

**The Doctrine of Death Sentence and Crimes in India - An Inquisitive
Perspective**

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ABSTRACT

In the era of punitive multiculturalism the controversial doctrine of death sentence defines a procedure where such an abominable crime has been committed that an alternative award of imprisonment for life can never be recommended and the precious action can be qualified under the category of the thesis of the rarest of rare theory. Historically speaking the horrendous philosophical perspectives of the notion of death sentence which were appropriated during the Moghul reign were also adopted by the colonial empire who executed the punishment of death sentence by following the strict disciplinary judicial formalities and this particular principle of death sentence was henceforth also adopted later by the Indian Penal Code. As modern criminal jurisprudence merges with the divine perspectives of the globally acclaimed philosophies of human rights, the demands for restricting or completely abolishing the conception of capital punishment is ever increasing. In furtherance of the above mentioned conception the second optional Protocol to the Covenant on Civil and Political Rights directs eradication of death sentences and subscribes to the manifestation of the nobler and majestic qualities of a human being. The ECOSOC resolution and various other declarations assures basis fundamental rights to the delinquents confronting death sentence.

The paper highlights the essential features of the principles of death sentence, it focuses on the perspectives of the constitution ability of the death sentence and the rarest of rare doctrines and it ends with a conclusive suggestion that the prospective doctrine of rehabilitative theory is more suitable than the Deterrent philosophy, harmoniously emancipating the possible transformation of a delinquent to a virtuous human being accentuating the ideology of righteousness and nobility.

INTRODUCTION

The magnanimous philosophy of the right to life discourages and disapproves the perspectives of death sentences. In order to provide allegiance to the prescribed standardized and empirical

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forms of behavior patterns of a civilized society, distinct jurisprudential scholars and legal experts have analyzed the very discrete and manifold perspectives of the Indian criminal and penal laws. Although death sentence continues to be the most disputed and controversial paradigm of the theories of punishment, yet it can never be ignored that the ultimate perspective of amercement, strict disciplinary action, deprivation of life, forfeiture or penance is to diminish the culpable deplorable disposition of committing a crime, rather than eliminating the human being who has committed it. Amongst the three theories of punishment, the Deterrent theory which Salmond propagates to be extremely necessary as, ' the chief end of law of crime is to the make evil doer an example and warning to all that are like minded with him "¹. He even goes on to say, "we hang murderers, not merely that we may put into the hearts of others like them the fear of a like fate, but for the same reason for which we kill snakes, namely because it is better for us that they should be out of the world than in it "².The concept of death penalty denotes the pronouncement of a sentence, which has the legal power to terminate the life of a human being complying with the provisions of law. The second paradigm relating to the concept of death sentence states it can only be awarded for the most atrocious and abominable crimes, in the other words only in the rarest of rare cases³, as in Omprakash &Anr Vs State of Tamil Nadu, ⁴,this particular perspective vision has been affirmed and recapitulated.

VARIOUS CRIMINAL LEGISLATIONS AND OTHER LAWS REGARDING DEATH SENTENCE! -

Although the Indian constitution under Article 21 states that " no person shall be deprived of his life or his liberty except according to the procedure established by law" ⁵, yet there are many statutory and penal provisions under the Indian criminal law which entails for the provision of capital punishment. The various sections under the Indian Penal Code⁶ which prescribes for capital punishment are section 121, section 132, section 194, section 195A, section

¹ Sir John Salmond : Jurisprudence,10th Ed.

² V.R.Krishna Iyer "Dialectics & Dynamics of Human Rights in India", Tagore Law Lectures (Yesterday, Today & Tomorrow) Eastern Law House 1999 P.-331.

³ Available at http://en.m.wikipedia.org/wiki/capital_punishment_in_India (Last visited on 10.12.2016)

⁴ Om Prakash & Anr vs. State of Tamil Nadu Criminal Appeal no. 143 of 20017

⁵ Doctor J.N.Pandey " Constitutional Law of India" , Central Law Agency, 14th Edition (2003)

⁶ Indian Penal Code, 1860,Sub-Devided into 23 chapters Comprises 511 sections.

302, section 305, section 307(2), section 364A, section 396, section 376E and section 376A. The other laws which ascribes to the philosophy of capital punishment are The Air Force Act 1950⁷, The Border Security Force Act 1968⁸, The Narcotics and Psychotropic Substances (Prevention) Act, 1985 (amended in 1988)⁹, The Army Act, 1950¹⁰, The Unlawful Activities Prevention Act, 1967 (amended in 2004)¹¹, The Explosive Substances Act (amended in 2001)¹² and many other legislations which has been adopted by various state criminal laws. The means of executing the death sentence has been prescribed by section 354(5) of the Criminal Procedure Code, 1973¹³, which clearly states that when any prisoner is sentenced to capital punishment he shall be hanged to death. Although this oftly debated method has been vey often designated to be inhuman, but in Deena Vs Union of India the ¹⁴, the concept of hanging to death was not perceived to be against the provisions of Article 21¹⁵, and this particular view was reaffirmed in Shashi Nayar Vs Union of India ¹⁶. Section 366 of the CrPc further regulates the death sentence awarded by the courts of sessions can only be processed into execution when it receives a confirmation or approval by the high court under Section 368 of CrPc. The Laws Commission in its 35th report has considered to for lesser punishment rather than which are ascribed in Section 302 or "303"¹⁷ of IPC and finally Section 303 ease being struck down as it was against the provisions of Article 14 and 21 of the Indian Constitution.

CONSTITUTIONALITY OF THE DEATH SENTENCE -

Our Indian Constitution believes in the philosophies propounded by Article 21 which ensures right to life and liberty and Article 14 which also ensures equality before law and equal protection of laws, henceforth it seems very obvious that the philosophy of the jurisprudence of

⁷ Air Force Act, 1950, Act no. 45 of 1950 (18th May, 1950)

⁸ Border Security Force 1968 was passed to ensure the security of Borders.

⁹ The Narcotics and Psychotropic substances act, 1985 (Amended 1988), was passed in order to may strict provisions for controlling activates relating to drugs and psychotropic substances.

¹⁰ The Army act was passed in 1950.

¹¹ The unlawful activates pretension act was passed in 1967 & amended in 2004.

¹² The Explosive substances (amendment) Act, 2001, Act no. 54 of 2001 is an act to amend the explosive substances act.

¹³ The Code of Criminal Procedure (CrPC) was enacted in 1973.

¹⁴ (1983) CrLJ 145 7 A.I.R. 1983 SC957 (1983) SC 473.

¹⁵ Article 21, guarantees the right to life and liberty

¹⁶ (1992) 1 SCC 96:1992 SSC(Cri)24.

¹⁷ Indian penal code, 1860, Kamal Law House, Second ed. 2001.

the constitution was against death sentence, yet quiet antithetically there are certain Articles which still upholds the possible premises of capital punishments. Its also an established fact that only a certain section of detestable, horrific crimes can be awarded death sentences, ones in which a person takes the life of any other human being or commits any other extremely precarious or perilous felony or violation. Although internationally and globally the particular form of penance is often quoted to be incompatible to the deep routed perspectives of right to life and liberty, yet it has also been conceived that the right to life is not conclusive or unequivocal. In order to perceive that whether the death sentence falls within the sphere of constitutional provisions or not, the first aspect has to be considered is that whether death sentence can be considered for certain crimes complying all the procedural formalities and secondly whether the sections observing death sentence under the IPC are abiding by the constitutional specifications and stipulations.

In the famous case of *Jagmohan Singh Vs State of Punjab*¹⁸, the Supreme Court confirmed to the view that the prescription of capital punishment has been done abiding all the provisions relating to the procedure followed by law and it was further held that the decision was not contradictory to the procurement as provided under Articles 14,19,21. Whilst in the case of *Rajendra Prasad Vs State of U.P*¹⁹, it has been held that death sentence can be shown to be justified only when it can be proved that the offender or delinquent is perilous to the civilization and it was further stated that the judicial discretion granted under Section 354(3) of CrPc, which empowers a judge to alter his decision under exceptional circumstances to be antagonistic to the philosophical perspectives of Article 14. Again in *Bachan Singh Vs State of Punjab*²⁰, the Supreme Court has upheld its view that the application of capital punishment is ,never antithetical to the paradigms of Article 21 which recognizes the perspectives of expropriation or privation of human life following the procedures that has been established by law. In *Triniben Vs State of Gujarat*²¹ it was held that the "modus operandi"²² by which a person's life can be deprived needs to fulfill the requirements of justice, fairness and reasonableness and unmerited detention of the petition for forbearance by the President might indefinitely result in

¹⁸ A.I.R.1973,S.C-1947

¹⁹ A.I.R.1979,S.C.-916

²⁰ A.I.R.1980,S.C.-898

²¹ (1989) 1 SCC 678

²² Available at <https://www.deathpanelyworldwide.org/country-search-post-cfm>, (Last Visiter of 10.12.2016)

psychological agony of the delinquent facing condemnation. Whilst in the case of *Madhu Mehta Vs Union of India*²³ due to the prolonged delay of mercy petition to be considered by the President, the decision regarding death penalty was finally converted to imprisonment for life. In order to survive the parameters set by Article 19, the essence of the diminutions that can be put in order to curtail the freedoms enshrined in the Article has got to be reasonable and issued in the interest of general public, although the state is never entitled to depreciate all of freedoms granted to civilians. The perceptions relating to allowing or recognizing certain fundamental freedoms is not to encourage citizens to employ them in such a way as to curtail the independence or liberty of others. As some of the critics point out that some of the provisions of IPC which entails and empowers death sentences are discriminatory in nature providing death sentences to some civilians and imprisonments for life to some. The critics have often debated that the theory of capital punishment is not only contrary to the provision of Article 245, due to immoderate and imprudent delegation of the legislative faculty by the judiciary but they have also prescribed to the view that the rational codification provided by the legislature is not adequate nor the legislative propositions are equitable enough based on which the categorization of capital punishment or life imprisonment can be done. Since the legislature do not possess the quantity of anticipating the actuality of various state of affairs henceforth ample amount of discretionary powers needs to be imparted to the courts considering the factual aspects of different situations. Not only is the judiciary very well trained to dispassionately decide and hear the trials but Section 235 (2) postulates for a scope of discreet hearing for crimes and convictions and Section 354 (3) of IPC entails for the provision of giving exceptional grounds for prescribing capital punishment, henceforth capricious adaptability of any decision by the Indian criminal legal procedure is absolutely beyond consideration.

CONCEPTUAL UNDERSTANDING OF THE TERM " RAREST OF RARE "-

The Supreme Court of India under section 354(3), of CrPc had accentuated the factual perspectives of death sentence that has to be exceptionally awarded in the rarest of rare situations. In *Machhi Singh Vs State of Punjab*²⁴, where capital punishment has been awarded

²³ (1989) 4SCC 62

²⁴ (1983) 3SCC 470.

to three of the four delinquents in the offence of gunning down seventeen people, Justice Thakkar had attempted to give a vivid explanation of the term rarest of rare by providing the following descriptions -

- (a) When the means of committing the crime is so savage or barbaric so as to evoke extreme emotions of resentment in the civilization.
- (b) When the rational behind the crime suffices qualification of privation or confiscation and acquisitiveness
- (c) When the nature of the crime is socially unacceptable or socially despicable like instances of burning a bride or killing a person belonging to the minority section of the civilization
- (d) When the offence is of extensive quantity like multiplicity of killing of a huge number of people belonging to a specific section of a society
- (e) When the person who has been murdered happens to be a juvenile or an innocent female or a publicly respected personality.

Although the case of *Shashi Nayar Vs Union of India*²⁵ the court rejecting the arguments of the critics in favour of abolishing the death sentence postulated that capital punishment does have a distinctive consequence and it performs a huge communal impetus. Again in the case of *Mohammed Chaman Vs State*²⁶, the concept of stratification and standardization of predictable norms before the crime takes place was completely outshined. In the case of *Kanta Tiwari Vs State of M.P.*²⁷, where Supreme Court had upheld the decision of death sentence when a seven year old child was raped and tortured to death, whilst in the case of *Ujagar Singh Vs Union of India*²⁸, considering the age of the offender the punishment of death sentence was set aside. In the case of *Sk Ishaque Vs State of Bihar*²⁹ due to lack of evidential proof and in the case of *Dharampal Singh Vs State of Rajasthan*³⁰ the apex court decided that it didn't fall within the premises of rarest of rare cases. Again in the case of *Ediga Anamma*³¹, the Supreme Court

²⁵ (1983)4 SCC 654 : 1983 SCC (Cri) 879,A.I.R. 1983 SC 1155

²⁶ (2000) 2 SCC 29 - 2001 CrLJ 725 SC

²⁷ A.I.R.(1996)SC 2800

²⁸ 1981 supp.SCCS

²⁹ (1995) 3 SCC 392

³⁰ (1998) CrLJ 3372

³¹ *Ediga anamma vs. state of Andhra Pradesh* S.C. 1974 P 799

reiterated the view that tender age of the accused, various socio cultural and economic crisis of the delinquents, inordinate delay in consideration of the mercy petitions might help the judges to opt for a punishment for life rather than capital punishment. Whilst in the case of Ranga Billa³² the grave and horrible criminal action which was premeditated and aggressively executed was considered to be fit for death sentence.

DEBATES FOR AND AGAINST DEATH SENTENCE -

With the magnanimous augmentation of the conceptions of human rights there has been a global attempt for the complete abrogation of the concept of death sentences. As the Supreme Court of our country often reiterates the view that the concept of capital punishment is not against the philosophical jurisprudence of the constitution, it has also not explained the exact definition of the qualities that categories itself under the theories of the rarest of rare doctrines and "left it to the discretion of the judges"³³. Hence there are so many arguments, debates and discussions for and against the perspectives of death sentence. The critics have often argued dubiousness and inconclusiveness as well as irregularity in categorization of the qualities that suffices the rarest of rare doctrines is one of the main reasons for which the death sentence might be abolished. While in the case of Dhananjay Chatterjee³⁴ the capital punishment was awarded for a horrendous rape and killing of a young girl, but in the case of Mohammad Chaman³⁵, an award of imprisonment of life was awarded for the rape and killing of an infant. Whilst in few cases it has been considered by the apex court mass killing due to inter communal conflicts can be considered to be falling under the rarest of rare doctrine. Critics have argued that the atrocious, excruciating, degenerating and inordinate nature of the death sentence and other reasons for which it should be seriously curtailed and jurisprudential scholars across the world have often confirmed to the view that there are no conclusive evidence as to prove that the rates of crimes diminishes with the pronouncement of death sentences. Imperfections, daintiness or deficiency whilst taking decisions relating to capital punishment which might cause serious jeopardy to the notions of justice is yet another key factor as to why the doctrine of death sentence needs to be completely abrogated. While some of the jurists have considered that

³² Ranga Billa vs. Union of India, Supreme Court 1982.

³³ Available at <http://m.hindustantimes.com/india/rarest-of-rere-cases-are-not-so-rare-in-india-now> (last visited on 9.12.2016)

³⁴ Dhananjay Chatterjee vs state of west bengal (1994) 2 SCC 220, A.I.R. 2004 SC 3454

³⁵ 2000 SOL case no. 705

capital punishments are mostly addressed to the disadvantaged and impoverished stratus of the society, the instances of excessive and inordinate detention in order to consider the mercy petitions are other serious grounds which completely confirms to the view that death sentence should be abolished.

The arguments that has been forward in favour death sentences strongly considers that an inordinate delay between the infliction and implementation of the death sentence is inevitable and hence this can never be considered as a valid ground for completely denouncing capital punishment. The Supreme Court has also laid down that while pronouncing death sentence the repulsive and repugnant feelings of an entire generation has to be taken into accord and the human rights of not only the accused but the victims has to ne strictly considered. The Supreme Court has also abrogated the chances of erroneous pronouncements of death sentences by the judiciary as following the principles of Stockholm Declaration³⁶ in India death sentences are awarded only in cases of monstrous and reprehensible crimes.

CONCLUSION

As India witnessed the execution of the death sentences of Ajmal Kasab, Afzal Guru, Yakub Memon in the recent past we can never surrender the deep routed cherished notion that the individual human conscience is a valuable masterpiece capable of redeveloping or renovating to a loftier spirited being by means of suitable therapy. The most despicable villains, once their quintessence has been rescued from the philosophic debris covetousness, rapacity, lecherous anxiety or other precarious malfeasance, he can be again reinstited back to the civilization as a cooperative human being mutually assisting everybody in the furtherance of a common goal. Apart from the Deterrent theory, the retributive philosophy also propagates the theory of avengement of injustice, yet it can never be outshined that perspectives of criminal jurisprudence represents the ethical manifestations of generations which ate always supposed to be changing. Blended with the ideologies enshrined in the "universal declaration of human rights "³⁷ the concept of "human rights "³⁸ along with the jurisprudence of the modern criminal law focuses not only on the legislative principles of one particular nation but on the universal judicial arrangements and the newly organized international judicial sequence addresses the larger routes

³⁶ The stock home declaration was adopted on June 16th, 1972.

³⁷ The Universal Declaration of Human Rights was adopted by gen assemble on December 1948

³⁸ Doctor U.Chandra, " Human Rights" Allahabad Law Agency Publications 5th Edition 2005 P. - 273.

of criminal jurisprudence even to its punitive proportions. The subconscious influence of the regulated modulations in the jurisprudence of criminal legislations holds the essence of human existence in high esteem and contemplation of the philosophies of empathy and reclamation which has been widely acclaimed and respected are best reflected in various legal and judicial outlook. Admiring the sympathetic perspectives of Jesus Christ, the brutal theories of prescribing capital punishment without complying the regularized formalities of trials and even without following the principles of natural justice the trappings of judicial savagery seems to be totally nullified by the world scholars and experts.

Instead of resorting to extremely harsh punitive methodology and horrendous criminal anarchism adaptation of proper humanitarian recourses even involving the magnanimous qualities of spiritual meditation so as to enhance the finer sensibilities of a human being and ultimately result in the emancipation of compassionate feelings and conquering the objectionable and offensive urges and compulsions. Henceforth it is evident that a curative remedial and a disciplinary plan of action, restorative conduct towards the delinquents in jail, active empowerment of human rights perspectives of the prisoners and other amending and other rectifying patterns of social behavioral process which finally helps in the ultimate metamorphosis of the prisoner proves to be the desired prison policy at a national and an international level. Considering the futuristic possibilities of every individual prisoner, having the capacity of developing into a finer and dignified human being, the rehabilitative theory is strongly propagated which enhances the magnanimous presence of the spiritually divine qualities in a person. Propagating the theory of rehabilitation and restitution Gandhiji had uttered these eternally philosophical words :

"God Alone Can Take Life
Because He Alone Gives It "³⁹

³⁹ V.R. Krishna Iyer "Dialectics and Dynamics of Human Right in India", Tagore Law Lectures (Yesterday, Today & Tomorrow), Eastern Law House 1999 P. - 334.

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