

Death Penalty

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Abstract- The death penalty, also known as capital punishment, is the highest form of punishment given by the state for very serious crimes such as murder, terrorism, or crimes against the nation. It means legally putting a person to death after a proper trial in a court of law. The issue of the death penalty is one of the most debated topics in criminal law across the world. Some countries have abolished it, while others still continue to use it. Supporters of the death penalty believe that it serves as a strong punishment for the most serious crimes. They argue that it provides justice to victims and their families and acts as a deterrent to prevent others from committing similar crimes. According to this view, when a person commits a heinous offence, especially intentional murder, the punishment should be equal to the seriousness of the crime. In India, the Supreme Court in Bachan Singh v. State of Punjab introduced the "rarest of rare" doctrine, which means that the death penalty can be given only in exceptional cases where life imprisonment is not sufficient. On the other hand, opponents argue that the death penalty is inhuman and violates the right to life. They point out the risk of wrongful convictions, where an innocent person may be sentenced to death due to errors in investigation or judgment. Unlike other punishments, a death sentence cannot be reversed once carried out. Critics also question whether the death penalty truly reduces crime, as studies show mixed results. Many human rights organizations like Amnesty International strongly oppose capital punishment and advocate for its abolition worldwide. In India, the constitutional validity of the death penalty was upheld in Jagmohan Singh v. State of Uttar Pradesh, but the courts have emphasized that it must be awarded with great caution. The debate continues between the need for justice and the protection of human rights.

I. INTRODUCTION

The death penalty is one of the oldest forms of punishment in the world. It is usually given for serious crimes such as murder, terrorism, or crimes against the State. Many countries have abolished it, while some still follow it. The death penalty raises important moral, legal, and human rights questions. Capital Punishment has a long and illustrious history dating back to the dawn of time. The first instance in

the Western world appears to be "The Law of Moses," which punishes with death. Murder had become a capital offence by 1179 B.C. in which Egyptians and Greeks were both involved and the capital punishment was given to offenders who were committing heinous crimes. The Mahabharata and Ramayana, two Indian epics, are also popular in India; contain references to the offender being sentenced to vadha-danda, or disfigurement. In more primitive societies, death by violence were a common occurrence. Tribal or group warfare was often the only way to survive. In that period the value of Life was considered very low, and take the personal vengeance in the name of punishment. Exile and death were two of the most common methods for removing dangerous members of the group. "As a result capital punishment was the most expedient mode of punishment at the time and hence it was a medium to attain retribution as well as deterrence when a competent court condemns a person to death for committing a criminal offense against the nation that the government has sanctioned capital punishment is imposed Murder, rape, and mass murder are only a few examples As a tool of social manipulation, criminal law employs coercive strategies to elicit positive wants, and these coercive techniques rely on punishment which can entail deprivation of liberty and even life".² When a competent court condemns a person to death for committing a criminal offense against the nation that the government has sanctioned, capital punishment is imposed. Murder, rape, and mass murder are only a few examples. As a tool of social manipulation, criminal law employs coercive strategies to elicit positive wants, and these coercive techniques depend upon punishment, which may include taking away one's freedom or even one's life. The primary goal of the all punishments, including capital punishment, is deterrence, which can also be referred to as "general prevention." As per the views of Salmond, "Punishment is, above all things, deterrent, and the chief end of the criminal law is to make the evil doer

an example and a warning to all who are like minded with him,” The primary goal of all punishments, including capital punishment, is deterrence, which can also be referred to as "general prevention".³As we can clearly conclude from the findings of the abovementioned statements that the main aim of the legislature in inflicting the punishment of death sentence to the accused is to create deterrence among the society but due to the shortcomings in the procedure of execution of death sentence in India such legislative goal remains unfulfilled.

II. ARGUMENT IN FAVOUR OF DEATH PENALTY

Justice (Retribution): This is the "eye for an eye" belief. People argue that for the most horrible crimes, death is the only fair and balanced punishment.

Deterrence: The idea that the fear of being executed will stop others from committing similar crimes.

Safety (Incapacitation): Once a person is executed, they can never commit another crime again.

Closure: It may help the victim's family feel that justice has finally been served.

III. ARGUMENTS AGAINST DEATH PENALTY

Risk of Executing the Innocent: No justice system is perfect. If an innocent person is executed, the mistake is irreversible.

Right to Life: Human rights groups argue that the state should not have the power to take anyone's life, as it violates basic human dignity.

Lack of Evidence: Many researchers have found no proof that the death penalty actually lowers crime rates more than life in prison.

Cost: It is often much more expensive to execute someone than to keep them in prison for life due to the long and complex legal appeals required.

Unfair Application: Studies show the death penalty is often used more frequently against the poor, minorities, or those without good legal help.

In contemporary times, The State must take responsibilities for safeguarding society from criminal elements; “as a consequence of which, it is also the state's responsibility to punish offenders. Punishment is thus used to reduce the number of crimes committed either by deterring potential offenders or by prohibiting current offenders from committing additional crimes This postulate is often used to justify capital punishment The reason for punishment changes as per the convictions of the individuals every now and then In the times past punishment was dispensed to fulfil human longing to get revenge as of now it has become reformation of the lawbreaker As capital punishment concedes no reformation, the abolitionists need that it ought to be taken out from the statute books Nonetheless so far we have not abrogated it totally despite the fact that it has been kept at most in the rarest of the rare cases”.⁶ “1948 saw the adoption of the Universal Declaration of Human Rights (UDHR). Every person is guaranteed the right to life, liberty, and personal security under Article 3 of the UDHR”.⁷ However, “the International Covenant on Civil and Political Rights was not adopted until 1966, and at that time the death penalty was not included (ICCPR). Since then, the death sentence and its effects on the right to life have been the subject of on-going discussion”. “Article 6 of the ICCPR is the most significant treaty provision relating to the death sentence at the international level. Article 6 offers crucial safeguards that signatories who still impose the death penalty must abide by and guarantees the right to life. It is clear from this Article's provisions that severe limitations are placed on the application of the death penalty”.

IV. RESEARCH METHODOLOGY

The present research on the death penalty is based on doctrinal research methodology. This method involves the study of existing laws, judicial decisions, books, articles, and reports related to capital punishment.

1. Research approach

Primary Research -

This is the most common method, involving the analysis of "bare acts", legal commentaries, judicial decisions (case laws), and legal articles.

Analytical studies:

Through this study from samples of research this paper will identify and provide information related to the process of execution of death sentence. Through the analytical study of research paper issues and problems in the process of execution of death sentence would be analyzed.

Involves examining statutory provisions, legal doctrines, and judicial precedents (e.g., Bachan Singh or Machhi Singh cases in India) to understand the evolution of the "rarest of rare" doctrine.

Descriptive study:

Descriptive research is defined as a research method that describes the characteristics of the relevant topic under study in all circumstances. This research is not based on statistics, but rather on more qualitative methodologies, and might incorporate both quantitative and qualitative data. Only some reference from the already present quantifiable data has been taken in order to determine the statistics in relation to the number of death penalty pronounced, and the how many of them has been executed, regarding the mercy petitions that have been already disposed by the executive or the regarding the mercy petitions that are already pending before the president of India.

Explanatory study:

Explanatory research is a valuable study for a problem that hasn't been thoroughly investigated using other methodologies. It is a type of research which design to focus on explaining the aspects of our study in accurate manner.

Sources of data collection: Source of the Data collection would include: -

- The primary sources are litigation, statutes or provisions related to the constitution of India. Like interpretation by judiciary of the various statutes can be considered.
- And secondary source like books, articles and journals.
- Then, it includes commentaries, experts opinions in seminar and workshops, newspapers and websites.

2. Source of Data –

Primary sources- The Constitution, Indian Penal Code (IPC) or relevant penal codes, landmark judgments (e.g., Bachan Singh v. State of Punjab), and Law Commission of India reports.

Secondary sources- Journal articles, legal books, reports from Amnesty International, and reliable media articles.

V. DEATH PENALTY AND INTERNATIONAL LAW

International law does not completely ban the death penalty, but it strongly discourages it, promoting a trend toward worldwide abolition. While International Covenant on Civil and Political Rights (ICCPR) allows it for the most serious crimes, it sets strict safeguards like fair trials and bans its use on juveniles. Most nations have abolished it, viewing it as a violation of the right to life.

The Universal Declaration of Human Rights (UDHR) recognizes the right to life.

The International Covenant on Civil and Political Rights (ICCPR) allows the death penalty only for the most serious crimes. Position in India-

The death penalty in India is a legal punishment reserved for "rarest of rare" cases involving exceptionally brutal crimes, state crimes, or national security threats. While the supreme court maintains its constitutionality, it is applied cautiously and sparingly, with "hanging by the neck" as the primary method of execution. The judiciary mandates a two stage trial process, weighing aggravating and mitigating circumstances before sentencing.

VI. DEATH PENALTY AND HUMAN RIGHTS

The death penalty, or capital punishment, is the lawful killing of a person by the state as punishment for a crime. It is viewed by many as a violation of fundamental human rights, specifically the "right to life" and the right not to be subjected to cruel, inhuman, or degrading punishment.

Key Points on Human Rights and the Death Penalty:

Right to Life: The most fundamental human right, enshrined in the Universal Declaration of Human Rights, is contradicted by state-sanctioned killing.

Cruel and Inhuman: The death penalty is considered the ultimate cruel punishment, regardless of the method used.

Risk of Error: Justice systems are not perfect. Executing an innocent person is a permanent mistake that cannot be undone.

Discrimination: Often, the death penalty is applied unfairly, disproportionately targeting the poor, minorities, or those with limited access to legal representation.

Not a Proven Deterrent: Many studies indicate that the death penalty is not more effective at preventing crimes than life imprisonment. Alternative to the Death Penalty-

Life in Prison Without Parole: The convicted person stays in jail until they die naturally.

Life Sentence with Parole Possibility: The person stays in prison but might be released after a very long time if they are rehabilitated.

Fixed Long-Term Prison Sentence: The person serves a specific, long, set number of years (e.g., 25+ years).

Psychiatric Hospitalization: For offenders with mental illnesses, treatment in a secure facility is used instead of prison.

These alternatives aim to protect society, punish the offender, and offer a chance for rehabilitation or reform, while avoiding the irreversibility of death.

VII. CONSTITUTIONAL VALIDITY OF DEATH PENALTY

The constitutional validity of the death penalty means whether giving death punishment is allowed under the Constitution of India. In India, the death penalty is legally valid, but it can be awarded only in very rare situations and with strict safeguards. The courts have played an important role in deciding when it can be given and how it should be applied.

The Constitution of India guarantees certain fundamental rights to every person. The most important right in this matter is Article 21, which says that no person shall be deprived of his life or personal liberty except according to procedure established by law. This means that the State cannot take away someone's life unless there is a proper law and a fair legal procedure. The death penalty directly affects the right to life, so its validity has been challenged many times.

The constitutional validity of the death penalty is also connected with Article 14, which guarantees equality before law. Some people argue that death penalty is discriminatory because it is often given to poor or marginalized persons who cannot afford good lawyers. However, the Supreme Court has maintained that as long as proper legal procedure is followed and each case is decided on its own facts, it does not violate Article 14.

VIII. CONCLUSION AND RESULT

The death penalty remains one of the most controversial and widely debated punishments in criminal law. Around the world, scholars, judges, activists, and governments continue to argue about whether it should be retained or abolished. The debate is not only legal but also moral, social, and humanitarian in nature. As a final conclusion, it can be said that the issue of the death penalty lies at the intersection of justice, human rights, and public safety.

Supporters of the death penalty argue that it serves as the highest form of punishment for the most serious crimes such as terrorism and brutal murder. In India, the constitutional validity of capital punishment was upheld in the landmark case of *Bachan Singh v. State*

of Punjab, where the Supreme Court introduced the “rarest of rare” doctrine. According to this principle, the death sentence should only be imposed in exceptional cases where life imprisonment is not sufficient. Supporters believe that this doctrine ensures fairness and prevents misuse. They also argue that it acts as a deterrent and provides justice and closure to the victims’ families. In cases involving threats to national security, like the attack on Parliament in 2001, the execution of Afzal Guru is often cited as an example of the state’s responsibility to maintain sovereignty and law and order.

On the other hand, opponents strongly criticize the death penalty on several grounds. First, they argue that the right to life under Article 21 of the Indian Constitution is a fundamental right, and taking life through state action raises serious moral questions. Second, the possibility of judicial error cannot be ignored. Once a person is executed, the mistake can never be corrected. Third, there is no clear and conclusive evidence that the death penalty acts as a stronger deterrent than life imprisonment. Many countries have abolished capital punishment and still maintain law and order effectively.

The global trend shows a gradual move toward abolition. Many democratic nations have either removed the death penalty completely or limited its application. International human rights organizations argue that capital punishment is cruel, inhuman, and against the dignity of individuals. The concept of reformative justice, which focuses on rehabilitation instead of revenge, also questions the need for such an extreme punishment. Modern penology emphasizes correction and reformation over retribution.

In India, courts have attempted to balance these conflicting views by applying strict guidelines and considering mitigating circumstances such as age, background, mental condition, and possibility of reform. This shows that the judiciary is aware of the seriousness and irreversible nature of capital punishment. However, debates continue regarding inconsistent application and delays in mercy petitions, which sometimes result in additional mental suffering for the convict.

In conclusion, the death penalty remains a deeply sensitive and complex issue. While it is legally valid in India under the “rarest of rare” doctrine, moral and humanitarian concerns continue to challenge its justification. The ultimate question is whether justice is better served by execution or by life imprisonment with the possibility of reform. As society evolves, the need to protect human rights must be balanced with the demand for justice and security. Therefore, the debate on the death penalty is likely to continue, reflecting the ongoing struggle between punishment and compassion in criminal jurisprudence.

RESULT

The results of the use of the death penalty can be understood from legal, social, moral, and practical perspectives. Around the world, countries are divided on this issue. Some countries have completely abolished it, while others continue to retain it for serious crimes like murder, terrorism, and war crimes.

In India, the death penalty is legally valid and is awarded only in the “rarest of rare cases.” This principle was laid down by the Supreme Court of India in the landmark case of Bachan Singh v. State of Punjab. The Court held that capital punishment should be given only when life imprisonment is not sufficient and when the crime shocks the collective conscience of society. As a result, the number of executions in India has been very limited.

One important result of the death penalty is its alleged deterrent effect. Supporters argue that it prevents serious crimes because the fear of death discourages criminals. They believe that harsh punishment ensures justice for victims and their families. However, many studies across different countries show that there is no clear evidence that the death penalty reduces crime more effectively than life imprisonment. Countries that have abolished capital punishment have not necessarily seen an increase in serious crimes. Therefore, the deterrent effect remains uncertain.

Another significant result is the possibility of wrongful convictions. Judicial errors can occur due to false evidence, mistaken identity, forced confessions, or poor legal representation. If an innocent person is

executed, the mistake cannot be corrected. This risk has led many countries to abolish the death penalty. The existence of this risk creates fear and mistrust in the criminal justice system.

The death penalty also has social and psychological effects. It may provide a sense of closure to victims' families, but it does not always guarantee peace or healing. In some cases, long trials and appeals delay justice for many years, causing further emotional stress. On the other hand, prolonged death row imprisonment has severe psychological impacts on prisoners, often referred to as "death row phenomenon," which involves mental trauma and anxiety due to uncertainty.

From a human rights perspective, the death penalty is criticized as cruel, inhuman, and degrading punishment. International organizations like the United Nations strongly advocate for abolition. The Second Optional Protocol to the International Covenant on Civil and Political Rights aims at the abolition of the death penalty. Many democratic nations in Europe and South America have already abolished it in law and practice. For example, the European Union prohibits capital punishment among its member states.

Economically, the death penalty can also be costly. Legal procedures in capital punishment cases involve long trials, multiple appeals, and mercy petitions. Governments spend significant public money to ensure fair procedure. In some countries, it has been found that death penalty cases cost more than life imprisonment cases due to complex legal safeguards.

In India, the President and Governors have the power to grant mercy under Articles 72 and 161 of the Constitution. This constitutional safeguard acts as a final check against miscarriage of justice. The Supreme Court of India has also interfered in several cases where mercy petitions were unduly delayed, commuting death sentences to life imprisonment.

Another important result is the change in global trend. Over time, more than two-thirds of the countries in the world have abolished the death penalty either in law or in practice. This reflects a growing international belief in reformatory justice rather than retributive justice. Modern penology

focuses more on rehabilitation of offenders rather than mere punishment.

However, some countries like the United States and China continue to use the death penalty for certain serious crimes. In the United States, the law varies from state to state, with some states abolishing it and others retaining it. Public opinion there remains divided.

In conclusion, the results of the death penalty show a complex picture. While it aims to deliver justice and deter serious crimes, its effectiveness is highly debated. The risks of wrongful conviction, high costs, human rights concerns, and changing global attitudes have led many nations to abolish it. In India, it continues under strict judicial guidelines in the rarest of rare cases. The future of the death penalty depends on balancing justice, human rights, and societal values.

REFERENCES

- [1] Amnesty International – Death Penalty Reports
- [2] Universal Declaration of Human Rights
- [3] International Covenant on Civil and Political Rights
- [4] Bachan Singh v. State of Punjab, AIR 1980 SC 898
- [5] Indian Penal Code and Code of Criminal Procedure