

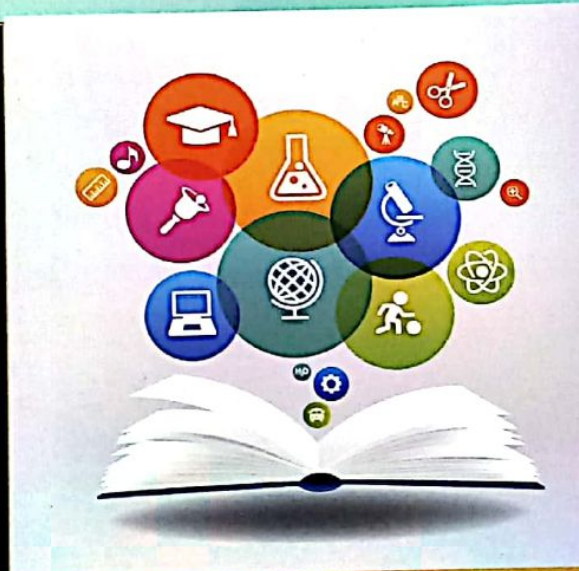
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Capital Punishment: Pros & Cons

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Introduction :

Death penalty was first codified in the Code of King Hammurabi of Babylon, for 25 different crimes. The death penalty was also component of the Fourteenth Century B.C.'s Hittite Code; in the Seventh Century B.C.'s Draconian Code of Athens, which made death the only punishment for every crimes; and in the Fifth Century B.C.'s Roman Law of the Twelve Tablets. Death sentences were carried out by such means as execution, beating to death, burning alive, and impalement.

In Britain hanging was the regular method of execution in the Tenth Century A.D., Britain. In the succeeding century William the Conquistador would not allow persons to be hanged or otherwise executed for any crime, baring in times of war. Such trend would not have been last, for in the next Sixteenth Century, under the domain of Henry VIII, as many as 72,000 people are estimated to have been executed. Some common methods of execution at that time were boiling, burning at the stake, hanging, beheading, and drawing. Executions were carried out for such capital offenses as marrying a Jew, not confessing to a crime, and treason.

Throughout the next two centuries the number of capital crimes in Britain continued to rise. Almost 1700s, 222 crimes were punishable by death in Britain, including stealing, cutting down a tree. Reason of the severity of the death penalty, many tribunals would not convict defendants if the offense was not serious. This leads to there is reforms of Britain's death penalty. From 1825 to 1836, the death penalty was removed for over 88 of the 200 crimes punishable by death.

¹Death Penalty Justified in Severest Crimes Against Women in the Delhi Gang Rape Case (Nirbhaya Case)

- Hon'ble Supreme Court of India in its judgement has noted that crime against women are on the rise and courts are too soft on the perpetrators.
- Hon'ble Court has maintained that in heinous crimes which both shock and repulse society, the extreme punishment of death is justified
- Death penalty was confirmed by the Court to two men who gang-raped and brutally murdered a 22-year-old BPO employee on November 1, 2007 night after she was picked by her company cab to the office
- In Nirbhaya Case also Death Penalty has was awarded by the Court
- In view of the Supreme Court in such "rarest of rare", crimes, collective conscience of the community is so shocked that imposing a lesser sentence, even life imprisonment, would fail justice.
- Justice Dattu has observed "The extreme punishment of death would be justified and necessary in cases where the collective conscience of society is so shocked that it will expect the holders of judicial power to inflict death penalty irrespective of their personal opinion".

Is Death Penalty an Ultimate Solution?

¹<https://www.mbauniverse.com/group-discussion/topic/social-issues/death-penalties-for-perpetrators-of-crime-against-women>

In country like India most of the people does not accepts death penalty as the only way to provide justice. In the recent scenario death penalty is given only for the 'rarest of rare cases'. It is the jurisdiction of the court to interpret such cases.

Supreme Court issued death warrants on January 7, 2020, in respect of four culprit for all the four convicts in the December 16, 2012 Nirbhaya Gang Rape and Murder Case and announced that convicts would be hanged on January 22 inside the Tihar jail. However, since then various pleas and petitions were moved in the various courts to linger on the process which took three months to execute the hanging order. And recently on they have been executed.

Civil society and Human Right Commissions has reservation and arguments against the Capital Punishment: -

1. **Human Life is supreme:** Human life is invaluable. Some of those against capital punishment believe that human life is so valuable that even the worst murderers should not be deprived of the value of their lives.
2. **Right to life :** Everyone has an inalienable human right to life, even those who commit murder or rape; sentencing a person to death and executing them violates that right.
3. **Recompense is wrong:** Many people believe that retribution is morally flawed and problematic in concept and practice.
4. **Failure to deter:** The general consensus among social scientists is that the deterrent effect of the death penalty is at best unproven. The death penalty doesn't seem to deter people from committing serious violent crimes. The thing that deters is the likelihood of being caught and punished.
5. **Animalize of Brutalising society:** Regardless of the moral status of capital punishment, some argue that all ways of executing people cause so much suffering to the condemned person that they amount to torture and are wrong.

So, while no sane mind will like to leave the perpetrators of such heinous crime unpunished, one must debate if Capital Punishment is the best way to punish, and deter future occurrences of such a crime.

²Case Laws

In **Jagmohan v. State of U.P.** the Supreme Court held that Articles 14, 19 and 21 did not violate the death penalty. The judge was said to make the choice between the death penalty and life imprisonment based on circumstances, facts, and the nature of the crime recorded during the trial. The decision to award the death penalty was therefore made in accordance with the procedure laid down by law as required by Article 21.

But, in **Rajendra Prasad v. State of U.P.**, the judge held that unless it was shown that the criminal was dangerous to society, capital punishment would not be justified. The learned judge pleads that the death penalty is abolished and said that it should be retained only for "white collar crimes". It was also held that the death penalty for the murder offence awarded pursuant to I.P.C. Section 302 did not violate the constitution's basic feature.

But, in **Bachan Singh, v. State of Punjab**, explained that, in accordance with an equitable, fair, and reasonable procedure laid down by law, the constitutional bench of the Supreme Court has recognized Article 21 the State's right to deprive a person of his life. In addition, there was no violation of the basic character of the Constitution by the death penalty for the murder offence granted under Section 302 I.P.C.

Conclusion

It is a controversial topic which is related to social and moral aspect. Hon'ble Supreme Court has come up with the guidelines regarding Capital Punishment time and again. The Court has extended the range of "alternative options" to be exhausted before the death sentence was chosen and the Supreme Court ruled in favour of the conviction in the case of Bachan Singh. By confirming the death penalty, we may execute someone to death who turns out to be innocent.

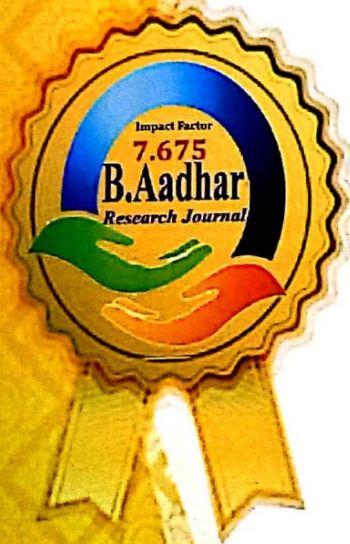


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