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ARTICLE

CONSTITUTIONAL VALIDITY OF CAPITAL PUNISHMENT : AN ANALYSIS

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Abstract:

The constitutionality of the death penalty has long been a divisive topic in the legal and ethical community. The issue centers on how the constitution should be interpreted, especially the parts that deal with fundamental rights and the ban on unusually harsh punishment. Advocates of the death sentence contend that it is a kind of punishment that is constitutionally justifiable, frequently referencing the legal frameworks that recognize the death penalty. They argue that it is a proportionate response to horrible crimes and that its existence acts as a deterrent.

On the other hand, opponents claim that the death sentence goes against fundamental constitutional rights, including the right to life and the ban on harsh, inhuman, or humiliating treatment. They place particular emphasis on worries over the possibility of erroneous convictions, sentence discretion, and the irreversibility of the penalty. Furthermore, the validity of the death penalty is contested on the basis of changing social norms and global abolitionist movements.

By applying legal analysis, weighing conflicting interests, and interpreting constitutional provisions in light of changing society norms, courts are essential in establishing whether the death penalty is permissible. This is a complicated and ever-evolving field of constitutional law since decisions made on it have a significant impact on both the criminal justice system and the defense of individual rights.

Keywords:

Constitutionality, Crime, Death Penalty, Law, Procedure

Introduction:

The constitutionality of the death penalty is a controversial topic that sparks important legal and moral debates. This analysis explores how the death penalty aligns with core constitutional principles, specifically the right to life and the ban on cruel and unusual punishment. Opponents highlight worries about potential injustices and shifting societal ideals, while supporters point to the legislation's constitutional legitimacy and deterrent effect. The process of evaluating the death penalty under a constitution is dynamic and involves legal authorities' complex interpretations of the law as they consider morality, justice, and changing societal norms.

To keep society's law and order, the state must impose penalties on violators. In the past, these offences were not specifically defined by any law or decree, and the state's monarch decided how harshly to punish the offender. Modern notions of punishment developed over time, and the state was granted the voluntary authority to uphold law and order as well as our rights. Although not all of the offences listed above definitely call for the death penalty, it is applied when a crime is so terrible that it has the ability to terrorize society as a whole. Only crimes that fit within the "rarest of rare doctrine" are subject to the death penalty.

What is capital punishment?

The Latin word "capitalis," which means about the head, is where the word "capital" originates. Therefore, to suffer the death penalty is to lose one's head.

The death penalty, or capital punishment, is the execution of a criminal who has been found guilty of a serious felony and given a death sentence by a court of law. It is regarded as the harshest type of penalty. It is a form of retribution for the most egregious, terrible, and disgusting acts against humanity. The death sentence has always been the outcome of such crimes, despite the fact that the definition and extent of such crimes differ by country, state, and age.

History:

In Babylon, the death punishment was established approximately 3700 years ago. The death penalty was exclusively applied to the most horrible and serious crimes in certain ancient societies, but it was also applied to less serious offenses like stealing in others. Rome enforced the death penalty in the fifth century B.C. for publishing songs that were considered defamatory or disturbing the tranquility of the city at night. Similar to this, every offense in Greece during the Draconian Law of the 7th century B.C. was punishable by death.

When the death penalty was first implemented, most criminals were put to death in front of witnesses. This had advantages of its own as well, as the survivors and those close to the victims experienced the somber satisfaction of seeing the last punishment meted out to the wrongdoers. Public execution demonstrated the willingness of public authority to safeguard the public and served as an example to prevent potential wrongdoers. Nonetheless, public hanging is no longer considered constitutional in India.

An additional feature of these penalties was the fact that commoners were executed more often than noblemen. In addition to the type of crime committed, social status also played a role in these executions, with foreigners and minorities receiving worse treatment than the majority and natives. The execution procedures also differed at that period. Among the frequently used methods of execution for criminals were amputating, burning, boiling, stoning, and drowning.

Beheading and hanging used to be the most popular methods of execution in Europe and Great Britain. The most popular methods of execution these days include hanging, electrocuting, firing, etc. There were objections to the death penalty even in antiquity; Plato maintained that only repeat offenders who are incapable of changing their ways should be put to death. Public

executions have only occurred in a few nations during the 1990s, namely Saudi Arabia, Nigeria, and Iran. Organizations like the United Nations Human Rights Committee typically oppose public executions because they believe that they are incompatible with human dignity.

Crimes punishable under death penalty:

- Indian Penal Code, 1860:

Wagering or attempting to wage war on India is one of the offenses that have been linked to the death penalty. A particular definition of war crimes is found in Section 121 of the Indian Penal Code. Anyone found to have attempted or succeeded in waging war against India faces the death penalty. The reduction of mutiny has also been linked to the death penalty. Accordingly, anyone who aids in the commission of a mutiny by an officer, soldier, sailor, or pilot in the army, navy, or air force of the Government of India, so that mutiny will be committed as a result of that complicity, may be punished by death.

- The Commission of Sati (Prevention) Act, 1987:

The act of Sati (Prevention) Act, 1987 stipulates that the death sentence is applicable to anyone who is directly or indirectly involved in the act of Sati.

- Narcotic Drugs Psychotropic Substances (NDPS) Act, 1985:

Section 31A of the NDPS Act imposes the death penalty for giving financial assistance or participating in the manufacturing or sale of drugs or psychoactive substances in a preset quantity (e.g. 500 grams of cocaine or 10 kg of opium) based on prior convictions.

The constitutional validity of capital punishment:

The fundamental right to life and personal liberty is guaranteed by Article 21 of the Constitution, as is well known. The state has the power to restrict or eliminate even this right in order to uphold law and order, so the answer is no, even though everyone has the right to live in dignity. The state may limit or revoke a person's right to life by enacting laws, provided that there is a fair and valid procedure; however, the death penalty is not a punishment for all crimes; rather, it is only applied to the most heinous offences. This is because, as decided in the case *Maneka Gandhi v. Union of India* (1978), the procedure must be a due procedure as it takes away a person's sacred life and must be fair, reasonable, and free of any bias. There have occasionally been challenges to the death penalty's constitutionality. In addition, *Bachan Singh's* decision was maintained by the three-judge bench in *Macchi Singh & Others v. State of Punjab* (1983), which held that the death penalty should only be applied in extremely rare circumstances where the

public's collective conscience demands that those in positions of judicial authority carry it out. In these conditions, the following conditions have to be met:

- when the murder is carried out in a way that is especially graphic, repulsive, or ethically questionable in an effort to provoke a powerful and intense feeling of indignation within the society.
- In the case of the bride burning or death from dowry.
- when the offence is disproportionately severe.
- when a murder occurs that causes social indignation and targets a member of the Scheduled Caste.

In the case of *Santosh Kumar Satishbhushan v. State of Maharashtra* (2009), the Supreme Court went on to say that the rarest of rare cases only serve as guidelines imposing the provisions mentioned in Section 354(3) of the CrPC and entrench the policy that life imprisonment is the rule and death punishment is an exception.

Ajmal Kasab is well-known for having been found guilty of 80 crimes, including possessing explosives, murder, and waging war on India. Declaring that it was the only fitting penalty for the 166 people killed in the Bombay assaults on November 26, 2011, the Bombay High Court sentenced him to death. The Supreme Court likewise affirmed the death penalty.

Conclusion:

The death sentence has been India's most popular punishment for crimes and offenses that basically break the law from the days of the monarchy. The death penalty is a controversial topic; several countries have banned it as a form of punishment due to the growing global opposition to it. Similar to how Justice ML Tahaliyani noted in the Ajmal Kasab case that "he lost his right to humanitarian treatment," such offenders also forfeit their right to humanitarian treatment as a result of committing heinous crimes. Death warrants are always unusual and are only ever issued in extremely rare circumstances in India. Consequently, the complete abolition of the death penalty would increase national security since the State would be unable to respond appropriately in the most exceptional of circumstances.

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