



Capital Punishment in India with Recent Recommendation of the Law Commission of India.

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ABSTRACT

In the rarest of rare case death penalty can be imposed on the convicted person. Legal Provisions are mentioned in the Indian Penal Code and Criminal Penal Code. According to Article 21 of the Indian Constitution, No person shall be deprived of his life or personal liberty except according to procedure established by law. In so many cases death penalty confirmed by Supreme Court of India. In 21st century 140 countries has abolish Capital Punishment, recently The Law Commission of India in Report No. 262 submitted that Death Penalty gradually may abolish.

KEYWORDS

Rarest of rare case, Death penalty, Indian Constitution, Jurisprudence, Kinds of Punishment, Indian Penal Code, Criminal Code, Law Commission of India Report.

Introduction:

"The least offences deserve death, and I can impose no worse for higher crimes"

-Draco, The first Compiler of the Penal Code of Greece.

The above mentioned quote can quite easily imply that where exactly the phrase "Draconian Laws and Methods" originated. Barbarism has always been the root of ancient man and some even argue that somehow, that still has not been lost, evidently on account of the death penalty. In the history of punishment, capital punishment has always occupied a very important place. In ancient times, and even in the middle ages, sentencing offenders to death was a very common kind of punishment. Even what might be considered as minor offences in modern criminal law attracted the death penalty in those days. In England, there was a time when there were as many as 200 felonies for which the punishment was the death penalty.

Indian Penal Code provides for six types of punishments for offences...

- Death
- Imprisonment for Life
- Penal Servitude
- Imprisonment
- Forfeiture of Property
- Fine

Meaning of Death Penalty:

Encyclopedia Britannica, Also Called death penalty – Execution of an offender sentenced to death after conviction by a court of law of a criminal offense. Capital punishment should be distinguished from extrajudicial executions carried out without due process of law. The term death penalty is sometimes used interchangeably with capital punishment, though imposition of the penalty is not always followed by execution.

The Columbia Encyclopedia in its 2008 sixth edition, 'Capital punishment: Imposition of a penalty of death by the state. Capital punishment was widely applied in ancient times; it can be found (c.1750 BC) in the Code of Hammurabi. From the fall of Rome to the beginnings of the modern era, capital punishment was practical throughout Western Europe...'

According to Ancient Indian Legal System – Death Sentence – The highest penalty of death sentence was prescribed for certain offences, namely, (1) acts of subverting the state, (2) Mahapatkas -killing a Brahmana, drinking the liquor called 'sura' by a twice born (dwija), adultery with guru's wife, and abetment of these offences (Manu IX 235 and XI 54). Incendiarism, murder, robbery, poisoning, adultery, abetment of the

theft by giving subsistence, instruments for house breaking or asylum, causing breach of embankment, attempt to murder, causing abortion vide Kaut. P.259, Harita VIII 190-202,220-221, Yaj. II 273, Manu IX 271, 279,371, and Gaut. XXIII 14, Kat.806 prescribed death penalty for a Brahmana if he committed theft of gold, caused abortion or killed a woman (Strihatya). There were several modes of inflicting death sentence referred to in ancient law texts, such as by administering poison, by burning or by getting him killed through wild animals.

Legal Provisions:

According to Article 21 of Indian Constitution – "No person shall be deprived of his life or his personal liberty except according to procedure established by law"

Various statutes in India deal with criminal law have laid down provisions relating to death penalty .

India retained the death penalty as one of the punishments in the Indian Penal Code, 1860 (IPC) after independence. Death penalty is also prescribed in special or local laws for various offences. Presently, death penalty is provided under the IPC for various offences such as Section 121, Section 132, Section 194, Section 195A, Section 302, Section 305, Section 307(2), Section 364A, Section 396, Section 376E, and Section 376A. The special or local laws which provide for death penalty are the Army Act, 1950; the Air Force Act, 1950; the Navy Act, 1950; the Indo Tibetan Border Police Act, 1992; the Assam Rifles Act, 2006; the Border Security Force Act, 1968; the Sasrastra Seema Bal Act, 2007; the Defence and Internal Security Act, 1971; the Narcotic Drugs and Psychotropic Substances (Prevention) Act, 1985 as amended in 1988; the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; the Explosive Substances Act, 1908 as amended in 2001; the Unlawful Activities Prevention Act, 1967, as amended in 2004; the Maharashtra Control of Organised Crime Act, 1999; the Karnataka Control of Organised Crime Act, 2000; the Andhra Pradesh Control of Organised Crime Act, 2001; and the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002. A number of local laws such as the Arunachal Pradesh Control of Organised Crime Act, 2002 providing death penalty have been repealed. Although various laws provides for the death penalty, it is mainly given under Section 302 IPC.

Case Laws:

The courts generally have to evaluate the facts in order to identify whether the case presents situation calling for death penalty or life imprisonment. The court may reduce punishment from death penalty to life imprisonment. If case fall in rarest of rare case death penalty may awarded by court of law in India.

Dhananjay Chatterji versus State of west Bengal [(1994) 2 SCC p.220]– This is the case of Rape and Murder from trial court of Supreme Court was agree that this is rarest of rare case and court impose Death Penalty in this case.

Bachan Singh and Machhi Singh versus State of Punjab [AIR 1980 SC 898] This reference to the Constitution Bench raises a question in regard to the constitutional validity of death penalty for murder provided in Section 302, of I.P.C., and the sentencing procedure embodied in subsection (3) of sec. 354 of the Cr.P.C.,. The reference has arisen in these circumstances: Appellant in Criminal Appeal No. 273/1979, was tried and convicted and sentenced to death under Section 302, Indian Penal Code for the murders of Desa Singh, Durga Bai and Veeran Bai by the Sessions Judge. The High Court confirmed his death sentence and dismissed his appeal. Bachan Singh's appeal by special leave, came up for hearing before a Bench of this Court (consisting of Sarkaria and Kailasam, JJ.). The only question for consideration in the appeal was, whether the facts found by the courts below would be "special reasons" for awarding the death sentence as required under sec. 354 (3) of the Code of Criminal Procedure, 1973.

Surendra pal Shivbalakapal versus State of Gujarat , the appellant was staying in one of the room of a building owned by complaint, Kavalpati, a widow having three children. On 11-09-2002 at 10 p.m. he came to her and offered Rs. 150 for sexual favours. She got angry and asked him to go away. During the night, she along with her two minor daughters was sleeping. At 1 a.m. she found that her Savitri missing and dead body found in the pond. The trial court found that accused guilty for the offence punishable under section 363,376 and 302 of IPC. He was sentenced to death and it was confirmed by the high Court and Supreme Court also agreed about the finding of guilt but the sentence of death was commuted to life imprisonment on the ground that the case did not belong to rarest of rare case...

Recent Recommendation of Law Commission of India.

Shying away from a blanket ban on death sentence, the Law Commission is likely to recommend "gradual" abolish in all cases, except terror related ones, as practised in countries like the UK. According to our ancient legal system it was mentioned that, Death sentence should be avoided even for the greatest offences, unless the guilty was a traitor who had indulged in any activity dangerous to the security of the state, i.e. acts prejudicial to the interest of the State.

The Law Commission of India received a reference from the Supreme Court in Santosh Kumar Bariyar versus Maharashtra [(2009) 6 SCC 498] and Shankar Kisanrao Khade versus Maharashtra [(2013)5 SCC 546], to study the issue of the death penalty in Indian to "allow for an up-to-date and informed discussion and debate on the subject."

This is not the first time that the Commission has been asked to look into death penalty-the 35th Report (Capital Punishment,1967), notably, is a key report in this regard. That Report recommended the retention of the death penalty in India. The Supreme Court has also, in Bachan Singh versus Union of India (AIR 1980 SC 898), upheld the constitutionality of the death penalty. However, the social, economic and cultural contexts of the country have changed drastically since the 35th

report. Further, arbitrariness has remained a major concern in the adjudication of death penalty case in the 35 years since the foremost precedent on the issue was laid down.

Commission says that, the death penalty does not serve the penological goal of deterrence any more than life Imprisonment. Further, life imprisonment under Indian law means imprisonment for the whole of life subject to just remissions which, in many states in cases of serious crimes, are granted only after many years of imprisonment which range from 30-60 years. Retribution has an important role to play in punishment. However, it cannot be reduced to vengeance. The notion of "an eye for an eye, tooth for a tooth" has no place in our constitutionally mediated criminal justice system. Capital punishment fails to achieve any constitutionally valid penological goals.

Commission has recommended in his report that, the death penalty be abolished for all crimes other than terrorism related offences and waging war The Commission trusts that this Report will contribute to a more rational, principled and informed debate on the abolition of the death penalty for all crimes. Further, the Commission sincerely hopes that the movement towards absolute abolition will be swift and irreversible.

Conclusion:

This recommended mad by Law Commission of India in his latest report, recently during the implementation of death penalty on Mr. Yakub Meman so many activist raised this argument that death penalty should be abolish from our country, as 140 have abolish Capital Punishment.

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