

## Death penalty in India: Need of the hour

Jaydeepsinh Chauhan

Shayamas Apartment, Near Hinglaj Matas Temple, Thakkarbapanagar, Ahmedabad, Gujarat, India

### Abstract

Mere criticism of crime is not enough; it must be pushed to its logic end that crime does not pay by punishing the offenders. Punishment means, "It is the redress that the commonwealth takes against an offending member" punishment is some sort of social censure and not necessarily involving physical pain. Many experts have questioned whether a capital punishment has any greater deterrent value than a sentence of life in prison without parole. When criminals are sentenced for life, long sentences inside the prison without liberty, luxurious comfort, isolated from family, friends, and society that would be more ideal painful deterrence than death. There are some justifiable grounds for abolition of death penalty; it is revengeful, it is immoral, society has a no right to take life that is incompatible with modern morality and human rights, and India believes in non-violence philosophy.

**Keywords:** death penalty, non-violence, revengeful

### Introduction

Death penalty is a legal process where a person is put to death as a punishment for a crime committed by him. In order to punish a large number of offences, death penalty is used both today as well as in ancient times. The death penalty is a travesty of justice. It is barbaric and does not deter crime.

A big question mark on the actual efficacy of such form of punishment in India came to the attention after four convicts of Nirbhaya Gang Rape Case getting hanged to death in Delhi's Tihar jail on 20<sup>th</sup> march, 2020. Even, the International Court of Justice Condemned the Execution of Convicts, and urged the government to abolish death penalty. In recent years, there has been increase in granting death penalty especially for grievous sexual offences and for murders. According to the fourth edition of 'The Death Penalty in India: Annual Statistics' published by Project 39A of NLU-Delhi, the number of death penalty awarded for murders involving sexual offences in 2019 was at the highest in four years.

### The Validity of a Death Penalty in India

In India, death penalty is handed out by the method of hanging by the neck. This method has been in practice ever since the British times and has not been abolished till date. Death penalty derives its' constitutionality from an exception clause [NO person shall be deprived of his life or personal liberty except according to procedure established by law] of article 21. It is fascinating to note that during the constitutional assembly debates one of the founding fathers of the constitution and the main architect of the constitution, Dr. B.R. Ambedkar was in favour of abolishing death penalty. Section 53 of the Indian Penal Code 1860 provides for a death sentence and section 368 of the Code of Criminal Procedure provides power to High Courts to confirm death sentences.

In the land mark case of Bachan singh v. State of Panjab, Supreme Court has laid down that death sentences would be given in 'rarest of rare cases.' Further, court held that the

judges' discretionary power to impose the death sentences, are well guided by the Indian Penal Code, Indian Evidence Act and Code of Criminal Procedure 1973 which do not offend Articles 14 and 21 of the constitution.

### There's always chance to execute an innocent person. How to solve this problem?

A thorough review of several cases of death penalty discovered that the Irretrievable error of justice is most practical reason for its abolition. Unlike life imprisonment, executed death sentences would not give opportunity to judiciary to correct its error of judgment. According to the Death Penalty Information Centre more than 152 death row prisoners have been declared to be not guilty and realized from prison from 1980 to 2019 in USA. This information leads to the logic that some other innocent might have been executed.

Yet people's mind is not free from the fact that it is judges who decide between life and death of criminals, because even in similar cases there is different findings. In Dhananjay Chatterjee v. State of West Bengal case, a young 18 years school-going girl was raped and murdered on 05.03.1990. In this case Supreme Court imposed death sentence upon the accused and he was executed in 2004. In similar case of Shankar Kisanrao Khade vs State of Maharashtra, the Supreme Court awarded life imprisonment to the accused committing rape more than one occasion and murder of a girl of 11 years.

### Delay in Execution of Death Penalty

The death punishment delivers a "double punishment" that of the execution and the preceding wait, and this is a mismatch the crime. Many offenders are kept "waiting" on death row for a very long time. Due to such a long delay in the judgments of the judiciary, a convicted person has to be given treatment because of the mental torture he undergoes since he starts to lose the hope to live. One prisoner on the death row said that 'When anyone is tortured like I was, it no longer matters whether you did it or not, you will agree

