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## RELEVANCY OF CAPITAL PUNISHMENT IN PRESENT SCENARIO: A SOCIO-LEGAL STUDY

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### ABSTRACT

It is a well-settled rule in human society from the very beginning till today even from the Vedic period to modern society, that every person irrespective of his caste creed, sex, age, religion, or colour, is a creature of nature and God so that everyone has right to live with full age and pleasure. No one can take the life of any other, similarly, no one has any right to disturb the peace of anyone. If anyone will destroy this liberty, he, or she will be subjected to be punished.

The death punishment has been subjected to debate in society, whether it is proper and reasonable to meet the goals of punishment. The death punishment is subjected to both senses, one side it was considered the need of society in order to prevent the offences, another side it was criticised by many agencies, like Human Rights Commission and Judiciary also, Lastly it has been recommended by Apex court of India by laying down the test of “Rare rest of Rare Case” that capital punishment can be awarded. But after passing many years from the day of adopting the death sentence, the offence of heinous nature are repeated by the culprits therefore it is to be considered whether awarding the death sentence is fruitful for the prevention of offences or beside the death sentence other measures should also be exercised in order to prevent the offences. It is considered that capital punishment is not the sole model to prevent offences. In India after the execution of the death sentence of four accused in the Nirbhaya case, again gang rape with a lady doctor was ravished so only death punishment is not adequate to prevent the brutal offences.

**Keywords:** Brutal, Capital Punishment, Offences, Rarest of Rare

## **Introduction**

The execution of the death sentence by public hanging is brutal and barbaric, in contravention of article 21 of constitution<sup>1</sup>. Therefore it is criticised on this ground that, awarding death sentence to the accused does not subserve any purpose<sup>2</sup>

To award capital punishment which is not executed in due time, does not achieve mental satisfaction to the victim. The death sentence is executed after long time when victim party changes his mind and think to grant pardon to the accused as was seen in case of Former Prime Minister Rajeev Gandhi's assassination case.

Crime, criminals and punishment are integral part of every society. Because the rationale of law is the basic instinct of human being, so the same reason is also behind the origin of criminal laws. The modern objective of punishment is of twofold. First, to discourage the wrongdoer himself and spread the message in society that if anyone does so could be treated with the same treatment.

The ultimate object of all the laws and punishment is to facilitate the society for smooth running. In this way it is up to state to make all the efforts which may directly or indirectly assist the society for its progress with maintaining peace and tranquility. Criminal laws and punishment embedded to it are one of the efforts in this direction by the state.

It is the state which executes the punishment against the convict, no individual or group is authorized to take action against the wrongdoer or culprit except in self-defense cases. There are number of criminal laws in India but Indian Penal Code is one of them which define general offences and lays down punishment for it. Apart from IPC, there is also some anti-terror law as which provide severe punishments committed under the law.

Section 53 of IPC<sup>3</sup> define rather tells about the kind of punishment. According to it following punishment is prescribed for different offences:

1. Death
2. Imprisonment for life

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<sup>1</sup> Attorney General of India vs. Lachhima Devi 1986 Cr.L.J.364 SC

<sup>2</sup> T.V.Vatheeswaran Vs. State of Tamil Nadu 1983 Cr.L.J.481 SC

<sup>3</sup> Act no. 45 of 1860

3. Rigorous and simple imprisonment
4. Forfeiture of property
5. Fine

So, in our legal system death penalty is a part of the punishment in written since 1860? Besides IPC some anti-terror laws also prescribe the death penalty.

In India death penalty is prescribed for murder, gang rape with murder, abetting the suicide of a child or inducing a person waging war against a govt. aid abetting mutiny by a member of the armed forces. Capital punishment is also provided under home anti-terror laws for those convicted of terrorist activities.

The term “capital” in capital punishment is derived from Latin “Capitalis”, which means “of the head”. The connection between “head” and “mortality” is an old one. Hence a capital punishment is that which affects the life or “head”.

Generally courts award life imprisonment to accused in a murder case only in rarest of rare cases. Death sentence is awarded only when the courts come to the conclusion that, life imprisonment is inadequate having regard to the facts and circumstances of the case.

Section 354 (3) of the code of criminal procedure<sup>4</sup> requires a judge to give “special reason” for awarding death sentences.

In *Bachan Singh V state Punjab*<sup>5</sup> Supreme Court originated the “rarest of rare” doctrine. Since then life imprisonment is the rule and death sentence exception. Rarest of rare depends upon facts and circumstance of a particular case, brutality of the crime, chances of reforming and integrating him into the society etc.

In the above case Supreme Court also observed that, “death penalty should be imposed when collective conscience of the society is so shocked that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability of otherwise of retaining death penalty.”

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<sup>4</sup> 1973

<sup>5</sup> AIR 1980 SC

Awarding the death sentence following point should be taken into consideration:-

1. manner of commission of murder,
2. motive of commission of murder,
3. Anti-social or socially abhorrent nature of crime and magnitude and personality of victim of murder.

In India death penalty is not generally awarded for murderer, because if we see the past 25 years we find only six death penalty have been executed. These are under-

1. Auto Shankar(1995)
2. Dhananjay chaterjee (2004)
3. Ajmal Kasab (2012)
4. Afzal Guru (2013)
5. Yakoob Memon (2015)
6. Nirbhaya gang Rape case 20 march 2020

Death sentence is criticized by many groups and organization mainly on the following ground:-

“If it is wrong for a man to kill another man, so it is even for the state to do. Besides, citing statistics, abolitionist jurist argue that capital punishment has had no visible effect as a deterrent and has failed to bring in a dip to the number of murderers which according to them makes capital punishment completely useless.”

On the basis of the above discussion certain suggestions may be put forward regarding capital punishment.

1. There should be a clear-cut policy regarding the exercise of article 72 and 161 by president and governors of state respectively, when they take action for or against the convict on the basis of mercy plea-petition.
2. There must be appropriate amendments in Cr P.C. for execution the death penalty within certain time period after the final judgment. President and Government will have to dispose the mercy-petition within the stipulated time.
3. It is also desirable that legislature expressly mention the circumstances and situations which may fall within the rarest of rare. So in this regard it is need to amend the relevant

provision.

4. In case of execution of death penalty against a hardcore terrorist, his dead body must be disposed of ritually according to his dharma inside the prison area.

**References:**

- 1 Indian Penal Code - Prof.S.N. Mishra 22<sup>nd</sup> edition p.141 CLA Publication
- 2 Constitutional Law of India Mamta Rao 2<sup>nd</sup> edition EBC P.307
- 3 Constitutional Law of India J.N.Pandey 58<sup>th</sup> edition CLA p.342,343.