

## Capital Punishment in India

*Mehul P.Barot*<sup>1</sup>

*Meet D.Lukka*<sup>2</sup> and *Keyur V.Golani*<sup>3</sup>

### **Abstract**

*India is a well-developing country at the same time lots of crime rates are increasing nowadays. There are lots of legislation in India to stop and control crimes, even though the crime rates are increasing because the punishments are not sufficient for the crimes. The punishments should be severe to reduce the crime rate. All punishments are based on the same motive to give penalty for the wrongdoer. There are different kinds of punishment in India such as capital punishment, life imprisonment, imprisonment etc. Capital punishment is known as the most severe form of punishment. This paper says about the status of capital punishment all around the world and also defines the concept of capital offence. It also explains about the modes of capital punishment in India.*

**Keywords:** *Capital punishment, Death penalty, Legislation, Capital offence, Crime, Offender.*

### **I. Introduction**

India is a country which consists of a large number of crimes and criminals. In India all punishments are based on the motive to give penalty for the wrongdoer. There are two main reasons for imposing the punishment, one is the wrongdoer should suffer and the other one is imposing punishment on wrongdoers discourages others from doing wrong.

There are different kinds of punishment in India based on their offence such as capital punishment, imprisonment, life imprisonment with fine etc. In this research the researcher focused on capital

---

<sup>1</sup> Assistant Professor, Computer Engineering dept., LDRP-ITR,

<sup>2</sup> Student, Information Technology Dept., LDRP-ITR

<sup>3</sup> Student, Information Technology Dept., LDRP-ITR

punishment or death penalty. Capital Punishment is one of the important part of Indian criminal justice system. Crimes result in death penalty are known as capital crimes or capital offences. The term capital punishment is derived from the Latin word "capitalis" means "regarding the head".

The term death penalty is also known as capital punishment. Capital Punishment is a process by a person is put to death by a state for their criminal offence.

Capital punishment or death penalty means the offenders sentenced to death by the court of law for a criminal offence. Capital punishment which has been awarded for the most grievous crimes against humanity.

Death penalty differs from place to place, state to state and country to country. There are many human rights movements in India which says capital punishment

is immoral. The human rights organisations are argued that capital punishment affect one person's right. In jurisprudence, criminology and penalty, capital punishment means a sentence of death. Indian criminal jurisprudence is based on the combination of two theories.

The constitution also gave powers to president and governor to suspend or pardon death sentence. In India capital punishment is awarded for the most serious and grievous offences. Capital punishment is given for murder, robbery with murder, waging war against the government and abetting mutiny, etc.

The death sentence is given only when the court comes to an end that life imprisonment is insufficient, based on situation of the case.

The main aim of this study is :-

- To study about capital punishment in India.
- To study about the criminological approach of capital punishment.

## **II. Methodology**

This research is based on doctrinal type pattern. Doctrinal research is also known as traditional research. Doctrinal research is divided into different types such as analytical and descriptive method.

This research is based on information which has been already available and analysed those facts to make evolution of this research. This research involves secondary data. In this research the researcher mostly used books, articles, journals, etc.

### **i. Capital Punishment in India**

Capital Punishment is a legal death penalty in India. India gives capital punishment for a serious offences.<sup>4</sup> In India capital punishment is awarded for most heinous and grievous offence. In India Article 21 of the Indian constitution is "protection of life and personal liberty". This article says "No person shall be deprived of his life or personal liberty except as according to procedure established by law". This article says right to life is promised to every citizen's in India. In India IPC provides death sentence as a punishment for various offences such as criminal conspiracy, murder, waging war against the government, abetment of mutiny, dacoity with murder, and anti-terrorism. The Indian Constitution has provision for mercy of capital punishment by the President. There are twenty-two capital Punishment is taken place in India since 1995. After the independence there are fifty-two capital punishment is taken in India. In "*Mithu vs state of Punjab*" the Supreme Court struck down the IPC Section 303 which provide mandatory death sentence for the offenders. India voted against a United Nations General Assembly resolution calling for a prohibition on the death penalty. In November 2012, India again continue its posture on capital punishment by voting against the UN General Assembly draft resolution request to ban death penalty. There are mostly two methods executed for capital punishment.

#### **a. Hanging**

All capital punishment in India is implemented by hanging. After independence, In Mahatma Gandhi case Godse was the first person to be executed by capital

---

<sup>4</sup>25 MAJUMDER, SANJOY. "INDIA AND THE DEATH PENALTY." BBC News 4<sup>th</sup> August 2005.

punishment in India. The SC of India suggested capital punishment must be given only to the rarest of rare cases in India.<sup>5</sup>

In Indian the government mostly used hanging method to execute capital punishment.

### ***b. Shooting***

In India the Army Act and Air Force Act also provide implementation of capital punishment in India.<sup>6</sup> In Air Force Act, 1950, section 34 allows the court martial to thrust the death sentence for the unlawful act mentioned in section 34(a) to (o) of The Air Force Act, 1950.

## **ii. Cases dealing with death penalty in India**

### ***a. Mithu vs State of Punjab***<sup>7</sup>

In this case the Supreme Court struck down Section 303 of the Indian Penal Code, which provided for mandatory death sentence for offenders.

### ***b. Bachan singh vs State of Punjab***<sup>8</sup>

In this case the Supreme Court says that capital punishment was given only to the rarest of rare cases.

### ***c. Jagmohan vs State of UP***<sup>9</sup>

This was the first case dealing with the question of constitutional validity of capital punishment in India.

## **iii. Statistical Report on Capital Punishment in India**

National Crime Records Bureau (NCRB) and American Convention on Human Rights (ACHR) statistical report:

<sup>5</sup>45 SAKHRANI, MONICA; ADENWALLA, MAHARUKH; ECONOMIC & POLITICAL WEEKLY, "Death Penalty – Case

<sup>6</sup>"CONSULTATION PAPER ON MODE OF EXECUTION OF DEATH SENTENCE AND INCIDENTAL MATTERS" (PDF). Law commission of India. Retrieved 29 July 2013

<sup>7</sup>AIR 1983 SC 473

<sup>8</sup>Criminal Appeal No. 273 of 1979, decided on 4 May, 1979

<sup>9</sup>AIR 1973 SC 947

Year: 1999-2003

Year	2000	2001	2002	2003
Sentences given	-	106	126	142
Sentences changes to life	-	303	301	142
Executed	0	0	0	0

Year: 2004-2009

Year	2004	2005	2006	2007	2008
Sentences given	125	164	129	186	126
Sentences changed to life	179	1241	1020	881	46
executed	1	0	0	0	0

Year: 2010-2013

Year	2010	2011	2012	2013
Sentences given	97	117	97	125
Sentences changed to life	62	42	61	115
Executed	0	0	1	1

According to Law Commission Report, capital punishment in recent years have been very few. Only three offenders were executed over a period of 10 years. One is in Maharashtra(2012), Delhi(2013) and Maharashtra( 2015). In India there is no death penalty was takes place between 2005-2011, that period was known as execution- free period. The latest capital punishment was Yakub Menon. On average

the, the court sentenced number of people to death row in India every year according to NCRB.

The above data shows a major gap between Death sentence pronounced and actual death sentence executed. According to the American Convention of Human Rights (ACHR) and National Crime Records Bureau (NCRB) data there have several death sentence pronounced between 2001 - 2013, but the authorities carried out only few executions. In India the death sentence rarely converted into executions. The law commission in India mostly recommends to abolish death sentence.

### III. Proposed work

In the current system, the criminal will get the punishment only and that's why he will not get second chance to make himself/herself correct in the future. If punishment is of death or lifetime imprisonment then he will not get chance to be a good person in life and if he/she has family then all will suffer due to only 1 punished person. Due to ruin of only one person all the family member will suffer the problems.

Instead of all such punishments if he/she will get chance to correct his/her mistakes so that he/she can move forward and develop to better person from past. It will be beneficial for all the person living in surrounding to his/her environment.

We can replace these punishments with such type of treatment in which it will help to such persons to get good person throughout their remaining life.

### IV. Implementation

There are 2 types of theories of punishment to such people which will lead to development in them.

- 1) Reformatory theory
- 2) Preventive theory

#### i. Reformation Theory

It is based on principle to reform the offender. Through treatments to offender the convicted person is reformed.

This theory will have target to educate the offender through which he/she can be reformed. It's like the punishment for benefit of own.

Reformative theory supports criminology. Criminology says every crime as a diseased phenomenon, a mild form of insanity. Criminal anthropology, criminal sociology and psycho analysis supports Reformative theory.

This theory aims to develop the mindset of offender in such a way that he/she can lead a life like a normal person. This theory criticize all kind of corporal punishment.<sup>10</sup> Some of them are as follows

**a. Criminal Anthropology**

The modern criminal anthropology says crime is a disease. Criminal anthropology says it is necessary to treat a criminal instead of punishing him. Hospitals and welfare homes are better adoption place to decrease crime than prisoners. Some crimes are happened by the normal persons due to willful violation of moral law. Sometimes crimes are caused due to mental or physical defect.

**b. Criminal Sociology**

Criminal sociology says to improve social and economic conditions to remove inequalities, than to punish the criminal. Punishment cannot change the crimes and crimes can be changed by justice and equality.

**c. Psychoanalysis**

Psychoanalysis is related to criminal anthropology and criminal sociology. Psychoanalysis support reformative theory. Instead of punishment education and psychoanalytic treatment is needed for preventing crimes.

**ii. Preventive Theory**

The main aim of this preventive theory is to keep the offender away from the society. According

---

<sup>10</sup> Bachan Singh v State of Punjab, AIR 1980SC 898 (India)

to preventivetheorythe main aim of punishmentis to set an example for others and prevent them from criminal activities. In this theorythe offenders are punishedwith death penalty, life imprisonment.

Preventive theory was supported by many law reformers because preventivetheoryhas humanizing Penal law. On many reformers view the preventive theory has a real effect on offenders. The main purpose of preventive theory is to take steps that accused person does not repeat the crime afterenjoyment of Punishment.

This theory explains that capital punishment as an most severe form of punishment because of its detriment effect. A man has taken the life of another man. So he is responsible to be deprived of his life. In India they follows preventive theory.

**iii. Clemency Powers**

If the Supreme Court files a case against capital punishment, a prisoner can submit a mercy petition to the President of India and the Governor of the State. Under Articles 72 and 161 of the Constitution, the President and Governors, have the power “to grant pardons, reprieves, respites or remissions of punishment”.

There are many mercy petitions filed by the offenders for their offence to President or Governor. That is known as pardoning power of President or Governor.

Maximum number of petition were acceptedby President. When President rejected mercy petition then the offender have the right to file curative petition

**Mercy petitions decided by the President of India (Law commission report)**

Year	Number of mercy petitions accepted	Number of mercy petitions rejected	Total
1950-1962	180	1	181
1962-1967	57	0	57

1967-1969	22	0	22
1969-1974	3	0	3
1974-1977	NA	NA	0
1977-1982	NA	NA	0
1982-1987	2	30	32
1987-1992	5	45	50
1992-1997	0	18	18
1997-2002	0	0	0
2002-2007	1	1	2
2007-2012	36	36	72
<b>Total</b>	<b>306</b>	<b>131</b>	<b>437</b>

## V. Conclusion

In India, capital punishment has been Practiced since ancient times. Many countries abolished capital punishment.<sup>11</sup> When we look at our national crime statistics death penalty has not proved to be deterrent for doing offence, the crimes rates are increasing only.

We have to reform our laws especially for death penalty in India. Our laws should reform and the punishment should be so rigours and it should be a example for people around him, about his unlawful acts. There is a punishment worse than death penalty.

Make the offender continuous discussion about capital punishment and the rigorous life in prison is worse than capital punishment. Each day and night the offender

---

<sup>11</sup> GANDHI 2016