



DEATH PENALTY IN INDIA: RETENTION, ABOLITION OR RATIONALIZATION

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ABSTRACT:

Death sentence has been an integral part of Indian Justice Administration System which finds its roots in ancient Indian legal texts. This punishment is resorted to in cases of the most heinous felony and aims at setting deterrent example in the society to preclude people involving in criminal activities. These paper endeavours to explore ancient and modern legal literature showing circumstance in which the capital punishment may be avoided, discouraged and attempts made to abolish the death sentence or finding its rational alternative on the grounds of protecting society and dignity of individuals.

Keywords: *Capital Punishment, Execution of Death Sentence, Law Commission, Lethal Injection, Reformation, Administration of Criminal Justice.*

INTRODUCTION:

The capital punishment just as any other punishments are based on the proposition that wrongdoing be penalized, having underlying reasons such as a beliefs that it is just and right to let the wrongdoer suffers for the crime and that, the punishment discourages or prevents others from involving in any wrong doing. Indian Penal Laws and other number of special statues provides for death penalty for specific offences. Whereas Section 354 of Code of Criminal Procedure regulates the mode of execution of death sentence. The societies in the countries across the world are undergoing change

in multifold dynamics which in its response calls for corresponding change in the Justice Administration system of the country.

DEATH SENTENCE PRESCRIBED UNDER ANCIENT INDIAN LAW TEXTS:

The sentence of death being the highest penalty sentence for several offences was prescribed such as, acts of destabilizing the State, for murdering a Brahmana (Mahapatakas), committing adultery with wife of guru, and for abetment of such offences.¹ Causing violent and illegal fire, murdering, robbing, poisoning, adultery, abetting

¹ Manusmriti IX 235 and XI 54

theft by providing shelter, supplying weapons for house breaking, temples or asylum, causing damage to river dams, causing miscarriage were also liable for death punishment.² Brahmana were too liable to death penalty if he found guilty of theft of gold, for committing Strihatya (murdering a woman) causing miscarriage to a pregnant woman.³ Found various very cruel modes of execution of death penalty, such as by administering poison, crushing the convict by elephant's feet, setting the convict on fire or leave him for wild animals to die.

AVOIDANCE AND DISCOURAGEMENT OF DEATH PUNISHMENT:

Ancient Indian also shows when such punishment should be avoided, be it severe felony, with some exceptions, the capital punishment was resorted to when the offender voluntarily fails to undergo the self-purification procedure (penance) as a punishment alternative to the death to be imposed in accordance with the law.⁴ It thus indicates that the death sentence was to be discouraged. There are interesting arguments on this question between King Dyumatsena and his son, Prince

Satyavat.⁵ The relevant passage thereof holds that, the young prince argues against death sentence considering effect of death penalty of the dependants of the convict, the father King furnished a cogent response supporting the necessity of heavy penalties holding the reasoning that people were not taking the lighter punishment very seriously.

VIEWS OF LAW COMMISSION OF INDIA:

The Law Commission appears to have been reluctant in its opinion to retain capital punishment in modern India as it may be seen reading the above referred arguments between the King Dyumatsena and his son Prince Satyavat in its 35th Report and opined that:

“The sentiment and reasoning against capital punishment is found in Sukra, according to whom this bad practice violates the Vedic injunction against taking any life, and should be replaced by imprisonment for life, if necessary, and a natural criminal should be transported to an island, or fettered and made to repair the public roads. Fa Hien did not find any capital punishment in India (300-400 A.D.) and (imposition of) fines were there, and mutilation in case of treason.

² Kautilya. P. 259, Harita VIII 190-202, 220, 221, Yajnavalkya. II 273, Manusmriti IX 271, 279, 371 and Gautama. XXIII 14.

³ Katyayana. 806

⁴ Manusmriti IX-236

⁵ Santiparva Ch. 268.

Nevertheless, it seems that, at various periods in the history of ancient India, capital punishment was one of the recognized modes of punishment.”⁶ The Law Commission however recommended that the capital punishment should be retained in modern Indian legislations.⁷

The Commission vide its 187th Report on mode of execution of death sentence and incidental matters, issued recommendations, among others, to amend the Section 354 of the Code of Criminal Procedure to provide alternative (more humane and painless) mode of execution of death sentence by lethal injection until the accused is dead. The law commission took up observations of the Supreme Court in *Bachan Singh v. State of Punjab* that physical pain and suffering by execution of death penalty by hanging is cruel and inhuman. The Commission has also discussed at length various methods of execution through ages such as, Lethal Injection, Gas Chamber, Electrocuting, Firing Squad and so forth.⁸ The Commission by its 262nd Report recommended to abolish death penalty for all felony except for terrorism and waging war, sincerely hoping for the swift and irreversible movement

towards absolute abolition of the death penalty.⁹

VIEWS OF SUPREME COURT OF INDIA:

The question whether to retain or abolish the death penalty also came up before the Hon’ble Supreme Court of India. Justice Krishna Iyer, opined heavily against the death penalty, holding that, “You cannot inflict degrading punishment since the Preamble speaks of ‘dignity of the individual’. To stone a man to death is lynch law which breaches human dignity and is reasonable under Art. 19 and unusually cruel and arbitrary under Art. 14. Luckily, our country is free from that barbarity legally.”¹⁰

In a subsequent judgment by Justice Chinnappa Reddy of our Apex Court expressed similar views by observing that, “The murderer has killed. It is wrong to kill. Let us kill the murderer’- That was how a Mr. Bonsell of Manchester (quoted by Arthur Koestler in his ‘Drinkers of Infinity’), in a letter to the Press, neatly summed up the paradox and the pathology of the Death Penalty. The unsoundness of the rational of the demand of death for murder has been discussed and exposed

⁶ 35th Report, Appendix, Vol. 2, pp. 200-201

⁷ 35th Report, Vol. I-III, p. 354

⁸ Law Commission Report no. 187, pp 8-17

⁹ Law Commission of India, Report No. 262 on Death Penalty, August 2015, pp. 217-218

¹⁰ *Rajendra Prasad v. State of U.P.* (AIR 1979 SC p.916 at932 para 55).

by my brother Krishna Iyer, J. in a recent pronouncement in *Rajendra Prasad v. State of Uttar Pradesh* (AIR 1979 SC 916) I would like to add an appendix to what has been said there.”¹¹ The Court goes on and reproduces the words of Justice K. Iyer:

“That is not all. There is yet a more ‘grievous injury’ which the death penalty inflicts on the administration of Criminal Justice. It rejects reformation and rehabilitation of offenders as among the most important objectives of criminal justice, though the conscience of the world community speaking through the voices of the Legislature of several countries of the world has accepted reformation and rehabilitation as among the basic purposes of criminal justice. Death penalty is the brooding giant in the path of reform and treatment of crime and criminals, ‘inevitable sabotaging any social or institutional programmes to reformation.’ It is the ‘fifth column’ in the administration of criminal justice”¹²

CONSTITUTIONAL VALIDITY OF DEATH PUNISHMENT:

Upholding the validity of death sentence u/s 302 of IPC by the Constitution Bench of the Hon’ble

Supreme Court of India. Justice Sarkaria, in the judgment, observed:

“To sum up, the question whether or not death penalty serves any penological purposes is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302, Penal Code, on the ground of reasonableness in the light of Article 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue is a ground, among others, for rejecting the petitioner’s argument that retention of death penalty in the impugned provision is totally devoid of reason and purpose. Notwithstanding the view of the abolitionists, to the contrary, a very large segment of people, the world over, including sociologists, legislatures, jurists, judges and administrators, still firmly believe in the worth and necessity of capital

¹¹ *Bishnu Deo v. State of West Bengal* (AIR 1979 SC p. 968 at 965 and at 968 para 18).

¹² (AIR 1979 SC 916)

punishment for the protection of society.”¹³

CONCLUSIONS:

According to Amnesty International Reports, 108 Countries completely abolished the death sentence by the end of the year 2021 and 19 Countries including India have pardoned or commuted the death punishment, whereas the method of execution used across the world in the year 2021 are Behading, Hanging, Lethal Injection and Shooting. 123 member Countries of United Nations voted in favor of abolishing the death penalty.

On the other hand India has recently introduced death penalty in POSCO Act, Punjab and Madhya Pradesh Houses cleared introduction of death penalty spurious liquor prohibition laws. Similarly, after the State of Andhra Pradesh, the State of Maharashtra approved death sentence for heinous crimes of rape vide Shakti Criminal Laws (Maharashtra Amendment) Act in the year 2021

The Hon'ble Supreme Court has repeatedly emphasized on avoiding death penalty except in the rarest of rare case and to protect the dignity of the individual and to be more humane to do justice in awarding punishments on one hand, and to consider the collective cry of the society at large

seeking to retain the death penalty for heavy felony on the other hand, several reforms in these aspects would serve the purpose to balance these two hands.

For that very purpose, the legislature may after due deliberations with various representatives of Indian society, come up with reforms to provide for rationalized alternative methods of execution of death penalty as appropriate and suitable to the characteristics of the convict and circumstances of the case.

REFERENCES:

- 1) History of Dharma Shastra – P. V. Kane
- 2) Legal Literature on Manusmriti
- 3) Constitution of India
- 4) Law Commission of India reports (Reports no: 35, 187, 262)
- 5) Reports of Amnesty International Human Rights Organization
- 6) AIR 1980 SC 898 at 9292
- 7) AIR 1979 SC p. 916 at 932 para 55
- 8) AIR 1979 SC p. 968 at 965 and at 968 para 18
- 9) AIR 1979 SC 916
- 10) The POCSO (Amendment) Act, 2019

¹³ Bachan Singh v. State of Punjab (AIR 1980 SC 898 at 9292)