation and assault.<sup>7</sup> These offenses were treated as serious offenses and given the maximum punishment possible. While analyzing more the aspects of punishments it was evident of the existence of the monetary punishments instead of physical punishments<sup>8</sup> the punishments were given even towards the 'mischiefs that are committed against plants and the trees'<sup>9</sup>

The Aim of punishment imposed on a person is to make him realize and to inculcate the people of how it could affect the entire cycle of society if a particular crime has been committed. For understanding let's

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<sup>3</sup> Supra 2,p.4

<sup>4</sup> Supra 2, p.6

<sup>5</sup> Code of Hammurabi, Law 196

<sup>6</sup> Quote by Mahatma Gandhi

<sup>7</sup> A. Lakshminath. (2006, january-march). Criminal Justice in India, Primitive to modernism, *Journal of the Indian Law Institute*, 48(1), 4.

<sup>8</sup> 2. Kautilya's Arthashastra mentions an exhaustive list of fines charged for committing them. The amount varied based upon offence, the person who was affected, and the nature of the accused.

<sup>9</sup> Supra 7,p.4

take a simple example itself Trespass. If a person has trespassed on someone else property, it is a dispute between two individuals only but if there is no effective law to guide the rights available towards the rightful owner and if punishment has not been imposed on the person who has infringed the other person right means then in mere future there is no guarantee that other individual in the society will also commit the same crime. so, the notion of actual owner and private property concept itself would be completely demolished and people would be fighting for property and would be traced back to the State of Nature as mentioned by Social Contract Thinkers like Hobbes, that if there is no law or sovereign for the people then they will act according to their own wishes so the number of the rights must be surrendered to the sovereign for ensuring protection and security towards the subjects. When the same concept comes to Indian Scenario, although all these philosophers in western countries may not be available but there were numerous principles, legal principles which were currently used were already mentioned in Ancient religious textbooks. For Example, Garuda Puranam is one such example where it prescribed the punishments which would be given to a person when he is dead his punishment would be determined based on the sinful activity which he has committed while he was on Earth and the adjudicating authority for this would be done by God. Since there existed an unbreakable belief in god with regard to Hindu Philosophy everything was related to God and other supernatural elements. The existence of such a textbook itself gives a clear opinion that there were numerous punishments which would be awarded to the individual based on the intensity of the crime these punishments might differ too.

### **Sentencing system in India**

The primary intention of the punishment system was to prevent crimes from happening in society and to protect the social order. The different kinds of punishment systems that were prevailing over in this country were created on the basis of the customs and practices that were followed for ages. The provisions of punishments always created a sense of fear among the citizens and it helped to develop a sense of security and social order. After the implementation of penal provisions the concept of substantive and procedural law principles developed. It is in a way that the Introduction of the Indian Penal code in 1860, and the Criminal Procedural Code in 1973, led to the codification of principles of criminal law. In the case of the sentencing system in India, there is no uniformity in the mode of sentencing. The sentencing system in India works under sections, 235, 248, 325, 360, and 361<sup>10</sup>. The court when it comes to the time of pronouncing the sentence, the judge will come to the conclusion of whether to pass a judgment of absolution or conviction. Before convicting a person the 'circumstances of the crime' and 'mental state and age' these kinds of factors are taken into consideration. There are protections given to women and children if they are offenders. This is considered one of the essential characteristics of the system the circumstances; age, etc. are taken into consideration before sentencing a person. This is part of the human rights principles. Through this kind of approach, the circumstances behind the compulsion of committing offenses are evaluated. This could be taken as a progressive approach. This helped in the introduction of the idea of reformatory principles in the legal system. But there were many principles that existed in these legal texts that were having traces of violence. The major factors related to that were capital punishment and solitary confinement.

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<sup>10</sup> Karan Gehlot, & Prem Dhurvey. Need for sentencing policy in India: critical study on 'discipline of justice. *International journal of law and legal jurisprudence studies*, 2(2), 2.

### Concept of minimum sentencing

The concept of the minimum sentencing system in India is decided by the courts. But the legislative measures are taking place to fix the duration of minimum sentencing. The major examples of this are, section 4 of the dowry prohibition Act, 1961, and section 376 (2) of the Indian penal code was substituted. This helps in the identification of the fact that the socio- economic offenses alone do not have the feature of the minimum sentence but the traditional laws too. This has a huge influence on the determination of the sentencing period of the offense.

### Capital Punishments India

Article 21 of the constitution is about the right to life and personal liberty, this emphasizes the concept that ‘no person shall be deprived of his right to life and personal liberty except the procedure established by law’<sup>11</sup> here the hanging till death comes under the part of procedure established by law. The death penalty could be considered one of the primitive and ancient forms of punishment existing in many countries. The rarest of rare crimes were awarded capital punishment in India<sup>12</sup> the major offenses for the capital punishment is awarded in India are,

1. Section 147 and 149 waging war against government of india
2. Section 159 abetting mutiny against a member of armed forces
3. Section 228 fabricating false evidence with intent to procure conviction of a capital offence, with the death penalty applies only if an innocent person is in fact executed as a result
4. Section 107 abetting suicide of the child and insane person
5. Section 103 Murder
6. Section 109 attempt to murder
7. Section 311 dacoity and murder<sup>13</sup>

These are the important provisions in Indian legal systems that are given capital punishment. During the ancient era there was a time period when the system of punishment was totally biased according to the caste and class structure in society. The major aim of sentence is the reformation. Through the application of the system of capital punishment, the reformation of the convict concept is totally absent; instead, the concept of coerciveness has been given importance. It was first during British rule that attempts of procuring the abolition of the capital punishment were done through Hindu Humanitarianism. Later in 1931, the bill for the abolition of capital punishment was introduced in the legislative assembly, and the same was later withdrawn. After the independence, twice the Bill for the abolition of capital punishment was introduced in both houses of the parliament at Loksabha in 1956 and in Rajyasabha in 1958. Due to the wide opposition from the parliamentarians both times, the Bill didn't pass in the parliament.<sup>14</sup> Then later various law commission reports suggested the abolition. They came up with many recommendations as well. The major recommendation that was accepted was that offenders under the age of 18 should not be sentenced to the death penalty.<sup>15</sup> The abolition of the death penalty is a serious motion of debate in contemporary India. Capital punishment would be awarded for the heinous crimes that the judiciary found as rarest of rare in nature. Hence it was understood that the

<sup>11</sup> Article 21, constitution of India

<sup>12</sup> *Bachan Singh V. State of Punjab*, AIR 1980 SC 276

<sup>13</sup> A.R.Blackshield. Capital Punishment in India. *journal of Indian law institute*, 2.

<sup>14</sup> *Supra* 12, p.3

<sup>15</sup> 262<sup>nd</sup> Law Commission Report.

justice awarded in such instances is absolute justice. The death penalty could be considered as the threshold of maximum justice given to a person.

While analyzing the facts related to the application of the death penalty all over the world, it is evident that many international councils and commissions such as the United Kingdom's Commission on Capital Punishment, The joint committee of the Senate and House of Commons of Canada, and the Economic and Social Council of the United Nations<sup>16</sup> all these international commissions and councils collected the countries and their details related to the death penalty. Based on these statistics the world countries are divided into 2 categories, countries having the death penalty and countries that don't have the death penalty. This could be defined as the countries prohibited death penalty *defacto* and *dejure*<sup>17</sup> In the case of countries like the United States of America, the provision of punishment with the death penalty has been quashed.<sup>18</sup> Crimes that are of heinous nature require the maximum sentence. The necessity for absolute justice is essential in the case of crimes that are brutal and heinous. Hence the reformatory system of punishments is not fully practical in certain situations. Some crimes should not repeat again and again or maybe never ever again. For that apart from the part of the reformation the concept of coercion can be justified. Hence in certain cases, capital punishment could be justified. The punishment for crimes that are of the rarest of rare nature could be capital punishment as they shouldn't repeat again.

### **Solitary confinement in India**

The major aim behind constituting the prison system is to maintain the social order. The societal structure and peace in society should be protected hence to prevent the occurrence of crimes in society the 'detention of prisoners' will be done. This has also another interpretation that prisoners are misfits in society as they are dangerous to the social order. Hence they should be excluded from society for its smooth function and peaceful social structure.

The concept of punishment emphasizes on the aspect of deterrence hence the prisoners were treated with strict disciplinary control, and harshness, a higher degree of punishment has to be awarded based on the gravity of the offense, up to the level of capital punishment. In India, the modern legislation dealing with prisoners are, the Prisoner's Act of 1894<sup>19</sup> According to section 73 and 74 of the Indian Penal Code, the concept of solitary confinement can be identified. For the first time solitary confinement was introduced in the United States of America, in the eastern state penitentiary in Philadelphia<sup>20</sup> In the concept of solitary confinement, the complete isolation is being done. The offender has been put in solitary confinement for a span of time. The time duration is determined by, the provisions, section 73 and 74, from 22-23 hours in a day as per these sections.

Section 73 mentions, for solitary confinement for 3 months 14 days on end with interims of at the very least 14 days 7 days in a multi- month with interims of fewer than 7 days if the detainment granted is

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<sup>16</sup> The Royal Commission on Capital Punishment 1949-1953 Report (London: Her Majesty's Stationery Office, 1953); Reports of the Joint Committee of the Senate and House of Commons on Capital Punishment, Corporal Punishment, Lotteries (Ottawa: Queens Printer and Controller of Stationery, 1956); and Capital Punishment (New York: Department of Economic and Social Affairs, United Nations, 19

<sup>17</sup> Clarence H. Patrick. (1965). criminology. *The Journal of Criminal Law, Criminology, and Police Science*, 56(4), 10.

<sup>18</sup> Furman v. Georgia, 408.U.S.238(1972)

<sup>19</sup> P.S. Bawa. (2000). Towards prison reforms. *India International Centre Quarterly*, 27(2), 2

<sup>20</sup> J.Sneha, & K.Roja. A study on solitary confinement as a punishment. *International Journal of pure and applied mathematics*, 120(5), 2.

over 3 months according to section 74<sup>21</sup> the reasons for putting prisoners under solitary confinement could vary from avoiding the fight between fellow prisoners to capturing a packet of cigarettes from pocket. As the time period and reason for the confinement could be anything, it is evident that the authority to decide the offender on solitary confinement is given to prison authorities. Hence the authorities make the prisoners undergo solitary confinement for no reason for any rule violation but they identify the prisoners of some offenses and prevent them from creating a gang or suspecting that the person belonging to a particular gang, the offender has to undergo solitary confinement.

This isolation that too years and years would result in serious mental and physical health issues for the offenders, the offenders released from prison directly towards society have faced numerous issues such as visual and auditory hallucination, hypersensitivity to noise and touch, etc.<sup>22</sup>

There is a famous quote by Aristotle the Greek Philosopher that mentions ‘men as social animal’ here the prisoners after completing various years in prison shows a relatively higher amount of suicidal tendencies among them. The recommendations by United Nations provided details indicating the difficulties that arise out of solitary confinement and the requirement for ending this concept in US prisons. While analyzing the factor of human rights it is very much evident that prisoners are also humans and they also have the right to avail the basic human rights. In a situation where they are tortured to the core, preventing the same torture which may result in the condition of the destruction of mental and physical health is necessary. The creation of an environment in which the prisoners are also capable to receive their basic human rights would help in the development of a better environment.

### **Solitary confinement in the eyes of the Right to life**

The speciality of the ‘Right to life and personal liberty’ is that it’s one of the crucial rights that can’t be suspended during emergency as well. The right to solitary confinement is protected under Article 21. This specifies the importance of the need for preventing the practice of solitary confinement. India is one of the nations that have recognized the importance of human rights should ensure the same for its citizens. Through giving the power to the prison authorities, the necessity of solitary confinement is not determined. That could be done for anything, even for cases that are unnecessary. The physical and mental torture causing out of this practice is severe and recurring. In the famous case law of *Sunil Batra V. Delhi Administration*<sup>23</sup> the offender was trying to commit suicide hence he was subjected to solitary confinement. It was found that the person was in solitary confinement for around a period of 8 years. This case shows the best example of the violation of fundamental rights guaranteed by Article 21 of the constitution.

There are a few more case laws that are dealing with the issues such as, *A.K.Gopalan V. State of Madras*<sup>24</sup>, *Unnikrishnan &ors V. State of Andhra Pradesh &ors.*,<sup>25</sup> *Rajendra Prasad V. State of Uttar Pradesh*,<sup>26</sup> etc.

It is very much evident that the reformatory theory of punishment is followed in our penal system it never supports the torturing of people like violating the right to life. Hence the provision of solitary

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<sup>21</sup> Supra 19, p.3

<sup>22</sup> Supra 19, p. 5

<sup>23</sup> 1978 4 SCC 494.

<sup>24</sup> AIR 1950 SC 27

<sup>25</sup> 1993 SCC

<sup>26</sup> 1979 AIR 916

confinement is illegal and violates the fundamental right to life, hence that provision should be struck down. The establishment of a system with a better reformatory form of imprisonment could be implemented instead of the provisions like solitary confinement.

### Cases on solitary confinement in India

Indian legal system has witnessed many cases regarding solitary confinement and capital punishments. In the case of *Trisha Chandran v. The Superintendent, Cherlapally Central Prison & Anr*<sup>27</sup> has mentioned about the direction of removal of two death row inmates from solitary confinement as they still had the grounds for challenging their sentence in the court. In the case of *Unni Krishnan & Ors v. State of Andhra Pradesh & Ors*<sup>28</sup> the dimension of including solitary confinement towards the ambit of article 21 was discussed. The case concluded that the solitary confinement is a violation of article 21. In *Sunil Batra v. Delhi Administration*<sup>29</sup> the court observed that it was under the consideration of court to intervene and prevent harsh treatment towards the prisoners. The court also checked the scope of section 30 (2) were the provision of prison authorities to keep the person in a separate cell. This section is found that it is against Article 21. *T.V. Vatheeswaran v. State of Tamil Nadu*<sup>30</sup> is a case where it was observed that taking away the life after illegal solitary confinement is violation of article 21. In the case of *Kishor Singh Ravinder Dev Etc v. State of Rajasthan*<sup>31</sup> and in *Union of India v. Dharam Pal*<sup>32</sup> the court held that solitary confinement should be charged for rarest of rare cases and not for feeble charges this could be considered as a landmark judgement that is upholding the concept of right to life. Similarly, Supreme Court marked a landmark decision that no legislation should prevent the inmates or convicted persons from exercising their fundamental right to life in the case of *State of Andhra Pradesh v. Challa Ramakrishna Reddy*<sup>33</sup> the solitary confinement was even abolished in Punjab and Haryana for death row inmates. The reason for this was the realisation that there is no proper scientific reason to isolate the prisoners from other prisoners immediately after pronouncing death sentence. This has been further identified that it will only help in increasing their mental trauma.

### Suggestions

The punishment system in India had a huge influence on the past. The major part that the focus here is that, the changes in the mode of crimes and the introduction of new crimes created a situation of changes in the punishments. Hence the system of punishment should be updated according to time.

After the independence, the structure of our punishment system itself has changed. Here the major factor is the approach towards punishments and offenders. We have amended our provisions by identifying the flaws in them and turned them into the form of a reformatory system. In the case of the punishments like capital punishment and solitary confinement, the primitive concept of the punishment system can be seen. Hence retaining provisions related to solitary confinement in an era where the idea of human rights

<sup>27</sup> Sanghi, J. (2022, December 12). *Confining Death Row Inmates In Separate Cells Unwarranted: Telangana High Court Directs Prison Admin To Remove Prisoners From Solitary Confinement*. LiveLaw. Retrieved September 27, 2024, from <https://www.livelaw.in/news-updates/confining-death-row-inmates-in-separate-cells-unwarranted-telangana-high-court-216541>

<sup>28</sup> 1993 SCC (1) 645

<sup>29</sup> 1980 AIR 1579

<sup>30</sup> 1983 AIR 361

<sup>31</sup> 1981 AIR 625

<sup>32</sup> 2019 SC 454

<sup>33</sup> 1974 SC 2094

and prisoner's rights are existing is unreasonable. The abolition of solitary confinement is the need of the hour.

In the case of capital punishment, it is evident that the 'rarest of rare'<sup>34</sup> cases were awarded capital punishments in India but the sections where the person can be sentenced for the same are a bit more compared to laws of other lands. In the case of the United Kingdom, the maximum numbers of crimes awarding death sentences that can be identified are 5 types of crimes. Such as Murder, Treason, espionage, arson in royal dockyards, and piracy with violence.<sup>35</sup> Through the reduction of the number of offenses falling under the punishment sphere of capital punishment, India can also reform its penal provisions.

With the crimes that are occurring in society, along with the advancement in technology and gadget availability (weapons) there is an immediate need for the creation of changes in the provisions.

International conventions and treaties and global concepts and values also form a major role in influencing municipal laws. The best example would be rethinking the provision of solitary confinement in the eyes of human rights principles.

While focusing on the cases of solitary confinement the research shows that, 45% of the prisoners suffered from psychiatric syndrome and 36 % of them were with chronic depression<sup>36</sup> hence it is evident that the aim of the punishment was the reformation of the offender hasn't been achieved. Instead, the total destruction of the mental health and physical health of the person has occurred. This is not amounting to the betterment of reformation to the offender.

There is a need for the establishment of a sentencing policy in India. This could be considered as a loophole in the system that is required to be achieved.

## **Conclusion**

Through the system of punishment, the law and order of the society is maintained. The maintenance of law and order by convicting the offenders through primitive modes of punishment doesn't help in the establishment of a just and fair society. The major problem here is that, the punishments that existed then were having different parameters and many of them constituted the footprints for the legal system that exists today. In the punishments, the major objective was that it shouldn't discriminate against the people and we are successful in establishing an independent and non- discriminatory system. The major aim of the punishment system is to provide justice to the maximum. In that process, the various punishments that evolved from many ages could be identified. The role of our system is to provide the justice to maximum number of sections as possible. The capital punishment is the only punishment that provides absolute justice. There are countries in the world which abolished this system of capital punishments. The concept of capital punishment was prevailing since ancient times and while analyzing modern rights and values which an individual acquired like human rights, explains the importance of considering the value of the life of the offender as well. There is a strong argument that is related to the societal pressure that compels a person to be a criminal. The argument over there was that the societal compulsions will result in a situation in which people end up committing crimes. This could be anything socio- economic conditions, Illiteracy, etc. Here the major reasons for the creation of criminals are society. It was because of the social compulsion a person will end up committing a crime. Hence

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<sup>34</sup> Supra 11, p.4

<sup>35</sup> Capital punishment. *SCCJR the Scottish centre for crime and justice research*, 5

<sup>36</sup> Supra 19,p.8

reforming him and returning to the societal life is a serious matter of concern. The major aim of the penal system is this kind of reformative action within the punishment. The punishment finally helps in getting back the person to his ordinary life. In the case of solitary confinement it was emphasized on the aspect that the punishments like solitary confinement are generating trauma in the prisoners than reformatting them the end result of such punishment is a physically and mentally ill human being. Hence it is very evident that such kind of a punishment can never benefit a person in understanding his mistakes in life.

The punishment system existing today is not discriminating in any form. Hence above all dissimilarities and differences ultimately the system will punish everyone equally.

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