

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

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Whether Capital Punishment should be Abolished or Not?

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ABSTRACT

The capital punishment also called as the death penalty. It's the highest penalty awardable to an accused person. Generally, it awarded in extremely "rarest of rare cases" like brutal, ridiculous, diabolical, revolting etc. In the Indian Penal Code 1860 there has some sections which deals with the death penalty for example section 121, 132, 194, 302, 305, 307, 364A, 369 etc.

The death penalty was commencing since the ancient Romans and Greeks era. It was mainly used for incurable offenders and in a wide range of offences like treason, murder etc. During the 17th and 18th centuries in England, it was made merely deal with the most heinous crimes of that time.

At this time, it has become a most controversial topic in the legal system where human rights are being violated continuously. Therefore, many Criminologist and Socialists have a long demanding for abolition of the death penalty in legal system and so many civilized countries have already been abolished the death penalty to their judicial system i.e. Australia, Congo, France, Italy, Norway, Portugal, and U.K have completely abolished the Capital Punishment due to inconsistent with the human rights requirement. However, According to Amnesty International record presented that the most of executions were taken place in China, Iran, Saudi Arabia, Vietnam and Iraq. In 2007 the UN General Assembly was called a resolution for a moratorium on the death penalty where India voted its against. In 2012 India again voted against the UN General Assembly on the draft regulation to ban the death penalty.

The Constitution of India Article 72 confers the pardoning power to the President which is an exclusive power of him and Article 161 provides the pardoning power to Governor and Article 136 gives the special leave to appeal by the Supreme Court of India and this right is applicable while High courts are passing the death sentence against an accused then the accused may file a petition at Supreme Court and if the Apex Court also passes the death sentence thereafter again the accused person can file a review petition at Supreme Court under Article 137. Moreover, the judgement passed the Court then he can be filed a mercy petition to the President and until the reply of the petition his punishment must be barred.

Keywords - Capital Punishment, Deterrent Theory, Retribution Theory, Reformative

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Theory. Party Officials.

I. ARGUMENT IN FAVOUR OF DEATH PENALTY

- Deterrent Theory says that the object of punishment not merely to prevent the wrongdoers from doing a wrong another time but it will make an example to others and further if anyone does it then they would be treated as the same manner.
- Retribution Theory says if any person commits a crime then he should be punished and suffer for his crime like "an eye for an eye" and the victim can seek the revenge against the individual who has committed the offence. Thereafter, the victim would refuse to make a complaint or offer to give a testimony.

II. ARGUMENT AGAINST OF DEATH PENALTY

The most common argument is the Capital Punishment doesn't confer a second chance to rehabilitate to the prisoners and return them to society. The object of Reformatory theory is conferred to reform the offender and the criminal must be educated and taught them some art during the term of imprisonment, if he may be able to lead an admirable life and become a responsible citizen after release from jail. According to UN Secretary General report presented to the Human Rights Council laid down that some 170 states were abolished the Capital Punishment and suspended the execution for more than 10 years.

For example:-

- In 1976 Portugal was abolished the Capital Punishment for all crimes.
- In 1979 Norway was abolished the Capital Punishment for all crimes.
- In 1981 France was abolished the Capital Punishment for all crimes.
- In 1985 Australia was abolished the Capital Punishment for all crimes
- In 1989 New Zealand was abolished the Capital Punishment for all crimes.
- In 1992 Switzerland was abolished the Capital Punishment for all crimes.
- In 1994 Italy was abolished the Capital Punishment for all crimes.
- In 2015 Congo was abolished the Capital Punishment for all crime.

III. CASE LAWS

- In Jagmohan Singh V. State of Uttar Pradesh AIR 1973 - In this case the Supreme Court held that Article 21 of the Constitution of India deprivation of a life is constitutionally valid and permissible if the execution is occurred according to procedure established by law.

- In Bachan Singh V. State of Punjab AIR 1980 - In this case a Constitution Bench of the Apex Court held the Doctrine of "Rarest of rare cases" and where death penalty wouldn't be awarded except in the "Rarest of rare cases" and alternative option will be unquestionably disposed.
- In Mithu V. State of Punjab AIR 1983 - The Supreme Court laid down that capital punishment isn't a mandatory punishment for the all grievous listed crimes. Besides the capital punishment will be unconstitutional if it's mandatory.
- In Machhi Singh V. State of Punjab AIR 1983 - In this case the Supreme Court laid down that certain conditions and considerations will be determining the capital punishment whether a case falls under the category of rarest of rare cases or not.

IV. CONCLUSION

In India's context the Capital Punishment might be justified because of its use in merely rarest of rare cases. Nevertheless, our government should be statistical examined about the Capital Punishment and taken an alternative methods to handle against the death penalty because it hasn't decreased the rate of crimes in our society yet.
