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# Capital Punishment in India: An Analysis

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## ABSTRACT

*Capital Punishment is given by court when there is no remedy available to the victim it means that rarest of rare case. There is procedure which is given in CRPC and under IPC under which crime is mentioned for which capital punishment given. Parliamentary debate on the bill of death penalty. The International convention on civil and political rights there is "Second Optional Protocol". Argument for death penalty. Article 21 of Indian Constitution violating by death penalty. Law commission report on death penalty that except terrorism related crime this penalty abolish. There is report on the death penalty which is National Crime Records Bureau. There is another report on death penalty which is Annual statistics report 2019. Protection of Children from Sexual Offences (Amendment) Act, 2019, in this punishment extend to life imprisonment and also liable to fine or death sentence. In India there is some act came in this regard like Shakti Act 2020 on death Penalty in sexual offence in Maharashtra, Disha Act, 2019 in Andhra Pradesh. Women on Death Row is very interesting thing in India, There is one case Seema Gavit and Renuka Shinde they are sister called serial killer sisters. They were kidnapping and killing five children. They were charged with "nine murders and thirteen cases of kidnapping". There is one another case recently in which women awarded with capital punishment, Amroha murder case in this case Shabnam and Salim who are lover and they murdered seven people of her family in April 14-15 in 2008 in Uttar Pradesh district Amroha, they lived in small village Bawankheri*

**Keywords** - Capital Punishment, Parliamentary Debate, Second Optional Protocol, National Crime Records Bureau, Disha Act, 2019.

## I. INTRODUCTION

The history of early penal system of most countries reveals that Punishment is cruel, tortuous and barbaric in nature. According to the view of English law on death penalty is that history of crime and punishment in England during the medieval period reveals that infliction of death penalty was commonly practiced for the elimination of criminals<sup>2</sup>. There is two point on which this kind of punishment reduced first, male who are offenders could read and eligible for holy

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<sup>2</sup> DR. N.V. PARANJAPE, CRIMINOLOGY & PENOLOGY WITH VICTIMOLOGY 347(17<sup>TH</sup> ed. 2018).

order exempted from this death penalty but in forthcoming years this exemption from death penalty extend to women also. Second point is that there is one condition on which prisoners' death sentence was pardoned if they accepted that they were transported to American Colonies<sup>3</sup>. This form of punishment was abolished in 1927. There were some country in which this form of punishment was as social defense measures like Ceylon but in 1956 abolished this capital punishment. In Italian view this form of punishment had utility that one of criminologists Lombroso according to him that this form of punishment is for habitual and incorrigible's offenders. He supported this type of punishment. On the other hand there is one criminologists Beccaria stated that a person's life is precious so no one who have right to end it by awarding this form of punishment<sup>4</sup>. In United States several states which abolished death punishment with beneficial result. There are one landmark decision in which Mr. Justice Brennan and Mr. Justice Marshall of U.S. Supreme Court *Furman v. The state of Georgia*<sup>5</sup> in this they observed that death penalty should be outlawed on the ground that it was an anachronism degrading to human dignity and unnecessary in modern life . Now we are discussing the Indian position in ancient time whether this form of punishment was exist or not. If we are looking into history of India we found that there was some offences for which death sentence given to offenders. There is two historic and very famous book the Mahabharata and the Ramayana these books contain some references that offenders punished by Vadhadand it means that an offenders punished amputation by bits<sup>6</sup>. Manu who is a famous and great ancient viewed that if this form of punishment is no existence then people harm each other like a fish. It means that as fish a person also harm weaker like a stronger fish eat weaker. This is not an ideal society. There is many reason which justify this form of punishment that no one have right to forfeit another life but if a person do this so it is lawful to forfeit his/her life. After all these prisoner have option to avoid this form of punishment like appeal or pardoned or commutation so this form of punishment is not so effective. In India there is many form of punishment like Flogging, Mutilation, Branding, Stoning, Pillory, Amercement , Fines, Forfeiture of Property, Collateral Sanctions which is also called Penalties, Security Bond, Ostracism , Blanket Civil Death, Exile, Banishment, Solitary Confinement, Detention, House arrest, Imprisonment for Life , Imprisonment simple or rigorous, Death sentence. But there is argument in favor of death sentence and against it. Who in favor has viewed that this form of punishment is serves ends of justice and who are against it has viewed, chance of Reformation

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

and Rehabilitation of the offender are reduced by this form of punishment.

## **II. ROLE OF IPC, CRPC, CONSTITUTION OF INDIA AND SECOND OPTIONAL PROTOCOL TO INTERNATIONAL CONVENT ON CIVIL AND POLITICAL RIGHTS**

### **(A) Indian Penal Code**

The aim of which we all know that it provides punishment for crimes. It is substantives not procedure. Under this there are some offences for which capital punishment is awarded like waging war against the state(section 121), Abetment of Mutiny (section 132) and there is other like this crime for which this form of punishment is given. There is an amendment of IPC, The Criminal Law (Amendment) Bill 2018 which is in force from the 21<sup>st</sup> day of April 2018. This bill introduced in Lok Sabha in July 23, 2018 and passed in 30 July 2018 in Lok Sabha and in Rajya Sabha in 6 august 2018. In this there is amend to IPC and insertion of new section which is based on rape punishment ,section 376AB in this section a person who commit rape of a women under age of 12 years is also punished with death sentence in addition to rigorous imprisonment which shall not less than twenty years but extend to imprisonment for life . The reason for this amendment is there is rape case of Kathua rape case and Unnao rape case due to these cases need of this amendment are necessary. In India states like Madhya Pradesh, Haryan, Rajasthan and Arunachal Pradesh passed anti-rape laws for this offences after this two cases. This is the first time capital punishment is given for rape cases.

### **(B) CRPC**

We all know that Crpc is procedure. In this the procedure is given for awarding death sentence. There are many section which deal with death sentence. Section 235(2) in this section accused have right when he has opportunity to put forth plea for award of life imprisonment as an alternative of punishment of death sentence that he conferment of right of pre- sentence hearing . This section actually impose a duty which is statutory upon the court to hear the accused on the point of sentence. The way by which execution of death is made given in section 354(5) in this section direction given by judge that when a person awarded with this form of punishment it means death penalty that condemned person be hanged by neck till he is dead. But limitation on execution of death sentence given in section 366(1) it deal that when a session judge imposed death sentence can be executed only after it is confirmed by the concerned high court. Commutation of death penalty is given under section 433(a) when a person awarded death penalty, the appropriate government without consent of that person commute the death sentence into any other punishment provided by the Indian Penal Code (45 of 1860). Central Government has also power to deal with death sentence which is given in section 434. The

power of given death sentence under section 28(2) in which a Sessions Judge or additional Sessions judge when they pass any sentence of death this shall be subject of confirmation by High court. But there is limitation on an assistant sessions judge , cannot pass a sentence of death or of imprisonment for life or of imprisonment for term exceeding ten years under section 28(3). There is appeal against death sentence to Supreme Court under section 379. Court has duty to give special reason when awarding death sentence under section 354(3).

### **(C) Constitution of India**

In our constitution there is article which deal with death penalty. Article 136 of the constitution of India provides appeal to Supreme Court related to death penalty. Governor / President has power to pardon or commutation of sentence under article 72 or 161.

### **(D) Second Optional Protocol to the International Covenant on Civil and Political Rights**

This protocol has aim to abolition of death penalty. It has believe that increase the human dignity and there is development of human rights in this abolition of death penalty has play important role. In this covenant there is article 6 which clearly states that it is desirable to abolish the death penalty. Article 1(2) of this covenant deal that each state party which signed and rectified it for abolishing this death penalty take all necessary measures. This is mandatory for state because the word shall is used in this. Date of adoption of this covenant is 15 December 1989. In this protocol there was 73 parties and 35 signatories but India has not signed this. But in 30 July 2020, 88 of 173 states parties to the ICCPR have rectified or acceded to its second protocol which is aiming abolition death penalty.

## **III. PARLIAMENTARY DEBATE IN INDIA ON DEATH PENALTY (ABOLITION) BILL, 2019**

This is bill which is related death penalty but this bill introduced in Lok Sabha, so this shall come when the central government may by notification in the Official Gazette, appoint. This bill states that death penalty are abolished in country but there is huge debate in Seventeenth Lok Sabha. In India there is ninety percent Indian states which want to retain this death penalty. This matter come under concurrent list of the constitution so in India 14 states and 5 union territories responded but one state which do not want retain of this punishment. In Rajya Sabha this bill is come for its consideration.

### **(A) Law Commission Report on Death Penalty**

There is many report of law commission on this like 35<sup>th</sup> report in which commission gave its suggestion that in India there is huge population we know that so India cannot take the risk to

abolish the death penalty. Recently 262<sup>nd</sup> report of commission on this and commission gives its recommendation that abolish this sentence but the crime related to terrorism and waging war in these there is no need to abolish this death penalty.

### **(B) National Crime Records Bureau (NCRB)**

Due to amendment of criminal law amendment act 2018 death penalty is extent to rape case also. So Case of rape is in 2016 is reported 38,947 case but in this 36,859 cases in which victims knew the offenders .It means that offenders are her family member or friend or to know to her very well. In 2017, according this report number of prisoner who awarded death sentence are in whole India 121, in UTs 5 and in states 116. This death sentence is number of prisoners whose sentence is commuted to life imprisonment during 2017 is in states and in all India is 83 but the number of prisoners whose sentence is executed is 0. In during year of 2019 number of prisoners is 121 in whole India and number of prisoners whose sentence commuted to life imprisonment is 68 in whole India and number execution is 0. In this year of 2019 there is none –receipt data from West Bengal for the year 2018 and 2019, so the data of year 2017 has been used.

### **(C) Annual Statistics Report 2019**

This report based on death penalty in India published by Project 39A National Law University, Delhi in year 2020. This is the First Death Penalty India Report. In this report death sentence given in 2019 by High court, Session court and confirmations and commutations by Supreme court. In this report for offence sexual death sentence imposed in 2019. 52.94% of the death sentences imposed by trial court and 65.38% of high courts confirmations of death sentences involved sexual offences along with murder.

## **IV. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (AMENDMENT) ACT, 2019**

This act come to amend the Protection of Children from Sexual Offences act, 2012. In section 6 of Protection of children sexual act 2012, deal with the punishment for aggravated penetrative sexual offence in this punishment extend to imprisonment for life and fine but in amendment act 2019 this punishment extend to imprisonment for life and shall also liable to fine or death sentence.

## **V. SHAKTI ACT 2020 ON DEATH PENALTY IN SEXUAL OFFENCE**

The Maharashtra bring a Bill based on death penalty in case of rape in 14 December 2020. The Shakti Criminal Law (Maharashtra Amendment) Act, 2020 and the Special Court and

Machinery for Implementation of Maharashtra Shakti Criminal Law, 2020. This is tabled in the State Assembly by Maharashtra Government. This draft bring to stop the crime against women and children. In case of rape, acid attack and serious crime against children, death penalty extended to these cases. This bring the amend to various provisions of Indian Penal Code ,1860,Code of Criminal Procedure, 1973 and the Protection of Children from Sexual offences act,2012. These amendment apply in State of Maharashtra. In Maharashtra a famous case which is the reason for bringing this Shakti act is Shakti Mills rape case in this case A girl 22 years old raped by five people in Shakti Mill compound. In this one of the Juvenile. Three of the accused awarded by death sentence in this case. This is called the rarest of rare case. This Shakti Act states that investigation in these case within 15 days and trial within 30 days. This gives speedy to judicial proceeding. This bill get the nod from House and sent to the Central Government for approval and President Assent.

## **VI. DISHA ACT, 2019**

This act states the death penalty in case of rape, gang rape. In this act within 21 days trial of the case is done. It means that within 7 days investigation executed and within 14 days trial from date of filling the charge sheet. There is reason to bring this act, in Hyderabad a veterinary doctor raped and murdered brutally. So the Andhra Pradesh State Legislative Assembly passed this act. In this law convicted person if there is adequate evidence shall be liable for death penalty for rape crime.

## **VII. CASE ON DEATH SENTENCE IN RAREST OF RARE CASE**

One of the historic case Bachan Singh v. State Of Punjab 1980 in which the doctrine of rarest of rare case has laid down by Supreme Court. In this case Bachan Singh murdered 3 persons and awarded death sentence under section 302 of Indian Penal Code by Sessions Judge. He appeal to High Court but High Court dismissed the appeal then he filed Special leave petition to Supreme Court. In Supreme Court the one of the argument is that section 302 of ipc is against 21 of the Constitution of India. Supreme Court said that under Maneka Gandhi judgement, a person can be deprived of his rights under article 21 by Just, Fair and reasonable law. Further Supreme Court said that Capital Punishment can be given in Rarest of rare cases where the option is not available.

## **VIII. CONSTITUTIONALLY VALIDITY OF DEATH SENTENCE**

In case Dina v. State of U.P., AIR, 1983 SC1155 in this case the constitutionality validity challenged on the ground that it was violated of article 21 of constitution of India is violated

being barbarous and inhuman in nature. The supreme court, but rejected the contention and held that hanging the condemned person by neck till he is dead was perhaps the only convenient and relatively less painful mode of executing the death sentence.

## **IX. WOMEN ON DEATH ROW**

There is one case Seema Gavit and Renuka Shinde they are sister called serial killer sisters. They were kidnapping and killing five children. They were charged with thirteen cases of kidnapping and nine murders. They found guilty by session court of kidnapping and murdering of six children. Five of cases are proved by prosecution the death sentence given by High court and confirmed. They appeal against this verdict in the Supreme Court but the appeal rejected by Supreme Court. Then they apply for mercy plea to President of India and he rejected it. But there is delay in execution of the sentence so they did not hanged.

There is one another case recently in which women awarded with capital punishment, Amroha murder case in this case Shabnam and Salim who are lover and they murdered seven people of her family in April 14-15 in 2008 in Uttar Pradesh district Amroha, they lived in small village Bawankheri. Shabnam is well educated and was school teacher and Salim is uneducated and school dropout. They both are love each other but Sabhnam's family did not accept their relationship. Now they awarded with death sentence in 2010 for murdered seven members of her family. They file mercy plea to Uttar Pradesh Governor, Governor rejected the plea. They file mercy plea to The President but The President rejected their plea. In Supreme Court they file review petition but in 2020 Supreme Court dismissed their review petition. Supreme Court held in this case while dismissed the review Petition that Shabnam and Salim meticulously executed the killing. After Independent if the death sentence executed, she will be the first women to be hanged for a crime.

## **X. CONCLUSION**

This is known to all in India that Capital Punishment should retain. There is report of Amnesty International on Abolitionist and Retentionist Countries in July 2018. According to this report more than two –third of the countries in the world in favor of abolished the death penalty and they now abolished it in law or practice. In this there is list of country in which capital punishment abolished. 56 Country which retain this death sentence out of this India is One which retain this punishment.

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