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DISCUSS THE RIGHT TO LIFE AND THE DEATH PENALTY IN THE 21ST CENTURY

INTRODUCTION

The Supreme Court has ruled for more than 40 years that the death sentence does not always violate the Eighth Amendment because it is cruel and unusual. However, the question of whether the death sentence inherently violates substantive due process has never been addressed by the Court, much less resolved. The right to life and its varied applications are among the most contentious issues in modern politics.

This article contributes to the philosophical–moral debate on the human right to life. First, examine the various international covenants and philosophical schools and their cryptic conceptualization of man's rights to life. Right to life is considered as absolute right to life two essential characteristics of man, his mystery and his priority setting ability. Because capital punishment denies these essentials.

- THE NON-EXISTENCE OF THE ABSOLUTE RIGHT TO LIFE IN PUBLIC INTERNATIONAL DOCUMENTS AND PHILOSOPHICAL SCHOOLS (riga)

These agreements and customs do not, at least not directly, support the right to life according to any philosophical theory of life. Certain legal texts combine the term "right to life" with the adjective "inalienable," or with another derived right.

The Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations in 1948 recognizes the right to life. (Riga, capital punishment and the right to life) Article 3 provides: "Everyone has the right to life, liberty and security of person. The Article does not say that the right to life is inalienable; it says simply that each person has such a political right, similar to that of the American Declaration of Independence. It is a statement of a general moral principle incorporated into a political document binding those who belong to the UN. Yet, each nation is free to apply its own meaning and interpretation of this general moral principle by domestic legislation. Article 3 does not recognize an absolute or inalienable right to life per se as distinct from other types of rights.

The International Covenant on Civil and Political Rights, was submitted to the United Nations General Assembly by the Economic and Social Council and approved by a 106 to 0 vote in December, 1966. Its purpose was to elaborate and make more specific the UN's Universal Declaration of Human Right. Part III, article 6 of The International Covenant specifies that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Another regional document, the Convention for the Protection of Human Rights and Fundamental Freedoms was signed in Rome in November, 1950, by the participant Western European nations, and entered into force September 3, 1953.

WHAT ARE RIGHTS?

Rights are those officially acknowledged privileges that each and every person believes are essential to living a life worthy of honour and dignity. In essence, these constitute an entitlement or a claim that is justified. Rights are significant because they facilitate the growth of a person's ability to reason, acquire new abilities, and make wise decisions in life.

ANALYSIS OF CAPITAL PUNISHMENT

Execution of a criminal sentenced to death after a court of law's conviction of the offence is known as the capital punishment. Though application of the sentence does not necessarily result in execution due to the possibility of commutation to life in prison, the terms "death penalty" and "capital punishment" are occasionally used interchangeably into life imprisonment.

EARLY EFFORTS AGAINST DEATH PENALTY

There were two types of murder in the United States throughout the 18th century, and both carried the death penalty. The State passed legislation authorizing the death penalty and imprisonment for first- and second-degree murder in certain regions, the death penalty was always required for a select few egregious crimes. The jurisdictions gradually expanded their discretionary power to commute death sentences. Although the death penalty is still authorized in many countries today—including Turkey and Japan—the number of executions has decreased over time. Although numerous states restricted the use of the death penalty, until Michigan's official abolition of the death penalty in 1846, no state had done so. In less than 20 years, Portugal (1867) and Venezuela (1863) had officially banned the practice as well. A few countries had abolished the death penalty by the early 1900s, including the Netherlands, Colombia, Costa Rica, Ecuador, and Norway. While it had not been officially abolished, many other countries, such as Brazil, Cape Verde, Iceland, Monaco, and Panama, have stopped using it.

RESTRICTION OF APPLICABLE OFFENDERS

Additionally, as international standards have evolved, an increasing number of groups of people have been excluded from the list of persons against whom the death penalty may be applied in nations that have not abolished it.

The practice of excluding juvenile offenders—those who were less than 18 at the time of the offense—has becoming so embedded in law and practice that it is on approaching the status of a norm becoming a standard of customary international

law. The Fourth Geneva Convention of 1949 relative war and the two Additional Protocols of 1977 to the Geneva Conventions of 1949, as well as the more recent Convention on the Rights of the Child (Article 37(a)), which has been ratified by two UN member states, prohibit the imposition of capital punishment on juvenile offenders. In actuality, most people abide by the prohibition.

- The exclusion of pregnant women, new mothers, and people over 70 years old, set forth variously in the ICCPR, the ACHR and the ECOSOC Safeguards, are also widely observed in practice.
- The ECOSOC Safeguards also state that executions shall not be out on "persons who have become insane" (emphasis added), and in resolution 1989/64, adopted on 24 May 1989, ECOSOC recommended that UN member states eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution". (amnesty international, 2014) These exclusions are less widely observed. Amnesty International has documented many cases of prisoners sentenced to death and - sometimes executed, particularly in the USA, who were of extremely limited mental ability.

WHAT IS THE CONTEXT OF DEATH PENALTY IN INDIA?

- CrPC of 1955, the death penalty was the rule and life imprisonment an exception in India.
- After the amendment of 1955, the court were granting liberty either life imprisonment or death. Acc. To section 354(3) of CrPC,1973 the courts are required in writing for awarding the maximum penalty.
- The situation been reversed, capital offences carry a life sentence as the norm rather than the death penalty.

In 35th report 1967, the Law Commission rejected the idea of abolishing the death sentence.

HISTORICAL JUDGMENT BY SUPREME COURT RELATED TO DEATH PENALTY

The case of **JAGMOHAN SINGH V THE STATE OF UTTAR PRADESH** had led to a land mark judgement by the supreme court in which the five-judge bench had upheld the constitutional legitimacy of the sentence of capital punishment under section 302 of the Indian penal code, 1860 that had been challenged in this case, upon the grounds of equality, freedom, and right to life that is provided by the constitution of India.

In another case **RAJENDRA PRASAD V STATE OF UP**, Justice Krishna Iyer empathically stressed that death penalty is violative of articles 14, 19, and 21. Her further said that to impose death penalty the two things must be required:

- The special reason should be recorded for imposing death penalty in a case.
- The death penalty must be imposed only in extra ordinary circumstances.

Later on, **BACHAN SINGH V THE STATE OF PUNJAB** case the five-bench judge of the supreme court held that death penalty is reasonable and it does not violate articles 14,19 and 21 of Indian constitution. It reversed the judgment delivered in the Rajendra prasad v state of up case by a majority of 4:1 the bench stated that the principle of awarding death penalty is applicable only in rarest of rare case. The opinion of justice Bhagwati stated that the death penalty is unconstitutional because it violates article 14 and 21

RECENT JUDGMENT

The case of **MUKESH & ANR. V STATE OF NCT OF DELHI & ORS. (NIRBHAY CASE)** in this case Justice R. Banumathi stated that “There is not even a hint of hesitation in my mind with respect to the aggravating circumstances

outweighing the mitigating circumstances and not find any justification to convert the death sentence imposed by the courts below to 'life imprisonment for the rest of life. (www.freelaw.in, 2023)

CONCLUSION

We have attempted to show that man's right to life is absolute because man thinking, mysterious and spiritual. The death penalty is an emotive matter that also calls into question the efficiency of legal proceedings and investigation techniques, the speed at which justice is served, and other related issues. The Indian Supreme Court has exercised caution and reluctance in imposing capital penalties. Nonetheless, numerous jurists have questioned the rarest of rarest doctrine. Human rights advocates have been less aware of hanging since they believe it to be a brutal practice. The death sentence has been argued to not offer criminals the opportunity to feel regret or repent for their conduct, even if it is a punitive measure and a crime against humanity. Death is not the only punishment that is being considered; life in prison and solitary confinement are also being considered.

