

---

# A CRITICAL ANALYSIS OF CAPITAL PUNISHMENT IN INDIA

---

Daniel T Sangtam, LL.M, The Assam Royal Global University

## ABSTRACT

A country has a large number of crimes and criminals in which the punishment is based on the motive to give a penalty to the wrongdoer. In India, since it follows a reformatory theory has two reasons for imposing punishment which may include the wrongdoer suffering and discouraging others from doing wrong by setting examples. As there are different types and forms of punishment in India, this article focuses more on Capital Punishment also known as the Death Penalty which is awarded by the court in the rarest of the rare cases.<sup>1</sup> Criminal justice system in India where there is an increase in the numbers of human rights movements provides that capital punishment is as immoral, it argued that Capital punishment violates the individual's right. However, we hardly find high profile persons, who have money have a high probability chance of escaping from this type of punishment, thereby capital punishment in its operation is declaratory.<sup>2</sup> Most of the decided cases awarding the Death Penalty generally belong to the poor and downtrodden class.<sup>3</sup> From ancient times as well people have been put to death for offences which may include stoning, crucifixion, drowning, impaling, beheading, etc. Nowadays, Death Penalty is done through hanging, shootings, injections, etc. Most of the ancient methods of punishment have been eliminated in modern times.

The study focuses on analysing the modes in which an execution is carried out, the constitutional validity of awarding Capital Punishment in India along with the judicial pronouncement in support of giving the Death Penalty. The study also laid down various obscure areas and tries to give some suggestions.

**Keywords:** Capital Punishment, Law, India.

---

<sup>1</sup> Capital Punishment in India, Arya Mishra, <http://blog.ipleaders.in/capital-punishment-2/>

<sup>2</sup> Rajya Sabha Debates, April 25, 1958, Col. Per Sh. B.B.B. Sinha

<sup>3</sup> Monica K. Miller and R David Hayward, Religious Characteristics and the Death Penalty, (June, 11, 2022, 22:39) <http://www.jstor.org/stable/25144611>

## INTRODUCTION

Punishment is the result or the consequences of the action done against the rules and regulations. The punishment of 'Capital Punishment' or 'Death Penalty' is distinct from various forms of punishment as it is irrevocable and has a retributive<sup>4</sup> nature. As a result of which there has been a lot of debates for many centuries.

'Death Penalty' or 'Capital Punishment' is the highest degree of punishment, for the most serious and grievous offences in any part of the world. While the punishments are to be imposed to create deterrence amongst the offenders, the offenders are also to be given an opportunity for reformation. In Indian Criminal jurisprudence, while imposing the sentence for death, the court has to record its special reason for its conclusion. For instance, for the session court to impose death sentence must submit the proceedings to the High Court and for which it cannot be executed until and unless it is confirmed by the High Court. Upon receiving the order from the High Court, the Session Court will issue a warrant in the prescribed form to the officer in charge of the jail for the proper execution of the sentence. When the death sentence has been executed, the officer shall return the warrant to the Court of Session, with an endorsement under his hand certifying the manner in which the sentence has been executed.<sup>5</sup>

In the Indian Penal Code, the Capital Punishment where the state has the right to take the life of a person has always been issue moralists who feels that the Death Penalty is required as a deterrent measure and the progressist who argue that judicial taking life is nothing else but court mandated murder.<sup>6</sup>

Offences for which Death Penalty maybe imposed under Indian Penal Code.

- ❖ Waging or attempting to wage war or abetting the waging of war against Government of India (Sec. 121).

---

<sup>4</sup> Retribution is a kind of theory of punishment which means of inflicting injury in return of injury, i.e., evil for evil. Since adoption of Code of Hammurabi, the principle of 'an eye for an eye and a tooth for a tooth' has been accepted as a principle of punishment where the wrongdoer merited punishment.

<sup>5</sup> Sneha Singh & Anubhuti Singh, Capital Punishment in India: A critical Analysis, VOL. 1 ISSUE 2 DROITPENALE: Indian Law Journal On Crime & Criminology (online) ISSN: 2456-7280

<sup>6</sup> Death Penalty as a punishment: The Debate, ( June, 12, 2022, 12:23), <http://www.ukessays.com/essays/criminology/capital-punishment-execution-publicity-in-india-criminology-essay.php>

- ❖ Abetment of mutiny actually committed (Sec. 132).
- ❖ Giving or fabricating false evidence upon which innocent person suffers death ( Sec. 194).
- ❖ Murder (Sec. 302).
- ❖ Punishment for murder by lifer (Sec. 303).
- ❖ Abetment of suicide of a child, insane or intoxicated person (Sec. 305).
- ❖ Abetment to murder by a person under sentence of imprisonment for life; if hurt is caused (Sec. 307).
- ❖ Dacoity with murder (Sec. 396).

While passing a sentence by the Judge in the matter of awarding Death Penalty has a vast discretion power, except in the solitary cases provided under Section 303 of Indian Penal Code which had left no option to the judge as it made capital sentence compulsory in the case of a convict who committed murder while undergoing a sentence of imprisonment for life was later struck down by the Supreme Court on the basis of Unconstitutional.<sup>7</sup>

### **CAPITAL PUNISHMENT: INTERNATIONAL PERSPECTIVE**

Many countries and Organisations have criticized this form of punishment. The United Nations General Assembly stated that in the case of Death Penalty, there is a need for the high standard of fair trial which should be followed by every country. The United Nations Economy and Social Council has asked its member states to abolish the Death Penalty but stated that those member states which wish to retain the capital punishment must ensure speedy trial to the defendants. Most of the European Union countries have abolished the death sentence.

In the Universal Declaration of Human Rights (UDHR), 1948, under Article 5 and International Covenant on Civil and Political Rights 1966, under Article 7 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Capital Punishment has been recognised as a cruel, inhuman and degrading punishment which infringes on the basis of human rights of the accused as expressed in Article 3 of the European Convention of Human Rights.

---

<sup>7</sup> B. Anjali and M. Kannappan, *A Critical study on punishment with reference to section 302 of IPC*, Saveetha School of Law, International Journal of Pure and Applied Mathematics, Volume 119 No. 17 2018, 1101-1116 ISSN: 1314-3395 (on-line version) url: [http://www.acadpubl.eu/hub/Special Issue](http://www.acadpubl.eu/hub/Special%20Issue).

Every member state of the United Nations has the sovereign right to determine its own legal system and appropriate legal penalties, as to which India has opposed the United Nations resolution for a moratorium on Death Penalty. Meanwhile, in India, the Capital Punishment are awarded only in the rarest and rare case when the crime committed is so grave that it outrages the conscience of the whole society.

## ANALYSIS OF MODE FOR EXECUTIONS

### 1. Ancient modes of Death Penalty

It differs from one civilisation to another, some of which may include of:

- a. **Crucifixion:** - From 6<sup>th</sup> century B.C till 4<sup>th</sup> century A.D, this method was the most common and painful practice, usually found among the Seleucids, Carthaginians, Persians and Romans. In this method a condemned person is tied or nailed to a large wooden cross and hanged till death. Even Jesus Christ was crucified using this method of Death Penalty.
- b. **Dismemberment:** - It's an act of cutting, tearing, pulling, wrenching or otherwise removing, the limbs of living beings. It was practised upon human beings as a form of Death Penalty.
- c. **Execution by elephant:** - In South and Southeast Asia, for a thousand of years this method was used as a form of capital punishment, where an elephant were used to crush, dismember, or torture captives in public executions. As this elephants were trained either to kill immediately or torture them slowly over a prolonged period. Employed by royalty, the elephant were used to signify both the ruler's absolute power and his ability to control wild animals.<sup>8</sup>
- d. **Death by boiling:** - this is a method of execution, in which a person is killed by being immersed in a boiling liquid such as water or oil. While not as a common as other methods of execution, boiling to death has been used in many parts of Europe and Asia.<sup>9</sup> The accused was dropped in boiling water, oil or tar until death.<sup>10</sup>

---

<sup>8</sup> Kritika Gupta, *CAPITAL PUNISHMENT IN INDIA AN EVALUATION*. ( Vivekanand Institute Of Professional University, Gpsip University)

<sup>9</sup> Supranote 8, at 12)

<sup>10</sup> N.M. Ghatate, Consultation paper on mode of execution of death sentence and incidental matter. Law Commission of India, Ministry of Law. (2000). 5-13

## 2. Modern methods of execution.

The methods adopted for providing Capital Punishment may include:-

- a. **Hanging:** Hanging till death is the most common and popular method in many countries. However with regard to India, it is illegal to hand the offender at a public place.
- b. **Execution by fire:** During World War II, it was the most common form of execution where a firing squad are called upon and then the accused person is tied up to a pole to be fired upon.
- c. **Guillotining:** Another form of execution which can be seen in French Revolution. Dr. Joseph Guillotine was the person who invented this method whereby the accused person's head was placed in a round hole on a wooden block and a blade is dropped, resulting in cutting the person's head.
- d. **Lethal Injection:** A new method is known as the lethal injection method introduced for the execution of capital punishment. For the first time, it was used at Yokohama in America in 1977. The positive quality of this technique is that it kills the criminal in few seconds and it does not give any physical pain to the offender. At present, it is used in Canada, England and other countries. Lethal Injection may appear to be more humane than other type of methods, but it is also a very slow process. It is essential that the caretaker actually goes into a vein rather than through it or round it if the prisoner is to die a pain free death. If it doesn't work then the person may suffer a great deal of pain but will be unable to communicate, this is due to the paralysing effect of the second drug. The biggest single objection to lethal injection is the length of time required to prepare the prisoner, which can take from 20 to 45 minutes depending on the ease of finding a vein to inject into.<sup>11</sup>

## 3. Methods of execution in India

In India, the two most popular methods of providing Capital Punishment are hanging and shooting.

---

<sup>11</sup> Deepak Verma, A PROJECT REPORT, ON “*Capital Punishment*” for the session 2008-10 MMIM, Maharish Markendeshwar University, Mullana (Ambala) 7

- a. Hanging:** All the execution in India is carried out by hanging the criminal till death. In 1949, the assassin of Mohandas Karamchand Gandhi i.e Nathuram Godse was the first person to be hanged till death in Independent India. The Supreme Court of India suggested that the punishment of death sentence should be awarded in that case which comes into the ambit of 'rarest of rare' cases.<sup>12</sup>
- Since 2010, the death execution of two persons had been done. One is of Afzal Guru, terrorists who attacked the Indian Parliament in December 2001. His execution was held in Tihar Jail, Delhi by hanging on February 9, 2013. The other is of AJmal Kesab, who was the lone surviving terrorists of the Mumbai attack in 2008. His execution for death was done on November 21, 2012, in Yerwada Central Jail, Pune at 7:32 a.m.
- b. Shooting:** The Army Act and the Air Force Act, 1950 provides the provision and methods for awarding capital punishment.<sup>13</sup> Section 34 of the Air Force Act, 1950 empowers the court to impose the death penalty to the offences mentioned in Section 34(a) to (o) of the Act. This provides the discretionary power to the court to provide for the execution of the death sentence either by execution or by shooting. As the Air Force Act, 1950, the Army's Act, 1950 and the Navy Act, 1957 also provides for similar provisions.<sup>14</sup>

## SUGGESTIONS AND RECOMMENDATION

Some recommendation put forwarded by the Law Commission are:

### 1. No age limit must be prescribed for awarding the death penalty

In India, no law permits to award death penalty to the Juvenile but if any juvenile commits heinous crime like rape, murder, etc which if falls under the category of 'rarest of rare case' it means that while committing the offence he has sufficient amount of understanding for the act he was committing and on this ground he must be awarded with Capital Punishment.

### 2. No pardon power for terrorist

---

<sup>12</sup> Monica Sakhrani; Adenwalla, Maharukh; economic & Political Weekly, "Death Penalty-Case,45

<sup>13</sup> "Consultation paper on mode of execution of death sentence and incidental matters" Law Commission of India. (June 18, 2022, 11:27 AM)

<sup>14</sup> Arya Mishra, Capital Punishment in India, ( June 18, 2022, 13:12 P.M), <http://blog.iplayers.in/capital-punishment-2/>

Indian Constitution grant pardon power to the President and Governor but if the accused found terrorist who affected the public at large, then he must not get the right to appeal for pardon.

### **3. Capital Punishment must not be provided in haste**

The Constitutional Courts before awarding death penalty should properly analysis each and every aspect by a penal of Jurist and shall not provide death penalty in haste.

### **4. Punishment should be according to the act**

Judicial hanging is the only procedure in India for execution of death penalty. In our country, death penalty does not award on petty offences but it uses to be pronounced only on rarest of rare case. The execution of death penalty must be according to the gravity of the act committed by the accused which will create a fear in mind of criminals so that they may not commit such type of offence and harm the public.

### **5. Appropriate law should be laid down**

As there consists of many statutes in our Indian Criminal Justice System which provide for the award of Capital Punishment, it was found that there were many laws present for awarding death penalty but no use to provide the grounds under which such punishment should be penalised in rarest of rare case, which in result creates a lot of confusion in the minds of jurist that on what ground the same punishment should be awarded to the accused.

### **6. Decision must be taken with due care**

Though the guardian of Indian Constitution has discretionary power to award the death penalty by following the precedent decision of constitutional court, it was recommended that while awarding the capital punishment the jurist should keep in mind that although the accused has committed brutal act but if there are some present conditions indicating that the accused will not harm the society, on this ground he must not be awarded with death penalty and this will be decided by his past behaviour in the society before committing crime.

### **7. Death Penalty should not be delayed after its pronouncement**

In *Triveni Bai v. State of Gujarat*, it was held that death penalty execution should be delayed on reasonable grounds so that the accused may get fair trial. But here it is recommended that the jury must not delay after the pronouncement and this method should be abolished by imposing the duty on the constitutional guardians to properly analyse the act relating the offence. It does not mean the accused should not get the right to appeal but that right must be provided for a specific period of time.



## BIBLIOGRAPHY

### 1. STATUTES

- a. Code of Criminal Procedure, 1973.
- b. Constitution of India, 1950.
- c. Indian Penal Code, 1860.
- d. United Declaration of Human Rights, 1947
- e. United Nation Economic and Social Council (ECOSOC) 1996.

### 2. BOOKS REFERENCE

- a. Battacharya T, The Indian Penal Code, (7<sup>th</sup> edition, Central Law Agency, Allahabad, 2013)
- b. Chaturvedi, R.G: Judiciary Under Constitution, 1978
- c. Gupta, Dr. Subhash C, Capital Punishment in India ( New Delhi: Deep & Deep Publications, 2000)
- d. Paranjape, N.V, Criminology, Penology and Victimology, ( Central Law Publication, Allahabad, 17<sup>th</sup> edition, reprinted 2018)
- e. Myneni S.R, (7<sup>th</sup> edition Vol 1, Allahabad Law Agency)

### 3. INTRENET SOURCES

- a. Arya Mishra, Capital Punishment in India,  
<http://blog.ipleader.in/capital-punishment-2/>
- b. Death Penalty as a punishment: The Debate,  
<http://www.ukessays.com/essays/criminology/capital-punishment-execution-publicity-in-india-criminology-essay.php>
- c. B. Anjali and M. Kannappan, *A Critical study on punishment with reference to section 302 of IPC*, Saveetha School of Law, International Journal of Pure and Applied Mathematics, Volume 119 No. 17 2018, 1101-1116 ISSN: 1314-3395 (on-line version) url: [http://www.acadpubl.eu/hub/Special Issue](http://www.acadpubl.eu/hub/Special%20Issue).

