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Efficacy and Ethics: A Critical Analysis of Capital Punishment in India

JESVENTHI[1]

ABSTRACT

The notion of stringent criminal punishment has been misconceived over the death penalty. Even though, the death sentence in India is not imposed based on no evidence and arbitrarily or without any logical reasoning, Death over another death questions the deterrent effect of the death penalty. It creates a situation of duty of the state vs. the state as a murderer where the question of morality and inhumane violation of human rights arises. This paper focuses on the effectiveness of the death penalty and emphasizes the alternatives with parlance to global views on the death sentence. The paper makes a critical analysis of the executions of the past 5 years and the constitutional validity of the Death penalty.

***Keywords**: Deterrent effect; state as a murder; inhumane violation.*

I. INTRODUCTION

India's stance on the death penalty has also fluctuated in response to changing international human rights standards. The nation's commitment to international treaties and conventions has led to periodic re-evaluations of its capital punishment practices, resulting in moments of alignment with global abolitionist trends and at times, reaffirmation of its retention stance. One significant aspect of India's debate on the death penalty is Section 302 of the Indian Penal Code (IPC). Section 302 lays down the legal framework for punishment for murder, including the provision for the death penalty in cases of the "rarest of the rare" crimes, as determined by the judiciary. This provision has been central to numerous legal battles and public discussions. It empowers courts to award capital punishment when certain aggravating circumstances are present, such as extreme brutality or premeditation. The interpretation and application of Section 302 have been subject to judicial scrutiny, with courts occasionally commuting death sentences to life imprisonment based on evolving legal principles and international human rights standards. Consequently, Section 302 represents a critical element of India's ongoing discourse on the death penalty, reflecting the nation's efforts to balance the demands of justice and human rights within its legal system. The debate surrounding the death penalty in India is

[1] Author is a student at VIT, Chennai, India.

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a dynamic and multifaceted one. Jurists argue that it serves as a necessary deterrent against heinous crimes and provides a form of retribution for victims and society at large. However, opponents raise profound moral and ethical concerns, questioning the state's authority to take a life and highlighting the possibility of wrongful convictions. Moreover, issues of socio-economic bias, arbitrariness in sentencing, and the overarching question of whether the death penalty can truly deter crime have added complexity to this debate. The death penalty in India represents a complex and evolving facet of criminal jurisprudence. Intertwined with contemporary societal values and international human rights standards, its historical roots have engendered a nuanced and dynamic discourse.

II. CONSTITUTIONAL VALIDITY OF THE DEATH PENALTY

In a nation like India, where it has neither validated nor abolished the Death penalty. The validity of the Death Penalty was challenged several times in the Hon'ble Supreme Court of India. Capital Punishment or The Death penalty is an Antithesis of one's right to life and equality since it is not always awarded to all cases and is disproportionate over the crimes and it is also not discriminatory because it is awarded only for serious cases(rarest of the rare cases). But, indisputably Constitution of India does not expressly hold Capital Punishment as Unconstitutional. It does assume the existence of the Death Penalty in Art.134(1) of the Indian Constitution says *" Any judgement, final order, or sentence in a criminal proceeding by a High Court in India may be appealed to the Supreme Court if the High Court reversed an order of acquittal and sentenced the accused to death on appeal, or if it withdrew any case from any court under its jurisdiction for trial and found the accused guilty and sentenced him to death in that trial."*[2] Art.72 of the Indian Constitution says " *Power of the President to grant pardons, etc, and to suspend, remit or commute sentences".* In the case of " Jagmohan Singh vs State of Uttar Pradesh"[3], the validation of the Death Penalty was challenged on the grounds of Art.19[4](freedom of speech) and Art.21[5](Protects life and Personal Liberty). The penal provision Sect.302[6] of the Indian Penal Code was scrutinized on its validity and contended the procedure prescribed Sect.354(3) of the Code of Criminal Procedure (Crpc)[7] was confined to finding guilty and not awarding Death Penalty. The Hon'ble Supreme Court of India upheld the validity and held that " the choice of Death Sentence is done by the Procedure are established by the

[2] The Indian Constitution, arts.134(1), 72
[3] Jagmohan Singh vs The State Of U. P, AIR 1973 SC 947
[4] The Constitution of India, Article 19
[5] The Constitution of India, Article 21
[6] The Indian Penal Code, 1860
[7] The Code of Criminal Procedure,1973 (2 of 1974)

law and it is also decided that the decision of Courts decided between Life sentence and Death Sentence is based on the type of crime, different facts, idea of wrongful act and circumstances being presented to the court before trial.

III. SELECTIVE DEATH PENALTY VIZ., DOCTRINE OF RAREST OF THE RARE CASE

Indian Judiciary system awards the Death penalty to an offender only after commendably circumspect over the decision of Capital Punishment and restricts these decisions through a Doctrine " Rarest of the rare case" which emphasizes selective Choice of the Death penalty over certain factors of scenarios that have to be considered.

The doctrine of Rarest of the rare case, tells that Capital Punishment can only be imposed in rare scenarios i.e., Rarest of the rare case. This Doctrine imposes the death penalty only when the crime is Heinous in Nature and at the same time the accused/offender is not amenable to reform. Factors like the Nature of the Crime- Degree of premeditation and brutality; Motive for the crime; Age and Mental state of the accused; The accused's previous Criminal records; Possibility of rehabilitation; and Public interest play a crucial role in deciding the Capital punishment. In the case of " Macchi Singh and others vs State of Punjab[8]", The Court laid down certain criteria for assessing cases that would fall under the ambit of this doctrine, which are

- Manner of Commission of Murder;
- Motive of Commission of Murder;
- Socially Abhorrent nature of crime;
- Magnitude of crime;
- Personality of Victim of murder.

Although the Formulation of Rarest of the rare case works well enough, it is not free from criticism. It is been put forward that the decisions taken over are given arbitrarily. Since the views expressed by this Doctrine are ambiguous and it is subjected to many interpretations.

IV. ARBITRARINESS IN THE DEATH PENALTY

In 1972, the Supreme Court invalidated all existing death penalty laws due to their arbitrary application. Subsequently, in 1976, constitutional guidelines were introduced to mitigate the potential for such arbitrariness in the future. The extensive discourse surrounding the death penalty in India primarily arises from concerns about its inconsistent application. Several

[8] Machhi Singh And Others vs State Of Punjab, AIR 1983 SC 957

factors contribute to this perception of unpredictability:

1. **Judicial Discretion:** The use of the death penalty relies heavily on the discretion of judges. This subjective element can result in uneven judgments and penalties, giving rise to worries about the arbitrary nature of the process.
2. **Socio-economic Disparities:** Critics argue that individuals from marginalized and economically disadvantaged backgrounds may be more likely to receive the death penalty compared to those with better access to legal resources. This inequality can lead to the arbitrary imposition of the punishment.
3. **Prolonged Legal Processes:** India's legal system frequently faces criticism for its protracted delays. Death penalty cases can extend over many years, introducing uncertainty and inconsistency into the sentencing process and causing psychological distress for the accused.
4. **Regional Disparities:** Notable variations in the application of the death penalty across different regions have been observed, prompting concerns about the fairness and consistency of the sentencing process.
5. **Transparency Deficit:** The criteria used to determine who receives the death penalty and who does not are not always transparent. There are concerns about the potential influence of political factors, public opinion, and media coverage on these decisions, which can lead to arbitrary outcomes.
6. **Risk of Wrongful Convictions:** The substantial fear of wrongful convictions is a significant issue. In cases where individuals are mistakenly convicted and sentenced to death, the arbitrary nature of the system becomes a life-or-death matter.

Efforts have been made to address some of these concerns.

In 1980, the Supreme Court of India established guidelines in the “Bachan Singh vs State of Punjab”[9] to restrict the use of the death penalty to the "rarest of rare" cases. However, the interpretation and application of these guidelines remain subjective and can vary among judges.

Recently, there has been a growing debate about the need to reconsider the use of the death penalty in India. Some argue for its abolition or the implementation of stricter safeguards to reduce arbitrariness. The issue continues to be complex and divisive within India's legal and societal landscape.

[9] Bachan Singh vs. State Of Punjab, (1982) 3 SCC 24

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V. EXECUTIONS IN PAST YEARS

1. Execution of Dhanajay Chatterjee (2004)[10]- Dhananjay Chatterjee's execution in 2004 marked a significant moment in India's legal history. Convicted for the heinous crime of rape and murder, his case drew widespread attention and debate regarding the country's stance on capital punishment. While some argued that the punishment served as a deterrent, others questioned the fairness and efficacy of the death penalty. Chatterjee's execution sparked discussions on the need for a comprehensive examination of India's criminal justice system, particularly in cases involving capital punishment, leading to ongoing debates about the ethical, moral, and legal aspects of this ultimate penalty in the country.
2. Mohamed Ajmal Kasab- Mohammed Ajmal Kasab's execution in 2012 marked a significant moment in India's response to terrorism. Kasab was the lone surviving gunman from the 2008 Mumbai terror attacks, which claimed the lives of over 160 people. His swift trial and subsequent execution underscored India's commitment to bringing perpetrators of acts of terror to justice. The case also highlighted the need for international cooperation in combating terrorism and the importance of a strong and efficient legal system to respond effectively to such threats. Kasab's execution served as a reminder of the ongoing challenges posed by terrorism globally and the importance of ensuring a fair and transparent legal process in addressing these security concerns.
3. Execution of Yakub Memon-Yakub Memon's execution in 2015 was for an activity of terrorism. He was convicted for his role in the 1993 Bombay bombings, one of the deadliest terrorist attacks in India's history, which claimed the lives of over 250 people and left hundreds more injured. Memon's trial and subsequent execution were closely watched both within India and internationally, as they highlighted the country's determination to bring those responsible for acts of terrorism to justice. The case also sparked debates about the death penalty's efficacy and morality, leading to discussions on the broader issues of terrorism, justice, and the rule of law. Yakub Memon's execution remains a contentious and thought-provoking chapter in India's ongoing struggle to balance security concerns with human rights and legal principles.
4. The execution of the individuals involved in the Nirbhaya case[11]- In 2020 was a watershed moment for India's justice system and a poignant symbol of the nation's

[10] Dhananjay Chatterjee Alias Dhana vs State Of West Bengal, 1994 (1) ALT Cri 388
[11] MUKESH & ANR V. STATE (NCT OF DELHI) & ORS, (2017) 6 SCC 1

commitment to ensuring justice for victims of heinous crimes. The 2012 gangrape and murder of a young woman in Delhi had deeply shaken the country, sparking widespread protests and demands for swift and stringent punishment for the perpetrators. The culmination of this case with the execution of the convicted individuals signified the country's determination to confront gender-based violence and its resolve to provide a safer environment for its citizens, particularly women. This event also ignited discussions on the necessity of expediting legal proceedings in cases of sexual violence, as well as the broader societal issues surrounding gender equality and women's safety in India.

5. In the case of Ravji alias Ram Chandra v. State of Rajasthan[12], in paragraph 24, the Supreme Court of India delivered a significant judgment that clarified and emphasized a crucial principle in criminal law. In paragraph 24 of the Ravji case, the Court explicitly articulated a principle known as the "doctrine of the rarest of the rare." This doctrine forms the foundation for deciding when the death penalty should be imposed in India. According to this doctrine, the death penalty should only be awarded in the rarest and most exceptional cases where the circumstances surrounding the crime are so heinous, brutal, and gruesome that they shock the collective conscience of society. Importantly, the Court in Rajvi's case underscored that the personal circumstances of the criminal, such as their background, character, or history, should not be the primary focus when determining the appropriateness of the death penalty. Instead, the Court emphasized that the critical factor for consideration should be the circumstances directly related to the crime itself. This means that the courts should assess the gravity of the offense, the degree of brutality involved, and the impact on the victim and society at large. In essence, the Court in Ravji's case made it clear that the death penalty should not be awarded based solely on the character or background of the accused. Instead, it should be reserved for cases where the nature of the crime is so heinous and shocking that it warrants the ultimate punishment, irrespective of the personal circumstances of the offender. This approach reflects a careful balance between the need for retribution and the recognition of the inherent dignity of every individual, even those accused of the most grievous offenses.

VI. CONCLUSION

The Death Penalty is a contentious concept, and the global opposition to it has enlarged

[12] Ravji @ Ram Chandra vs State Of Rajasthan, (1996) 2 SCC 175

significantly. The 262nd Law Commission Report[13] also recommended abolishing capital punishment with exception of the acts of terrorism, thereby not putting a blanket on the Death penalty but uplifting the concept of the Selective Death Penalty. As Aristotle quoted " Evil Lies at the Extremes", the practice of the Death penalty would be a form of retribution and abolition would put the nation at a greater risk because the nation would not be able to take required action when the rarest of the rare case arise.

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[13] Law Commission of India, NEGOTIATING CONSTITUTIONALISM AND DEMOCRACY: THE 262ND REPORT OF THE LAW COMMISSION OF INDIA ON DEATH PENALTY

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