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Capital punishment

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Abstract

“Capital punishment or death penalty is the highest punishment awarded in the criminal jurisprudence. Many nations around the globe has abolished the capital punishment or the death penalty but in India capital punishment has been debatable in the supreme court of India and the supreme court of India which is the highest court of the country has favored the retaining of death sentence due to many reasons discussed in this research paper. Rasha alias Raghurajsinh, executed on 09th of September 1947 at Jabalpur central jail, is presumed to be the first person executed in independent India. Rattan bhai jain, the first women executed in independent India, was hanged on 03 January 1955 at Tihar jail. Rattan bai jain was hanged in 1955 for poisoning three girls and killing them. Life is precious and same is protected by article 21 of the Indian constitution, in India the person can be deprived of his life and personal liberty by the procedure established by the law.

Keywords: Capital punishment or death penalty, deprived of his life and personal liberty, theories of punishment

Introduction

Capital punishment is the legal penalty for some offences under the substantive penal legislations. Execution is carried out by the hanging of the culprit after the conclusion of trial and exhausting all the remedies available to the excused. Capital punishment is to be very sparingly applied with special reasons, in cases of brutal murder and gravest offences against the state. The abolition of capital punishment, debates are raising. Whenever the court awards a punishment there is a theories on the basis of which it passes its judgment. These theories are known as “theories of punishment” and are generally are 5 types:

- A. Deterrent theory.
- B. Reformatory theory.
- C. Preventive theory.
- D. Retributive theory.
- E. Expiation theory.

The legal sanctity of capital punishment is provided under section 53 of Indian panel code 1860. Section 53 ipc reads as:

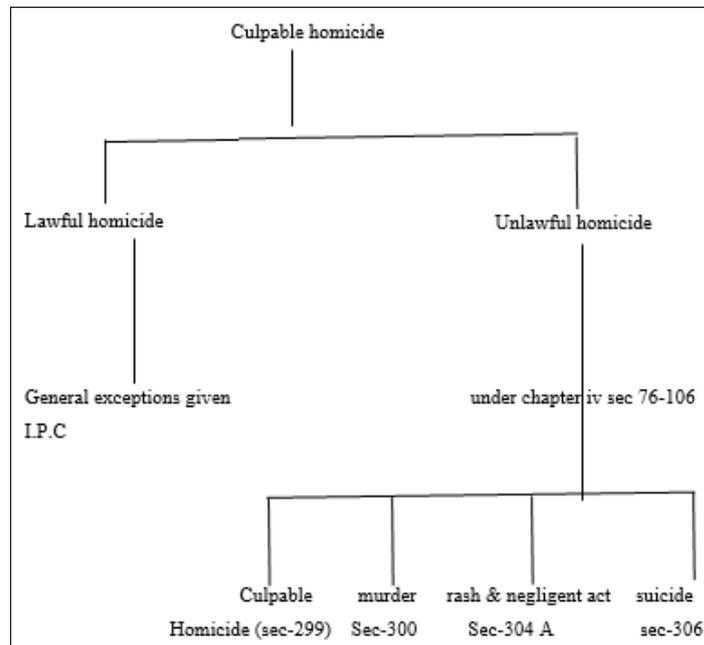
The punishments to which offenders are liable under the provisions of this code are_____.

- i. Death
- ii. Imprisonment for life
- iii. Omitted by act 17 of 1949, section 2, (W.E.F 6.4.1949)
- iv. Imprisonment which is of two descriptions, namely:
 - a) Rigorous, that is, with hard labor
 - b) Simple
- v. Forfeiture of property
- vi. Fine.

Section 53 of panel code 1860 is legal sanction to the death penalty in India.

The Indian panel code section 299 defines culpable homicide and section 300 defines murder. The simple meaning of culpable homicide is killing of a human being by another human being. The culpable homicides are of two types I.e. lawful homicide and unlawful homicide, the table below clarifies it more accurately.

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Object of the study

- A) To study the judicial approach with regard to the capital punishment.
- B) To discover that how state can take life of a criminal.
- C) To study about capital punishment.
- D) To study criminal law jurisprudence with regard to capital punishment in India.

Hypothesis of study

Ho: Capital punishment doesn't decrease the crime rate in India.
Ha: Capital punishment decreases the crime rate in India.
He: Whether the capital punishment serves the object of punishment.

Constitutionality of capital punishment

The 35th law commission report in response to the resolution moved by the Raghunath Singh the then Lok Sabha member. The law commission of India stressed that death penalty should be retained because the conditions of the country demands so due to the increasing crime rate in India. The first challenge of capital punishment came in year 1972 in the case of jagmohan Singhv. S state of utter Pradesh, the judgment came before the code of criminal procedure was reenacted in 1973. Where by the death sentence constituted an exceptional sentence it is argued that death penalty violated the right to life and equality as guaranteed by the constitution of India under article 14 and 21.

The Supreme Court refused to accept this argument and held that the death sentence is pronounced after detailed recording and evolution of aggravating and mitigating circumstances, thus such procedure justifies the imposition of capital punishment and does not violate article 21 of the Indian constitution. The judgment also discussed the U.S supreme court struck down the death sentence scheme as it violated the eighth amendment of the U.S constitution as being cruel and unusual punishment, the supreme court of India refused to accept this reason and stated that there are no rational basis for concluding the death sentence as unconstitutional because the Indian constitution doesn't have an equivalent to the 8th amendment.

The code of criminal procedure 1973 section 354(3) mandates that the judge must provide the special reason for imposing the death penalty. Section 366crpc 1973 says that the death sentence passed by the court of sessions is to be submitted to the high court for confirmation, and the sentence shall not be executed unless it is confirmed by the high court. Section 369 of the code of criminal procedure 1973 says that confirmation of the new sentence to be signed by the two judges of the high court.

After post enactment of code of criminal procedure 1973 there was ambiguity in the jurisprudential understanding of special reasoned for imposing the death penalty. The Supreme Court in the Rajinder Presadv. S state of Uttar Pradesh. The court said that the judge should state the special reasons for imposing the death sentence. The court departed from the retributive theory and emphasizes on the deterrence and reformative theory as a social goals. Justice V.R Krishna iyer in this case commented that "the special reason must relate, not to crime but to criminal. The crime may be shocking and yet the criminal may not deserve the death penalty"

Death penalty was again challenged in the bachan singhv. s state of Punjab. It was argued that death penalty is unnecessary, cruel, inhuman and degrading treatment and death sentence does not serve the purpose of deterrence. Furthermore the validity of section 302 of I.P.C and section 366(2) of code of criminal procedure was challenged in this case on the ground that the death penalty is arbitrary and vehicle. Supreme Court by 4:1 majority did not accept this contention and affirmed the constitutional validity of death sentence but propounded the new concept of the doctrine of (rarest of rare) in the criminal law.

Jurisprudence. Further, in the case of Macchi Singh and others V. state of Punjab ⁴⁻ the three judges bench of the supreme court follow the decision of bachan Singh's case & submitted that only in rearest of rare cases when collective conscience of community is in such a way that it will expect the holders of judicial powers to inflict death penalty then it can be awarded if

- 1) When the murder is committed in an extremely brutal manner so as to arouse intense and extreme indignation of the community.

- 2) When a murder of a member of a schedule caste is committed which arouse social wrath
- 3) In case of “dowry death”.
- 4) When the crime is enormous in proportion.
- 5) When the victim of murder is-
 - An innocent child.
 - A vulnerable woman or a person rendered unaided by mature apoch or illness.
 - Once the injured party is individual in relation to home the slaughterer is in point of authority.
 - As soon as the injured party is civic figure as well as murder is committed for political or similar reason rather than personal reas

The capital punishment was again challenged in the Supreme Court in Mithuv state of Punjab. Section 303 I.P.C which provided for the mandatory sentence for offenders serving the life sentence was discussed. The Supreme Court held sec.303 I.P.C is based on logic that any criminal who convicted for life and still kills someone is beyond reformation & the only suitable punishment for such culprit is death penalty.

4. Capital punishments for the offences under the Indian penal code are as under

1. Section 121: Waging or attempting to wage war against the government of India.
2. Section 132: Abetting of mutiny actually committed.
3. Section 194: Giving or fabricating the false evidence.
4. Section 195-A: Threatening or inducing ay person to false evidence resulting in conviction and death of innocent person.
5. Section 302: Murder
6. Section 305: Abetting of suicide of child or insane person.
7. Section 307(2): Attempting murder by serving life convict.
8. Section 364-A: Kidnapping for ransom.
9. Section 376-A: Rape and injury which causes death or leaves women in persistent vegetative state.
10. Section 376-AB: Rape of child below 12 years.
11. Section 376DB: Gang rape of child below 12 years.
12. Section 376E: Certain repeat offences in context of rape.
13. Section 396: Dacoity with murder.

Conclusion

The capital punishment is the one of the way by which the habitual offenders are eliminated from the society, as every human being wants a crime free society. The capital punishment is retained because it serves the purpose of the deterrence. Humans are not angels and can do wrongs but the wrongs which are heinous and against the society and the state are called the crimes, for which the state has made penal legislations and different kind of punishments are there in the the criminal law jurisprudence. Capital punishment being the highest kind of punishment and not the new invention in the criminal law jurisprudence, it has been there from time immemorial. The accused is executed after following all the procedural formalities. The person awarded the death penalty has right to appeal before the high court then the apex court, governor of the state and finally he can approach the president of India. The convicted person is provided with many opportunities to

prove his innocence. The concept of capital punishment is not new still it was discussed many times in the supreme court of the India and the Supreme Court has been in the favor to retain this kind of punishment. The concept of capital punishment needs more discussions and debates as it is the need of the hour as 75 nations around the globe has abolished the death penalty for all the crimes.

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