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– Saurabh Mishra, 5th Year Student

City Law College, Lucknow

Introduction

In India, the punishment of death penalty has been going on before the implementation of the Indian penal code. A civilized society does not accept death penalty as a punishment and the Indian penal code is also based on reformatory theory. Therefore, from time to time there has been a demand to abolish the death penalty in the country and there have been amendments from time to time regarding the condition of giving death penalty.

History

Under the code of criminal procedure 1898, death penalty was a common rule in the offense of murder and life imprisonment was an exception. According to section 367(5) of Code of Criminal Procedure 1898, if the court had to award any punishment other than the death penalty in the case of murder, it was necessary to mention the reasons.

This method continued from 1898 to 1955. Section 367 5 of the Code of Criminal Procedure was repealed by the Amendment Act

in 1955. Now courts have got the discretion to give death sentence or life imprisonment in murder cases. But the debate on abolishing the death penalty continued, so in 1962, the dispute on death penalty was handed over to the Law Commission by the current government. The Law Commission in its 35th report opposed the abolition of the death penalty, and stated,

'But keeping in view the prevailing conditions in India, especially considering the diverse living standards of its residents, the disparity of their morality or education level, its geographical vastness, the heterogeneity of its population and the paramount need to maintain order at this time. India cannot afford to abolish the death penalty. Arguments that seem appropriate in one part of the world may not be effective elsewhere. It could be accompanied by dire consequences in other parts of the world.'

In the present circumstances, as per Section 354 3 of the Code of Criminal Procedure, 1973, life imprisonment is the general rule and the death penalty is the exception.

Case laws

Calling the death penalty as unconstitutional, its recognition as a punishment was first challenged in the case of **Jagmohan Singh vs. Uttar Pradesh 1973.**

It was argued that the death penalty violates Articles 14, 19 and 21 of the fundamental rights given in Part III of the Indian Constitution. It has also been argued that the death penalty is a restriction on fundamental liberty and that the courts have the discretion to award the death penalty but there is no standard or control given to this discretion, the discretionary discretion encroached upon the right to equality by Article 14 of the Constitution.

In the context of the violation of Article 19, it was argued that both the freedom provided by Article 19 of the Constitution and a restriction in the form of capital

punishment on that freedom cannot co-exist.

The final argument was made that in the absence of procedure established by any law in the matter of punishment, the protection provided by Article 21 of the Constitution is also violated.

The Supreme Court rejected all the arguments given to prove the death penalty unconstitutional and justified the system of death penalty. The view was also expressed by the Supreme Court that if a person is deprived of his life in accordance with the procedure established by law, then he will be treated in accordance with the provisions of the Constitution. It is difficult to say whether the death penalty itself is not in the public interest or is justified.

In another case in **Rameshwar v state of UP** 1973, Chief Justice Krishna Iyer criticized the death penalty in harsh words, saying that 'every mahatma has a past and every sinner has a future, so the person wearing the cloak of criminal acts should be abolished. But do away with the process of his fatal downfall.'

In 1979, in **Rajendra Prasad v State of Uttar Pradesh**, the Supreme Court held that capital punishment can be given in cases where the existence of society is in danger,

Therefore, the Supreme Court in this case laid down the direction that Section 302 of the Indian Penal Code and Section 354 of the Code of Criminal Procedure should be read along with the humanitarian provisions mentioned in Parts III and IV of the Constitution of India which are also published by the Statement of the Constitution. The death penalty should be given in planned crimes, white collar criminals, adulterated persons, hardened killers or where law officers have been murdered, Also, the specific reasons mentioned by the court in support of the death penalty should also be related to the offender and not only to the crime.

Therefore, there was not much clarity regarding capital punishment in the cases till 1979, but in 1980, the last important case on death penalty came before the court **Bachan Singh Vs State of Punjab**, in which it was expressed that the death penalty should be given only in rarest of the rare cases. The following points should be kept in mind by the court in making its decision.

- Where the murder has been committed as a result of preplanning and with extreme cruelty
- where the murder has been committed in gross immorality such as murder for economic gain
- Where a member of the Indian Army or a police force or a public servant has been murdered while such persons are in the performance of their duty
- The murder of any person who is performing his duty under section 43 of the Code of Criminal Procedure

The Supreme Court also determined some exceptional situations on the basis of which the death penalty cannot be justified, they are as follows:

1. Where the offense is the result of gross mental disturbance or impulse.
 2. The offender is an infant or an old man.
- Where it is not possible that the offender will not commit such acts of violence as may cause continued danger to society.

1. Where there is a possibility that reformation and social rehabilitation of the offender is possible.

It is up to the discretion of the judges to decide which case should be considered rarest. Hence this principle has created an internal conflict in the minds of the judges. In order to identify the rarest of the rare cases, the Supreme Court in the case of **Machi Singh vs. State of Punjab 1983** laid down 5 points which are as follows

1. Where the murder has been done with such cruelty, merciless or ruthless that the society considers it to be the most heinous act.
2. Where the grisly immoral motive is hidden behind the murder.
3. Extent of crime such as killing almost all members of a family.
4. Personality of the person killed, such as the murder of a helpless infant or a helpless woman.

In the case of **Shabnam v Union of India, 2015** hon'ble Supreme Court awarded a death sentence to the women and the same was hanged for the first time in the Indian criminal judicial system. In this case, shabnam with his lover killed all of her family members in the year 2008 just because they were not allowing her to marry with her lover.

In another case the **Vinay Sharma v Union of India, 2020 (Nirbhya gang-rape case)**, had shocked the conscience of the whole country. In this case the girl was brutally raped by six accused in a bus in delhi. One of the six accused was a juvenile so he was not sentenced to death. One of the accused committed suicide. But the other four accused were sentenced to death and also hanged in the year 2020.

Note: The 20th Law Commission, whose tenure was from 2012 to 2015, in its 262 report, recommended that the death penalty should not be given in cases other than terrorism and cases against the government. The Commission was of the view that since the 35th Report 1967, there has been a lot of change in the socio-economic and cultural sphere of the country, so except in the above cases, the death penalty should be abolished in all types of cases.

Conclusion

Indian criminal law works on the remedial principle, not on the principle of deterrence. According to the principle of

natural law, we do not have the right to take the life of a person because we cannot even give life to him. Along with this, the death penalty should be abolished in general, following the principle of Mahatma Gandhi "Hate the sin, not the sinner".

At present, it is clearly seen that the death penalty is given in the rarest of the rare cases whereas life imprisonment is provided as a general rule.