

## DEATH PENALTY: LEGAL MURDER BY THE STATE

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### **Abstract**

Death penalty is execution of a person for a specific crime after a proper legal trial. In my opinion it is a legal murder by the state itself as it offers society no further security but further brutalisation. The death penalty doesn't prevent terrible crimes and only seems to serve as a means of revenge. 'It is believed that deterrent punishment is the important purpose of criminal justice as it creates an awe not only in the mind of the offender but in the minds of others also and deter them from committing crimes. But actually the purpose of punishment or criminal justice should be to readjust the criminal to the demand of the society.'<sup>1</sup> The wide judicial discretion given to the court has resulted into enormously varying judgment, which does not portray a good picture of the justice delivery system. What is needed to be done is that the principle laid down in cases like Bachan Singh or Machhi Singh have to be strictly complied with, so that the person convicted for offence of similar nature are awarded punishment of identical degree.

Death penalty is a time immemorial practice of executing someone as punishment for a specific crime after a proper legal trail. It can only be used by the state. It is used as a punishment for particularly serious types of murder, but in some countries treason, types of fraud, adultery and rape are capital crimes.

In past sentence was carried out by drowning, burning, impaling and quartering of the accused, etc. However, the methods currently used are considered more humane than those various forms used in past. The object is to execute with least amount of suffering. There has been worldwide growing humanistic approach to criminals and punishment. There has been growing public opinion in favour of abolishing death sentence.

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<sup>1</sup> Tripathi B.N, "JURISPRUDENCE LEGAL THEORY", 17th Edition 2006, Allahabad Law Agency, Allahabad.

The issue of abolition of death penalty is constantly being debated. The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state in the name of justice. It violates the right to life as proclaimed in the Universal Declaration of Human Rights<sup>2</sup>. It is the ultimate cruel, inhuman and degrading punishment, whatever form it takes—electrocution, hanging, gassing, beheading, stoning, shooting or lethal injection. There can never be any justification for torture or for cruel treatment. Like torture, an execution constitutes an extreme physical and mental assault on an individual. The physical pain caused by the action of killing a human being cannot be quantified, nor can the psychological suffering caused by foreknowledge of death at the hands of the state.

Everyone think that human life is valuable. Some of those against death penalty believe that human life is so valuable that even the worst murderer should not be deprived of the value of their lives. They believe that the value of the offender's life cannot be destroyed by the offender's bad conduct even if they have killed someone. Some abolitionists don't go that far. They say that the life should be preserved unless there is a very good reason not to. Mahatma Gandhi ji has said<sup>3</sup> "God Alone Can Take Life Because He Alone Gives It."

Everyone has an inalienable human right to life, even those who commit murder; sentencing a person to death and executing them violates that right. Another argument against death penalty is that it sooner or later innocent people will suffer due to the mistakes or flaws in the justice system. Witnesses, prosecutors and jurors can all make mistakes. When this is coupled with flaws in the system it is inevitable that innocent people will be convicted of crimes. Where death penalty is used such mistakes can be put right.

At times people are not responsible for their acts. It is generally accepted that people should not be punished for their actions unless they have a guilty mind which acquires them to know that what they are doing and that it is wrong. Therefore people who are insane should not be convicted, let alone executed. This doesn't prevent insane people who have done terrible things being confined in secured mental institutions, but this is done for public safety, not to punish the insane person. To put it more formally, it is wrong to impose death penalty on those who have at best a marginal capacity for deliberation and for moral agency. A more

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<sup>2</sup> The Universal Declaration of Human Rights (UDHR). 1948

<sup>3</sup> As written in his book Harijan

difficult moral problem arises in the case of offenders who were sane at time of their crime trail but who develop signs for insanity before execution.

Now let us take one by one various aspects of death penalty starting up with the legal aspect. Indian Criminal jurisprudence is based on a combination of deterrent and reformatory theories of punishment. While the punishments are to be imposed to create deter amongst the offenders, the offenders are also to be given opportunity for reformation. The courts while imposing death sentence has to record its special reasons as to why the court came to the conclusion.

Capital Punishment is laid down as a penalty in several legislative Acts, such as:

- **Indian Penal Code, 1860<sup>45</sup>**
- **Army Act, 1950, the Air Force Act, 1950 and the Navy Act 1956<sup>6</sup>**
- **The Commission of Sati (Prevention) Act, 1987<sup>7</sup>**
- **The Narcotics, Drugs and Psychotropic Substances Act, 1988.<sup>8</sup>**

Several legislative attempts to abolish the death penalty in India have failed. Before Independence a private Bill was introduced in the 1931 Legislative Assembly to abolish the death penalty for penal code offences. The British Home Secretary at the time however rejected the motion.

The Government of independent India rejected a similar Bill introduced in the first Lok Sabha. Efforts were also made in Rajya Sabha to move resolution for abolition of death sentence in 1958 and 1962 but were withdrawn after some debate.

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<sup>4</sup> Mishra S.N, "INDIAN PENAL CODE", 23<sup>RD</sup> edition 2012, Central Law Agency, Allahabad

<sup>5</sup> Under the IPC eleven offences are punishable by death. For ex-Murder, Abetment of suicide by a minor or insane person, Dacoity with murder etc.

<sup>6</sup> A death sentence may also be imposed for a number of offences committed by members of the armed forces.

<sup>7</sup> Prescribes punishment by death for any person who either directly or indirectly abets the commission of sati (immolation of a widow).

<sup>8</sup> Introduced the death penalty as a punishment for financing, or engaging in the production, manufacture or sale of narcotics or psychotropic substance of specified quantities (e.g. opium 10 kgs, cocaine 500 gms) after previous convictions.

The Law Commission in its Report presented to the Government in 1967 and to the Lok Sabha in 1971 concluded that the death penalty should be retained and that the executive (President) should continue to possess powers of mercy

The issue regarding the constitutionality of hanging as a mode of execution came up before the Supreme Court in **Deena v. Union of India**<sup>9</sup>, though the court asserted that it was a judicial function to probe into the reasonableness of a mode of punishment, it refused to hold the mode of hanging as being violative of Article 21 of the constitution.

This issue was once again raised in **Shashi Nayar Case**<sup>10</sup> the court held that since the issue had already been considered in Deena, there was no good reason to take a different view.

Another issue which deserves attention is public hanging as a mode of execution. The issue of public hanging came to the Supreme Court through a writ petition **Attorney General v. Lachma Devi**<sup>11</sup> in this petition the order of Rajasthan High Court regarding the execution of the petitioner by public hanging under the relevant rules of Jail manual. The S.C. held that public hanging even if permitted under the rules would violate the Constitution<sup>12</sup>.

In the case of **Jagmohan v. State of U.P.**<sup>13</sup> the question of constitutional validity of death punishment was challenged before the SC, it was argued that the right to live was basic to freedom guaranteed under Article 19 of the constitution. The S.C. rejected the contention and held that death sentence cannot be regarded as unreasonable per se or not in the public interest and hence could not be said to be violative of Article 19 of the constitution.

After CrPC<sup>14</sup>, 1973, death sentence is the exception while life imprisonment is the rule. Therefore, by virtue of section 354(3) of CrPC. it can be said that death sentence be inflicted in special cases only. The apex court modified this terminology in **Bachan Singh v. State of**

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<sup>9</sup> AIR 1993 4 SCC 645

<sup>10</sup> AIR 1992 SCC [CRI] 24

<sup>11</sup> AIR 1989 SCC [CRI] 413

<sup>12</sup> Pandey J.N, "THE CONSTITUTIONAL LAW OF INDIA", 50<sup>th</sup> Edition 2013, Central Law Agency, Allahabad.

<sup>13</sup> AIR 1973 SCC [CRI] 169

<sup>14</sup>Ratanlal and Dhirajlal "THE CODE OF CRIMINAL PROCEDURE", 20<sup>th</sup> Edition 2011, LexisNexis Butterworth.

**Punjab**<sup>15</sup> and observed- “A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed...”

To decide whether a case falls under the category of rarest of rare case or not was completely left upon the court's discretion. However the apex court laid down a few principles which were to be kept in mind while deciding the question of sentence. One of the very important principles is regarding aggravating and mitigating circumstances. It has been the view of the court that while deciding the question of sentence, a balance sheet of aggravating and mitigating circumstances in that particular case has to be drawn. Full weightage should be given to the mitigating circumstances and even after that if the court feels that justice will not be done if any punishment less than the death sentence is awarded, then and then only death sentence should be imposed.

In the case of **Mohd. Chaman v. State (NCT of Delhi)**<sup>16</sup> on the question of extent of judicial discretion, the court observed:-

“Such standardization is well nigh impossible. Firstly degree of culpability cannot be measured in any case. Secondly criminal cases cannot be categorized there being infinite, unpredictable and unforeseeable variations. Thirdly in such categorization, the sentencing procedure will cease to be judicial. And fourthly, such standardization or sentencing discretion is policy matter belonging to the legislature beyond the courts functions”

Death penalty advocates imply that all those affected by violent crime support the death penalty universally. Too many governments still believe that they can solve urgent social or political problems by executing a few or even hundreds of their prisoners. The death penalty is discriminatory and is often used disproportionately against the poor, minorities and members of racial, ethnic and religious communities. It is imposed and carried out arbitrarily. In some countries, it is used as a tool of repression to silence the political opposition. Abolition is gaining ground, but not fast enough.

It creates new victims – the families of the executed. Every execution leaves a family behind – a son or daughter who doesn't understand why their parent was executed, a grieving mother

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<sup>15</sup> AIR 1980 SC 898

<sup>16</sup> AIR 2001 (2) SCC 28

who will never hear the voice of her child again. Theirs are among the hidden stories of death penalty.

Death penalty or the execution of the one adversely affects the mental condition of the inmate as well as the people who either witness or participate in the execution and the jurors as well.

In the most severe cases this can lead to "agitation", "psychotic" and "self-destructive" behaviour of the inmate. The healthy "often" became mental ill. "There is an enormous agony in endlessly, and helplessly, waiting while others decide whether you live or die. This is called as 'death row syndrome'. This death row syndrome has played a major role in many of the decision abounding their appeals and volunteering for execution.

Those who witness or participate in executions share an unlikely bond: they are at the absolute centre of the death penalty. The mythology is that executions heal wounds, but studies and individual experiences suggest that executions inflict more wounds than they heal, all while creating a new set of grieving victims.

Studies have found symptoms of anxiety, nausea, and nightmares among journalists who had recently witnessed an execution. Jurors suffer as well. Two studies found that jurors who serve on death penalty trials are likely to endure prolonged distress as a result of determining whether someone should live or die.

As of 2012<sup>17</sup>, a total of 140 countries (including Canada, Mexico, Australia, Russia, South American nations and most European nations) have abolished the death penalty in law or practice. Of these, 80 countries have abolished the death penalty for all crimes, fifteen countries have abolished the death penalty for all but exceptional crimes (such as wartime crimes) and 23 countries can be considered abolitionist in practice, i.e., they retain the death penalty in law but have not carried out any executions for the past ten years or more and are believed to have a policy or established practice of not carrying out executions.

At last, I would like to conclude by the saying:

“The death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake ... Experience has taught us that the constitutional goal of eliminating arbitrariness and discrimination from the administration of death ... can never be achieved without

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<sup>17</sup> As per the Amnesty International's Report.

compromising an equally essential component of fundamental fairness - individualized sentencing.”<sup>18</sup>

### **Bibliography**

1. Pandey J.N, “THE CONSTITUTIONAL LAW OF INDIA”, 52<sup>th</sup> edition 2015, Central Law Agency, Allahabad.
2. Mishra S.N, “INDIAN PENAL CODE”, 24<sup>RD</sup> edition 2014, central law agency, Allahabad
3. Ratanlal and Dhirajlal. “THE CODE OF CRIMINAL PROCEDURE”, 20<sup>th</sup> edition 2011, LexisNexis Butterworths.
4. Tripathi B.N, JURISPRUDENCE LEGAL THEORY, 17<sup>th</sup> Edition 2006, Allahabad Law Agency, Allahabad.

### **Internet sources**

1. [www.google.com](http://www.google.com)
2. [www.indiakanon.org](http://www.indiakanon.org)
3. [www.legalserviceindia.com](http://www.legalserviceindia.com)
4. [www.bbb.co.uk](http://www.bbb.co.uk)
5. [www.ejusa.org](http://www.ejusa.org)
6. [www.old.usccb.org](http://www.old.usccb.org)

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<sup>18</sup> Justice Harry Blackmun, United States Supreme Court, 1994