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**CONSTITUTIONAL VALIDITY OF CAPITAL PUNISHMENT AND
CONTEMPORARY ANALYSIS OF EXECUTION OF REFORMATIVE
MECHANISMS IN INDIA**- Dr. N. Nisha Devi¹**ABSTRACT**

Fifteen years down the line, there were Corporal punishments, that were given students based on the degree of their irregularities, but now in the eyes of law, Corporal punishments bloom into a big sphere of rock and takes away one's own life in the name of capital punishments. This paper focuses on the analytical way of researching the current trend of capital punishments in India and finding the reason for such conviction, both socially and psychologically. This paper further analysis 5the need for such capital punishment and relating the save with the constitution of India in article 21, where the right to life and personal liberty is ensured, finally the research paper suggests the way for better execution and reformative process.

KEYWORDS: Capital Punishments, Death penalty, Article 21, Criminal Reformation, Reformative mechanism.

INTRODUCTION

From the early days to the modern day world, Crimes are inevitable in our society. Since the existence of crime for its prolonged period and also it is anticipated to be continued, there emerges the need for reformatting such anti-said behaviours in our society. One of the well known and experiment way of correcting the when it comes to a cruel or hevious nature

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of crime, the immediately suggested penalty is get penalty. This scenario is not only existing in today's magistrate courts, but also during early kings rule and monorules dynasty as well.²

Though the purpose of the death penalty is to make reformation, the ultimate goal serving mechanism is in a great question, due to this lacunae, many critics has been emerged against the implementation of the dead penalty as the latin phrase "Nulum ponea sine legae" (ie) There is no penalty without law, each and every punishment must be executor only in accordance with law. This is the British concept of "Rule of Law". Like our Indian Constitution the criteria of death penalty is having both rigid and flexible nature, sometimes the "Fact is bear interpreted and in higher courts the "Law" in interpreted, in what so ever case may be the flexibility of death penalty created a suitable environment for it called "Rarest of the rare case"

CAPITAL PUNISHMENT AND ITS PURPOSE

The bitterness of capital punishments have come in to reality due to the avoidable of the corporal punishments in every primary socialigation of the child. In America, around 2000 men and women are currently waiting for the prosecution cases and where the death penalty is confirmed, Though civil libertarians advocate that punishing is not the need for ensuring proper solution, but still the intention and preparation of a criminal activity gets regulated by the intersified manner of giving punishments.

The persons who are advocating the capital punishments to be good or bad, the controversy in these questions given a clear understanding that our society is in need of the save in one way or other, because if it not a cup of tea, then it would have been vanished from the point of discussion from the time it come in to discussion. Hence it is little bit difficult to produce direct evidence for supporting such claim because the death penalty is not considered to be indulying in a murder, rather it is a treatment, sometimes a extreme treatment for reducing the crime rates in the society and be ensure proper way of reducing justice.³

In one of the historian judgement, " Bachau single vs State of Punjab (1980), the concept of rarest of rare doctrine was pronounced, where, the capital punishments should be grauted in the conditions, where there is no other go, rather to execute it. The supreme court

² Roger Hood, Capital Punishment, Encyclopaedia Britannica, <https://www.britannica.com/topic/capitalpunishment>

³³ Bachan Singh vs State Of Punjab, AIR 1980 SC 898 (Y Chandrachud, A Gupta, N Untwalia, P Bhagwati, R Sarkaria)

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of India, in this case held that the constitutionality of death penalty in this particular case, but where it is applied for the cases, where there might be all alternate solutions, hence it becomes constitutionality invalid and hence capital punishments are having its our uniqueness when it is fabricated wisely without any misconception.

INDIAN CONSTITUTION AND CAPITAL PUNISHMENT

In many of the annex court judgements, the honourable court has ruled that Indian constitution is not having any Negative over apply with the concept of capital punishment. Article-21 of the Indian constitution, through it guarantees the right to life and personal liberty to all its citizens and Non-citizens in some cases, the question arises when capital punishments are looked in certain manner as to take away the constitution right of an individual. Author landmark judgment, (i.e.) the capital punishments are for reformation in the society, and not for taking away one's own right to life was pronounced in Menaka Ganshi vs Union of India (1978) where it takes way the individuals life and it should be used fairly without and mala-fide intention.

Secondly when we are talking about the validity of the capital punishment, the way of executing the some must be in accordance with treating the convicted person in a signified manner rather in a barbaric way. From times immemorial, the capital punishments are executed only through Barbaric manner, especially in early roman empires gullatin were very cruel way of killing, similarly in India, particularly in the state of Tamil Nadu, “kalumaram” was the way hardest punishment where the life of an individual is not taken away at one stretch, rather by inch-by-inch, so that the society that comes to know about those punishments, should fed the pain of the same, before indulging in any criminal behaviour, hence in a holistic manner, our Indian Constitution provides the key for the Capital punishments, but that is not the some in all the case.⁴

RIGHT TO LIFE VS CAPITAL PUNISHMENT

All are born to die in this would, but the condition where law duties such life time is put to criticism by many jurists. Right to life is the basic right of all the other fundamental rights that are ensured by as Constitution because without thus right, all the other rights count exist. On the other hand it is a well known fact that all the fundamental rights granted by

⁴ . Machhi Singh And Others vs State Of Punjab, 1983 AIR 957 (Thakkar, M.P. (J)).

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Indian constitution are not absolute rights. The state can take away such right at any time if it is really necessary. Hence in various supreme court judgements it was observed that gravity death penalty is only the criminal and anti-social activities.

The journal of American congress has frequently in its various citations convey a message that cruelty fear away the people about the penalty is not a reformation measure to curb any crimes from taking place, because there are always handed criminals, who are ready to do anything for their motive to get fulfilled, rather the primary socialization of such community should be regulated.

The stability of killing a person for the act/crime that he has committed might be the best solution for his peer group members to act in accordance with law but this brutal or legal murder can never bring a change in the convicted persons mind, because he is no more to ask pardon for his offence. Hence right to life and capital punishments are two sides of a some coin because, they cannot be viewed individually because capital punishments are given to one, who already taken away the other person right to life.

PSYCHOLOGY OF THE CRIMINALS AND THEIR BEHAVIOURS

The very first stage of committing a crime is to have a criminal intension (i.e.) Mens rea, without which the act is not said to be an offence, To understand such criminal intention and native, the clear cut view about the psychology of the criminals is very significant. Over the years the concept of any human behaviour is closely conducted with the psychology of an individual. There are two states of mind namely conscious and sub-conscious memory, mostly these two does their duty as to when and if it really necessary for their role has to be. When we are fall about the conscious mind, it plays a vital role in deciding our intrinsic actious and contributes for the any kind of developed actious that an individual is said to do so.

Subsequently from the conscious memory, all the credits and because are analysed without any action of thought. For example when former will here intrinsic action (i.e.) Conscious reaction, to do the save or to oppose or default himself from the latter. But in controversy, our sole-conscious memory is more of analysing nature oriented, and any action cannot be done

with our sub-conscious memory with that much easily. Hence to know about the criminal behaviour, one has to make sure about the sub-conscious mind to react in his society.⁵

SOCIETAL IMPACT OF CONVICTS FAMILY

Generally is man of our Indian society the social stigma and prejudice about people are in its zenith. In such on environment, the impact of capital punishments not only affect the convicted person individually, but also his entire family as a whole gets affected. In our constitutional society especially where people are identified by the socially stratified caste system, the son of a doctor is anticipated to study medicine, the such of a politician of course wishes always to shine in politics, similarly the son of a convicted person always viewed with a eye of suspecting line to be a criminal.

This psychologically and socially isolated family members are not given ample amount of opportunities to get rid from the work they do, (i.e.) they are affected in multiple factor ways like in the educational institution they study, their employment places, in their social gathering and etc., Apart from these individually affecting factor, the bitter truth is that, such isolation causes frustration among the family and at one point of time, they because an anti-social element and decide to take research and the entire society, many altruistic leaders and extremists are the best example for their personally affected life and the feudal of them to because a weapon to change the society negatively in mode of violence and disturbance.

CAPITAL PUNISHMENT-A MYTH

Both Indian jurist as well as International farmers have opined that killing or taking away the life of an individual cannot be a solution for reforming the society. First of all the death penalty is too much deterrent may jurists advocate that the data that shows about the rate of death penalty does not cause or reduce homicide. Its degree all the incidence of may heinous crimes, if any exist, is more significant, and strongly argue that removal of death penalty is must fare a vibrant society, which is filled with harmony.

Secondly when we discuss about the “rarest of rare” doctrine, the question arises as to what can be the factor to decide the rarest nature, without any flow for example, the domestic violence may be of petty nature in the eyes of law when comparing to the Pocso case, but in

⁵ Report No. 262, The Death Penalty, Law Commission of India, 2015.

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the purview of a family, the domestic violence that disrupts the institutions of family is the humorous in nature.

Thirdly each and every offender has a fair shot to prove their innocent and it may take ample about of time and space, then provider in law, which one is being prosecuted by considering the security of society, then the save authority answer the reason for such behaviour, then blindly taking away once own life, hence in today industrialised and modernised society capital punishment stand as a great myth in may mines.

VARIOUS THIRD DEGREE TREATMENT

When the constitutional validity of the two capital punishments are discussed, there are one of the leading factor of degrading the dignity of the convicted persons through the law enforcement agency and that is third degree treatment. Multiple reports have been pending before the court of law regarding custodial torture and violence against the arrested persons . By considering the persons two be in the state of suffering there are many violation happening in may prisons and in police custody which is more painful that the onetime capital punishment. Being a person not accordance with law never deems a person to the of slave increase lifetime to others. The basic jurisprudence says, even the arrivals that are entitled to get treated with respect, but nevertheless such persons legality is in the great question.

When criminals are punished for not acting in accordance with law, may law enforcement officers who act beyond the law is also subjected to a great question of punishment. When may united national forum, when talking about human rights to be inherent and basic rights, the dignified way of treating the convicts are in this stage that are very worse than treating animals. Both Indian constitutional in one hand and international forum an another hand should take necessary action regarding this third degree treatments and form a secure and solicited way of all procedures.

BEST WAY OF REFORMING A CRIMINAL

“Criminals are not born, they are made to be so”! Once a childish notorious in his childhood, the society is ready to criticize all its activity to be mischievous, rather the save society is not ready to correct it. All the criminals especially many hardened criminals are made so by naming from them as said to be. The very best example is the formation of the

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gowrishankar to autoshankar, who was latest convict undergone death penalty in the state of Tamil Nadu. Initially he was indulging in the brothers business and drug trafficking case, by way of branding his name to be a famous person for specialised crime, boosted his patent to become a hardened criminal.

Another best way of reforming a criminal is by not letting any criminal to be formed. In that can notation, social medias and mass medias plays a very crucial role. Each and every information that the child leaves from his society is observed in its two save without any saving. Hence it is the duty of the historical society to concentrate on good values that are to be deep rooted in to the young minds rather the anti-social elements. Finally the correctional mechanisms or the reforming mechanism must be the school rather than prison or juvenile homes.

CONCLUSION

Gone are the day, where a student enters his school with the state of fear where he is not proper in his duty or work, the latest trend is that teachers get isolated from the students in the name of legal adieus against their correctional proceedings. The validity of the capital punishment, whether it is necessary or not, is not proper mode of executing the same in India is carried on correctly, or not, is not the need of the hour, because only by one component (i.e.) through the purely socialization of the child, all the need for such hardened punishments becomes unnecessary.

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