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The Fragile Line: Navigating the Right to Life in the Shadow of Capital Punishment

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ABSTRACT

This paper delves into the complex interplay between the controversial practice of capital punishment and the fundamental human right to life. An individual's intrinsic dignity and worth are embodied in their right to life, which is often regarded as the cornerstone of human rights. At the same time, the death penalty poses serious ethical, legal, and human rights issues as the most extreme form of state-approved life deprivation. Article 21 states that "No person shall be deprived of his life or personal liberty except in accordance with procedure established by law." All the people, i.e. citizens and non-citizens alike, are entitled to this fundamental right. The right to life is a fundamental human right that upholds a person's right to life and protection from wrongful death or deliberate deprivation of life. The Universal Declaration of Human Rights (UDHR) and many national constitutions have stressed the importance of the right to life of the individuals The right to life is a topic of discussion and controversy that often touches on various issues. It has ramifications for many topics, such as the death penalty, war, access to healthcare, environmental protection, and humanitarian disasters. In conclusion, the right to life is a fundamental human right that emphasizes the worth and dignity of every person and calls for the respect of life as well as defence against acts that could endanger it. The death penalty, sometimes referred to as the capital punishment, is the state-approved method of putting someone to death for a crime. Generally speaking, crimes that carry the death penalty include murder, terrorist acts, rape, espionage, and serious drug trafficking in certain jurisdictions. The death penalty's ethical ramifications are examined in detail in this study, with special attention paid to the death penalty's purported deterrent effect on crime and the possibility of irrevocable mistakes that result in the execution of innocent people.

Keywords*: Capital punishment, implication, deterrence, right to life, crimes.*

I. INTRODUCTION

Since criminality is an inherent part of human nature, it is impossible to eradicate it entirely

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from society. Since criminals are a part of our society, it is our responsibility to help them change and become law-abiding citizens. For criminals to exercise some of their fundamental human rights, attitudes toward them should also shift. However, if we take the victims' perspective into account, we find that it is imperative to grant them justice, as there is a significant risk that they may decide to impose justice on themselves. And chaos could result if this takes place. Therefore, it is essential to guarantee that the penalty is appropriate and prescribed to prevent this circumstance.

II. INTERNATIONAL INSTRUMENTS

Amnesty International (London-based) observed at Stockholm in December 1977, "Capital Punishment is the ultimate, cruel, inhuman and degrading punishment and violates the right to life a basic right. The imposition and infliction of the death penalty is brutalising to all who are involved in the process. In India, the movement to abolish the death sentence is still going on with the participation of eminent jurists and intellectuals.

Article 6 of the ICCPR permits the use of the death penalty in limited circumstances, it also provides that "nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant to which India acceded in 1970.[3] Second optional protocol to ICCPR, aiming at the abolition of the death penalty In 1989, 33 years after the adoption of the Covenant itself, the UN General Assembly adopted the Second Optional Protocol to the ICCPR that gave abolition decisive new momentum. Member States which became parties to the Protocol agreed not to execute anyone within their jurisdictions. [4]These requirements are similar to the guarantees provided *by Articles 20 and 21* of the Constitution of India. The Indian Penal Code prescribes the death penalty as an alternative punishment only for heinous crimes which are not more than seven in number. *Section 354 (3) Code of Criminal Procedure, 1973* in keeping with the abovementioned International Covenant, has further restricted the area of the death penalty for persons convicted of murder, life imprisonment is the rule and the death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through the law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed. In view of the above *section 302 of the Indian Penal Code* and *section 354 (3) of the Code of Criminal Procedure*, are constitutional

[3] https://www.ohchr.org/en/topic/death-penalty/international-framework#:~:text=Topic%3A%20Death%20Penalty,Overview&text=Although%20Article%206%20of%20the,Party%20to%20the%20present%20Covenant.%E2%80%9D last accessed on 31-08-2024 at 9.47 am

[4] Ibid

III. EXECUTION OF THE DEATH SENTENCE

In *Deena alias Deen Dayal v. State*[5]Supreme Court reiterated that execution of the death sentence by hanging as provided by *section 354 (5) Code of Criminal Procedure 1973* does not violate *Article 21 of the Constitution* as the system of hanging is as painless as possible in the circumstances and causes no greater pain than any other known method of execution, and there is no barbarity, torture or degradation involved in it.

In *Shashi Nayar v. Union of India*[6], the Supreme Court observed that the procedure provided by the law for awarding a death sentence is reasonable. The death sentence should be awarded in rarest of rare cases and it does not violate the mandate of *Article 21.* The Law Commission had opined in 1967 that the country should not take the risk of abolishing the death sentence. Judicial notice can be taken of the fact that the law-and-order situation in India has not improved since 1967-but-has deteriorated over the years and is fast worsening today. It was also observed that the method of execution of capital punishment by hanging is scientific and is one of the least painful methods and so no other method seems to be warranted.

(A) Rarest of Rare Case Principle

The Supreme Court held by majority at a by majority of 4:1 that the provision of death penalty as an alternative punishment for murder is not violative of Article 19 and 21 of the Constitution. The procedure for sentencing in *section 354 (3) of the Code of Criminal Procedure, 1973)* does not violate *Articles 14, 19 and 21 of the Constitution*

The above guidelines ware still further clarified by the Supreme Court *in Machhi Singh State v State of Punjab.*[7]

In rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded the community may entertain such sentiment in the following circumstances:-

1. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community
2. When the murder is committed for a motive which evinces total depravity and meanness, for example, murder by hired assassin for money or reward, or a cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating

[5] 1983 AIR 1155 1984 SCR
[6] 1992 AIR 395 1991 SCR
[7] 1983 AIR 975, 1983 SCR(3) 413

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position or in a position of trust, or murder is committed in the course for betrayal of the motherland

3. When murder of a member of a Scheduled Caste or minority community etc is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of bride- burning or dowry death or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.
4. When the crime is enormous in proportion, for instance, when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community or locality are committed
5. When the victim of a murder is an innocent child or helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position public figure generally loved and respected by the community

(B) **Constitutionality of death sentence**

In Jagmohan Singh v. State of UP[8]the plea of the Right to life guaranteed under Article 19 of the Constitution was taken to save the accused from the Capital punishment but it was rejected by the Supreme Court. The Court held that capital punishment cannot be regarded as unreasonable 'per-se' or not in the public interest Hence it cannot be said to violate the provisions of Art 19 of the Constitution.

Constitutionality of Death Sentence. The constitutional impermissibility of death sentence was pleaded before the Supreme Court on the following grounds-

(1) Death sentence puts an end to all the fundamental rights guaranteed under sub- clauses (a) to (g) of Article 19(1). Therefore, it is unreasonable and not in the interest of public justice.

(2) *Section 302 of I.P.C*. empowers a Judge to impose death penalty or imprisonment for life. No standard or policy has been laid down by the legislature in preferring capital punishment to the imprisonment for life. Therefore, it is a stark abdication of essential legislative functions. *Section 302* is, therefore, vitiated by the vice of excessive delegation of essential legislative functions.

(3) The discretion of Judge under *Section 302* in imposing death penalty or life-imprisonment is hit by *Article 14* of the Constitution, since the persons guilty of the

[8] AIR 1973 1 SCC 20

offence of murder may be treated differently in awarding of punishment although the facts may be similar.

(4) Under the law, there is no procedure for trial of factors and circumstances crucial for making the choice between the capital penalty and imprisonment for life. The trial for guilty is limited under CrPC. Therefore, the protection given by *Article 21* of the Constitution that 'no person shall be deprived of his life or personal liberty except according to procedure established by law' stands violated

In Rameshwar and another v. State of UP[9] the Court supported the retaining of the death penalty particularly in those cases where the prohibition of grave conduct like murder is required. In this case the Supreme Court did not hesitate to punish an old man with death)

In *Rajendra Prasad v. State of UP*[10], the Supreme Court has observed that capital sentence may be awarded where survival of the society is in danger. Special reasons necessary for imposing death penalty must relate, not to the crime as such but to the criminal. The crime may be shocking and yet the criminal may not deserve death penalty. The crime may be less shocking than other murders and yet the callous criminal e.g., a lethal economic offender, may be jeopardizing societal existence by his act of murder. Likewise, a hardened murderer or dacoit or armed robber who kills and relishes killing and raping and murdering to such an extent that he is beyond rehabilitation within a reasonable period according to current psychotherapy or curative techniques may deserve the terminal sentence. Society survives by security for ordinary life. If officers employed to defend the peace are treacherously killed to facilitate perpetuation of murderers and often plunderers crime, social justice steps in, to demand death penalty dependant on the totality of circumstances

In Bachan Singh v. State of Punjab[11], the contention was that death penalty in Section 302. IPC offends Article 19 of the Constitution as the right to live is basic to the enjoyment of all six freedoms guaranteed in clauses (a) to (e) and (g) of Article 19(1) and death penalty puts an end to all these freedoms. The imposition of death penalty is an unreasonable restriction because it amounts to total prohibition of Article 19 (1).3

Upholding death penalty as constitutional, the Supreme Court held-Some murders may be of purely private significance and the injury or harm resulting there from affects only specific individuals, and, consequently such murders may not be caused by "public order" within the

[9] AIR1978 SCC (2) 518
[10]AIR 1979 SCR(3) 78
[11]AIR 1983 SCC 24 1SCR 145

contemplation of clauses (2), (3) and (4) of Article 19. Such murders do not lead to public order but to disorder simplicities. Yet no rational being can say that punishment of such murderers is not in the general public interest. It may be noted that general public interest is not specified in clauses (2) to (4) on which restriction on the rights mentioned in clause (1) of the Article 19 may be justified. A murder committed in given circumstances may cause only a slight terror, the wavelength of which does not extend beyond the parameters of law and order. Another murder committed in different context and circumstances may unleash a tidal wave of such intensity and gravity that its impact throws out of gear even flow of life. Nonetheless, the fact remains that such murders which do not affect "public order" even the provision of life imprisonment in Section 302, IPC, as an alternative punishment would not be justified under clauses (2).

In *Mithu v. State of Punjab*[12] Section 303 of the IPC was struck down as violative of Article 21 and 14 of the Constitution of India, as the offence under the section was punishable only with capital punishment and deprived the judiciary of its discretionary power and thus, results in an unfair and unjust procedure that costed a man his life. Justice A.K Ganguly of the Supreme Court has termed the award of death sentence as barbaric, anti-life, undemocratic and irresponsible which is legal in the prevailing judicial system. The doctrine of the crime falling in the rarest of rare category in awarding the death penalty was a grey area as its interpretation depended on individual judges. He cautioned that before giving death penalty, a judge must be extremely careful and weigh mitigating and aggravating circumstances.

In Mahesh v. State of UP[13],the Supreme Court refused to reduce the death sentence based on deterrence is more than the reformative jargon.

In Kailash Kaur v. State of Punjab[14]Court has held that it is the duty of the court to be with a case of gruesome murder of a young wife by the barbaric process of pouring kerosene oil on her body, in most severe and strict manner and award the maximum penalty prescribed by the law in order but it may operate as a deterrent to other persons from committing such and anti-social crimes.

In *Vasanta Sampat Dupare v. State of Maharashtra*[15],the petitioner lured the victim a minor girl of four years, by giving her chocolates, kidnapped her and after satisfying his lust caused crushing injuries to her with the help of stones weighing 8.5 kg and 7.5 k Betides other

[12] AIR 1983 SC 473 : 1983 Cri LJ
[13]AIR 1987 SC 1 346
[14]AIR 1987 1368 SCR (2) 1221
[15] AIR 2017 SC (Cri) 833

sentences, the death sentence was awarded to the accused and affirmed by the Supreme Court. Then a review petition was filed in the Supreme Court. The material on the record showed that after the judgment under review, the petitioner cleared Bachelor preparatory programme of IGNOU enabling him to prepare for Bachelor level study and that he also completed the Gandhi Vichar Pariksha and participated in drawing competition. It was asserted that the jail record of the petitioner was without any blemish The possibility of reformation and rehabilitation of the accused was also projected. The Supreme Court dismissed the review petition and held-The aggravating circumstances and the barbaric manner in which the crime was committed and the fact that the victim was a helpless girl of four years clearly outweigh the mitigating circumstances brought on record.

IV. REASONS TO ABOLISH THE DEATH PENALTY

- **The risk of executing innocent people exists in any justice system**

There have been and always will be cases of executions of innocent people. No matter how developed a justice system is, it will always remain susceptible to human failure. Unlike prison sentences, the death penalty is irreversible and irreparable.

- **The arbitrary application of the death penalty can never be ruled out**

The death penalty is often used in a disproportional manner against the poor, minorities and members of racial, ethnic, political and religious groups.

- **The death penalty is incompatible with human rights and human dignity**

The death penalty violates the right to life which happens to be the most basic of all human rights. It also violates the right not to be subjected to torture and other cruel, inhumane or degrading treatment or punishment. Furthermore, the death penalty undermines human dignity which is inherent to every human being.

- **The death penalty does not deter crime effectively**

The death penalty lacks the deterrent effect which is commonly referred to by its advocates. As recently stated by the General Assembly of the United Nations, “there is no conclusive evidence of the deterrent value of the death penalty” (UNGA Resolution 65/206). It is noteworthy that in many retentionist states, the effectiveness of the death penalty to prevent crime is being seriously questioned by a continuously increasing number of law enforcement professionals.

- **Public opinion is not a major stumbling block for abolition**

Public support for the death penalty does not necessarily mean that taking away the life of a human being by the state is right. There are undisputed historical precedence's where gross human rights violations had had the support of a majority of the people, but which were condemned vigorously later on. It is the job of leading figures and politicians to underline the incompatibility of capital punishment with human rights and human dignity.

It needs to be pointed out that public support for the death penalty is inextricably linked to the desire of the people to be free from crime. However, there exist more effective ways to prevent crime[16].

V. CONCLUSION

The idea of death as a punishment has always troubled people. In India's Criminal Justice Administration, the requirements for the preservation of human rights must be met if the death sentence is implemented. Since execution delays are common in our nation, they contradict both the Universal Declaration of Human Rights and Article 21 of the Indian Constitution, which protects fundamental human rights. Any penalty for a crime must be reasonable, fair, just, sufficient, and proportionate to the offence; it cannot, under any circumstances, be excessive given the circumstances of the crime.

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[16]https://icomdp.org/why-the-death-penalty-should-be-abolished/ Last accessed on 31-08-2024, 2:37 pm.