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CAPITAL PUNISHMENT- A CRITICAL ANALYSIS

Introduction

Capital punishment has been a contentious issue throughout history, evoking strong emotions and sparking intense debates on ethics, justice, and human rights. In common language, it could be defined as the killing of a person legally as punishment for a heinous crime. Capital punishment has been practiced by societies around the world for centuries, with its origins dating back to ancient civilizations. The first established death penalty laws date back to the eighteenth century B.C., when King Hammurabi of Babylon legislated the death penalty for 25 separate offenses. The death penalty was also included in the Hittite Code of the fourteenth century B.C., the Draconian Code of Athens of the seventh century B.C., which made death the only punishment for all offenses, and the Roman Law of the Twelve Tablets of the fifth century B.C. Executions included crucifixion, drowning, beating to death, burning alive, and impalement. In Britain, hanging became the usual mode of execution by the tenth century A.D. William the Conqueror prohibited the hanging and other forms of execution of people for crimes other than those committed during times of war in the century that followed. This pattern would not continue, as it is estimated that up to 72,000 people were put to death during Henry VIII's reign in the sixteenth century. During that period, boiling, burning at the stake, hanging, beheading and drawing and quartering were among the prevalent ways of execution. Executions were carried out for serious crimes like treason, marrying a Jew, and refusing to confess to a crime.

Capital Punishment in India

The death penalty has been applied to criminals as a form of punishment since the colonial era. It was formerly administered under the worst possible conditions. Indian criminal law maintains that the goal of punishment is to both terrorize offenders and provide them the opportunity to change, based on a synthesis of reformatory and deterrent views of punishment. There are differing opinions about the death penalty in India, with some people supporting it and others opposing it. Everyone's fundamental right to life is guaranteed by the Indian Constitution, subject to being deprived of it in compliance with the legal process. Abolitionists contend that the death penalty as it currently exists violates a citizen's right to life.

Furthermore, as per Article 14 of the Constitution, every individual is entitled to "equality before the law and equal protection of the laws," meaning that discrimination against any person is forbidden unless it is deemed necessary to attain equality. The concept of equality included in Article 14 is mentioned in the preamble of the Constitution. It seems that a person's right to life is

directly opposed by a death sentence. It is undeniable, however, that the death penalty is not specifically prohibited by the Indian Constitution.

The Indian Constitution states in Article 21: "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except by procedure established by law." It was declared that suicide was not permitted unless the legal procedure was followed. The death sentence is still applied in India to several serious offenses. The Supreme Court declared that only the "rarest of rare cases" should the death penalty be applied in India. said that there is no constitutional violation.

The judicial system's deliberation surrounding the death penalty is heavily influenced by the 1983 AIR SC 957 case **Machi Singh v. State of Punjab**. In addition, the court attempted to ascertain whether the offense qualified as one of the "Rarest of the Rare" cases. In reaching its decision, the Supreme Court determined that "the rarest of rare dictum serves as a guideline in enforcing Section 354(3) and establishes the policy that life imprisonment is the rule and death punishment is an exception." According to Section 303 of the Indian Penal Code, convicts serving life sentences are required to be executed.

One of the most well-known death penalty cases is **Bachan Singh v. State of Punjab**, 1980 SC 898. In this judgment, the Supreme Court maintained the death penalty's constitutional legitimacy as an alternative to life imprisonment under Section 302 of the Indian Penal Code 1860 (IPC). The court decided that Section 302 did not violate Articles 19 and 21 of the Constitution. The Supreme Court also established the "**rarest of the rare cases**" doctrine when imposing the death penalty. For individuals convicted of murder, life in prison is the norm, with the death penalty being an exception.

According to a 2015 Law Commission report, the death penalty should only be considered less severe in cases of terrorism. It needs to be relevant for safeguarding the country's security. Before 2015, the Law Commission had said in a report that India could not reduce the death sentence; however, the 2015 report indicated that the Commission should move toward the abolition of the death penalty. The death penalty is not used as often in India. Nevertheless, the Law Commission study recommended that this punishment be eliminated, as it does not eliminate the crime but only criminals and an alternative to the death penalty is the need of hour.

Ethical Considerations on Capital Punishment

Moral law seems to be the starting point and the final point for any discussion regarding the ethics of the death penalty. Indeed, the Supreme Court acknowledged in *Gregg v. Georgia* that morality might transcend the laws in effect at any given time. Certain religious groups indeed consider the death penalty to be incompatible with their core values. However, it is also true that not everyone who practices those religions or all religions opposes the death penalty. When it comes to Oklahoma's death penalty statute, the Green Country Society of Friends first acknowledged that people "have the need and the right to seek safety and order for themselves and their communities" but rejected the death penalty as a means of achieving that goal because:

(1) it disregards the Spirit of God, which they believe resides in every person;

(2) it "magnifies the tragedy of a lost life by killing again, ignoring the human capacity for change, quenching forever the possibility of redemption and renewed contribution"; and

(3) because it harms the community by endorsing violence as a "legitimate status as a way to resolve problems," endorsing vengeance as an acceptable response to harm, shifting the focus from healing and assistance to victims, offenders, affected families, and communities and the possibility that an innocent person is being put to death; and

(4) the individuals tasked with carrying out the execution are in "moral and psychological peril to themselves."

Critics contend that state-sanctioned taking of human life is inherently immoral and violates fundamental human rights.

(Capital punishment) is . . . the most premeditated of murders, to which no criminal's deed, however calculated . . . can be compared . . . For there to be an equivalence, the death penalty would have to punish a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at mercy for months. Such a monster is not encountered in private life. --**Albert Camus**

If . . . he has committed a murder, he must die. In this case, no substitute will satisfy the requirements of legal justice. There is no sameness of kind between death and remaining alive even under the most miserable conditions, and consequently, there is no equality between the crime and the retribution unless the criminal is judicially condemned and put to death. --**Immanuel Kant.**

Let us analyze and evaluate the ethical arguments for and against capital punishment.

For- 1) Retribution and justice- The death penalty can be seen as a means of delivering justice and retribution to the victims and their families. The retribution theory of capital punishment asserts that the severity of punishment should be proportionate to the seriousness of the crime committed, reflecting the concept of 'an eye for an eye'. Despite debates surrounding its ethical and practical implications, retribution remains a central justification for the imposition of the death penalty in many legal systems.

2) Deterrence- The deterrence theory of capital punishment asserts that the threat of the death penalty discourages potential offenders from committing capital crimes and enhances public safety.

3) Cost-effectiveness- Some even argue that the death penalty is more cost-effective than life imprisonment, as it eliminates the need for expensive appeals and lengthy prison sentences.

Against- 1) Right to life- Critics argue that capital punishment violates the fundamental right to life, enshrined in international human rights law and many national constitutions. It also violates the internal dignity of every individual and undermines the principle of respect for human life. Moreover, the risk of wrongful convictions further exacerbates this threat, highlighting the irreversible nature of the death penalty's impact.

2) There is always a risk of executing an innocent person, as evidenced by cases of wrongful convictions and exonerations.

3) Irreversibility- Once a person is convicted and executed, there is no possibility of correcting a wrongful conviction or miscarriage of justice. The risk of executing innocent individuals amplifies ethical concerns surrounding the death penalty, prompting calls for greater safeguards and scrutiny in its application.

4) Critics are also of the view that there is not sufficient evidence to prove that capital punishment has proved to be a deterrent in curbing capital crimes and instilling fear of the law in the minds of potential offenders.

5) Alternative punishment- Exploring alternative punishments to capital punishment is crucial for addressing concerns about fairness, effectiveness, and human rights. Alternatives include rehabilitation-focused punishment, restorative justice initiatives, and life in jail without the chance of parole. Life in jail guarantees that criminals are taken out of society and provides a chance for possible rehabilitation or exoneration. Repairing the harm caused by the offense through communication, mediation, and community involvement is the main goal of restorative justice initiatives. Through education, counseling, and vocational training, rehabilitation-focused sentencing seeks to address the underlying causes of criminal conduct and aid in the offender's reintegration into society. These solutions lessen the permanent effects of the death penalty while addressing the underlying complexity of crime and punishment, providing a more compassionate and nuanced approach to justice.

International Perspectives

Over 70% of nations worldwide have either outlawed or abolished the death penalty. Nonetheless, the death sentence is still applied in many nations across the world, particularly those with sizable populations and autocratic governments. Since many nations have either abolished the death penalty or stopped using it, there has been a noticeable shift away from the death sentence in recent decades. Although the death penalty is not prohibited under international law, the majority of nations view it as a violation of human rights. The use of the death penalty throughout the world is relevant when assessing American standards of decency and determining what constitutes cruel and unusual punishment by the Eighth Amendment. Several Supreme Court justices have cited international law as further support for their rulings supporting the death sentence, especially when it comes to cases involving certain defendant classes like juvenile offenders.

Amnesty International reports that among the 92 countries and territories that still have the death penalty, 54 issued laws imposing the death penalty in 1990, and 24 of those states acknowledged carrying out executions. Ten of these were Islamic nations in the Middle East and North Africa; five were in Africa (none since South Africa's moratorium); six were in Asia; two were in the Americas (Guyana and ten U.S. states); and the Soviet Union made up the remaining group. Accurately counting the number of executions that have taken place in each of these nations has proven to be impossible, although there is no doubt that the U.S.S.R., China, Iran, Iraq, and Nigeria have carried out by far the most.

While exact numbers are difficult to ascertain, at least 2,016 death sentences were issued in 52 countries in 2022 as opposed to 2,052 death sentences issued in 56

countries in 2021. Following a pause, the death penalty was reinstated in Bahrain, Comoros, Laos, Niger, and South Korea. In 2022, there were executions carried out in Belarus, Cameroon, Japan, Malawi, Morocco/Western Sahara, Oman, Sierra Leone, Uganda, and Zimbabwe, but no new death sentences. At the end of the year, there were at least 28,282 individuals reported to be facing the death penalty. In 2022, the death penalty was outlawed in Kazakhstan, Papua New Guinea, Sierra Leone, and the Central African Republic.

Amnesty International holds that the death penalty breaches human rights, in particular the right to life and the right to live free from torture or cruel, inhuman, or degrading treatment or punishment. Both rights are protected under the Universal Declaration of Human Rights, adopted by the UN in 1948. Over time, the international community has adopted several instruments that ban the use of the death penalty, including the following:

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty.

Protocol No. 6 to the European Convention on Human Rights, concerning the abolition of the death penalty, and Protocol No. 13 to the European Convention on Human Rights, concerning the abolition of the death penalty in all circumstances.

The Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

Although international law says that the use of the death penalty must be restricted to the most serious crimes, meaning intentional killing, Amnesty International believes that the death penalty is never the answer.

Recent Developments in India

By the end of 2023, India had 561 inmates on death row—its highest number since 2004. The population on death row has been steadily increasing. In a precedent-setting move, the Indian Supreme Court cleared six out of approximately fifty-five death row inmates out of the cases it heard in 2023. This event needs to be interpreted in light of the Court's plan to assemble a Constitution Bench in September 2022 to modify the death penalty's sentencing guidelines. The likelihood that this Bench will be able to improve sentences in India's courts, however, seems doubtful given the ongoing evidence of its dysfunctional status. Rather, the Court must decide whether India's reform of the death penalty can ever be effective given the high percentage of acquittals and the rapidly increasing number of people on death row. The Court's attempts to modify sentencing through its directives in **Manoj v. The State of Madhya Pradesh (May 2022)** have not succeeded in trickling down to trial courts for the second year in a row, according to data from Project 39A's 2023 annual statistics on the death penalty. Trial courts executed 86.96% of death sentences in 2023 despite the need they obtain information on the accused in Manoj.

India has previously voted against a draft resolution on the repeal of the death penalty proposed by the UN General Assembly. A study by the National Law University Delhi found that, as of December 31, 2022, there were 539 inmates in India on death row, the most since at least 2016. This information was found in the Annual Statistics Report 2022, which was released by Project 39A.

A parliamentary panel report released in 2023 stated that the planned Bhartiya Nyaya Sanhita (BNS) Bill, 2023, which aims to replace the Indian Penal Code of the British era, has increased the number of crimes that can result in the death penalty from 11 to 15. The standing committee stated in its Bhartiya Nyaya Sanhita report that it has deferred decision-making about the death penalty to the Union government. The domain specialists contacted on the subject "deliberated at great length about the need to abolish the death penalty," according to the statement. If the death sentence is to be kept, the experts argued, the "rarest of rare case" doctrine needs to be defined more precisely.

The Bhartiya Nyaya Sanhita Bill, 2023 which will repeal and replace the more than 160-year-old Indian Penal Code (IPC), has been introduced in Lok Sabha. The Bill proposes the following changes.

IPC Section 420: Cheating

IPC Section 420 deals with Cheating and dishonestly inducing the delivery of property.

In proposed Bill, 2023: There is no Section 420 and the offense of cheating is covered under Section 316.

IPC Section 124A: Sedition

IPC Section 124A deals with Sedition.

In proposed Bill, 2023: Section 124 in the proposed Sanhita relates to the offense of wrongful restraint.

The word sedition does not exist in the proposed Sanhita. Offenses of the nature described as "sedition" in the IPC are covered in Section 150 of the proposed Sanhita, as "Acts endangering sovereignty, unity, and integrity of India". It is a more detailed provision than IPC Section 124A.

IPC Section 302: Murder

IPC Section 307: Attempt to murder

IPC Sections 375 and 376: Rape

IPC Section 120B: Criminal conspiracy, etc.

"The committee, upon reviewing the submissions about capital punishment, has comprehended that the rationale behind a strong opposition to the death penalty is the possibility of judicial error and the desire to shield the innocent from being unjustly executed," the statement stated.

The opposition was of the view that a life sentence without the possibility of parole is a harsher penalty that also gives the offender a chance to turn their life around. In his comment, O'Brien mentioned that 74.1% of the people in India on death row are from economically challenged families, based on national statistics. The death penalty has been added for at least four new crimes such as mob lynching, organized crime, terrorism, and rape of a minor.

Arguments in favor of the Death Penalty in Parliament

Favored by various agencies:

In the 35th Report of the Law Commission of India (1962), which was presented in 1967, the Law Commission favored retaining the death penalty in the Indian Judicial System. It said that maintenance of law and order, absence of any empirical research, and other similar factors, “India cannot risk the experiment of the abolition of capital punishment”.

Death punishment serves as a deterrent and a “response to the society’s call for appropriate punishment in appropriate cases”.

Arguments against the Death Penalty

According to the Amnesty Report, at the end of 2021, more than two-thirds of the world’s countries had abolished the death penalty in law or practice. The poor are most affected more than the rich. The numbers of the uneducated and the illiterate sentenced to death outweigh those who are educated and literate. It can be observed that 74.1% of individuals on death row in India come from economically disadvantaged backgrounds. Neither of these options (hanging or lethal injection) are concerned with reducing pain for the prisoner and neither can they achieve that reduction of pain. Society, as a consumer and supporter of the death penalty, does not want to see the immense suffering that is inflicted in killing a death row prisoner. According to the data, the Supreme Court has affirmed the death penalty in only 7 cases in the last 6 years. While the imposition of the penalty itself causes distress and trauma, the wait before the sentence is set aside or confirmed causes distress many times more. Imprisonment for the remainder of natural life without parole is, in fact, a more rigorous punishment according to critics, and also opens a window of opportunity for the convict to reform.

The Government has hailed the Bills as a move towards shedding the colonial nature of criminal laws, the Bills still retain the colonial spirit of the current laws, and punishments for some offenses have been made harsher. The issues that need to be addressed are:

- the arbitrariness in death penalty sentencing,
- the discriminatory and disparate impact of the death penalty on marginalized groups,
- the brutal realities of life on death row, and
- the mental health consequences of being on death row, etc.

The experts opined that the quasi-judicial boards should be made to exercise probation, commutation, and remission to provide greater scope for victims to have a say; and timelines should be indicated for mercy petitions to be heard and disposed of.

Pardoning Powers defined in the Constitution

– Pardon: This means completely absolving the person of the crime and letting him go free. The pardoned criminal will be like a normal citizen.

– Commutation: It means changing the type of punishment given to the guilty into a less harsh one, for example, a death penalty commuted to a life sentence.

- Reprieve: It means a delay allowed in executing a sentence, usually a death sentence, for a guilty person to allow him some time to apply for a Presidential Pardon or some other legal remedy to prove his innocence or successful rehabilitation.
- Respite: It means reducing the quantum or degree of the punishment to a criminal given some special circumstances, like pregnancy, mental condition, etc.
- Remission: It means changing the quantum of the punishment without changing its nature, for example reducing twenty-year rigorous imprisonment to ten years.

For example, the Death penalty for gang rape of minors: IPC allows the death penalty for gang rape of women below 12 years of age. The Bill allows the death penalty for gang rape of women below 18 years of age.

Conclusion

The debate over capital punishment remains deeply contentious, with compelling arguments presented both in support of and against its continued use. Proponents of the death penalty assert its deterrent effect on crime, the necessity of retribution for heinous offenses, and the importance of justice for victims and their families. On the other hand, opponents argue that capital punishment violates the fundamental right to life, risks executing innocent individuals, and perpetuates systemic injustices within the criminal justice system. Given the complexity of this matter, it is imperative to weigh the moral and practical ramifications of the death penalty as well as conduct a critical analysis of the available data. Because the death penalty is irrevocable, caution must be exercised and strict measures must be put in place to avoid injustices. Additionally, there are promising ways to combat crime while preserving human rights and promoting a more compassionate approach to justice through alternatives to the death penalty, such as life in prison without the possibility of parole, restorative justice, and rehabilitation-focused sentencing. In the end, the future of the death penalty will depend on how carefully conflicting interests are balanced, taking into account issues of justice, fairness, and the sanctity of life in addition to the concepts of retaliation, deterrence, and vengeance. Society may strive toward a more just and humane criminal justice system that represents our common commitment to preserving human dignity and the rule of law by having intelligent conversations and formulating well-informed policies.

In conclusion, the debate on capital punishment is a complex and contentious issue, with valid arguments both for and against its use. On one hand, the death penalty can serve as a deterrent to heinous crimes, provide justice and closure for victims and their families, and ensure public safety by permanently removing dangerous criminals from society. On the other hand, the risk of executing innocent people, the potential for discrimination and unequal application, and the ethical concerns surrounding the taking of a life all argue against its use. Ultimately, the decision to implement or abolish the death penalty is a value-based judgment that depends on societal norms, cultural context, and moral principles. While some argue that the benefits of capital punishment outweigh its drawbacks, others believe that the risks and ethical concerns make it an unjust and outdated practice. As we move forward, it is essential to engage in thoughtful and respectful dialogue, considering multiple perspectives and evidence-based research to ensure that our justice systems prioritize fairness, justice, and human rights for all. Furthermore, it is crucial to recognize that the debate on capital punishment is not a static one,

and as societal values and understanding of human rights evolve, so too should our approaches to justice and punishment. By engaging in ongoing discussions and critically examining the effectiveness and ethics of capital punishment, we can work towards creating a fairer and more just society for all.

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