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**ANALYZING THE CAPITAL PUNISHMENT PROVISION IN THE
POCSO ACT IMPLICATIONS, EFFECTIVENESS AND ETHICAL
CONSIDERATIONS**- Manvendra Yadav¹**ABSTRACT**

Capital punishment is a contentious topic, especially concerning the Protection of Children from Sexual Offenses (POCSO) Act. This act is aimed at safeguarding children from sexual abuse and exploitation, covering various offenses such as sexual assault, sexual harassment, and pornography involving children.

While some argue for the imposition of capital punishment as a deterrent against such heinous crimes, others oppose it on ethical, moral, and practical grounds. Proponents argue that the fear of facing the death penalty could deter potential offenders from committing such crimes, thereby protecting children. Capital punishment is seen as a form of justice for the victims and their families, offering a sense of closure and retribution.

Child sexual abuse is considered one of the most abhorrent crimes, causing severe physical and psychological harm to the victims. Some believe that such crimes warrant the harshest punishment available. Capital punishment carries the risk of irreversible error, with the possibility of innocent individuals being wrongly convicted and executed.

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Critics argue that there is insufficient evidence to support the claim that capital punishment acts as an effective deterrent against crimes, including child sexual abuse. Many oppose capital punishment on the grounds that it violates the inherent right to life and constitutes cruel and unusual punishment, particularly when applied to offenders who may have themselves been victims of abuse or trauma. Instead of focusing solely on punishment, opponents advocate for preventive measures, such as education, awareness, and rehabilitation programs, to address the root causes of child sexual abuse and support victims.

In the context of the POCSO Act, the debate over capital punishment underscores broader discussions about the efficacy and morality of using extreme penalties to address complex social issues, including the protection of children from sexual offenses.

INTRODUCTION

The concept of capital punishment is the practice of legally executing people who have been convicted of committing certain serious crimes. The IPC and various special laws prescribe the death penalty for specific offenses. However, the application of the death penalty in India is subject to strict procedural and judicial safeguards. In recent years, there has been ongoing debate and discussion about the effectiveness and morality of capital punishment in India. Some argue that it is a necessary deterrent against serious crimes, while others advocate for its abolition, citing concerns about wrongful convictions, human rights violations, and the lack of proven deterrence effect.

The provision for capital punishment in the POCSO Act, along with its implications and ethical considerations, forms the background of this study. The POCSO Act is a legal framework in India aimed at safeguarding children from sexual offenses. It includes provisions for severe penalties, including the death penalty, for perpetrators found guilty of certain aggravated forms of sexual assault against minors.

The study aims to delve into various aspects related to the inclusion of capital punishment in the POCSO Act. This includes analyzing the implications of such a provision on the legal system, society, and the well-being of victims. Furthermore, ethical considerations

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surrounding the use of capital punishment in cases involving crimes against children will be explored.

Understanding the background and context of the POCSO Act and its provision for capital punishment is crucial for comprehensively assessing its effectiveness, ethical implications, and potential societal impact. The study will contribute to the ongoing discourse on the appropriate legal response to heinous crimes against children and the broader ethical considerations in criminal justice systems.

Among the prisoners whose mercy petitions were rejected by the President of India, the median time spent in prison under trial was 16 years nine months, and median time under sentence of death was 10 years five months. The longest time spent by a prisoner in jail in such cases was 25 years, and the longest time spent on death row was 21 years one month. On 2018, the Supreme Court reserved its order on the plea of two of the four condemned convicts seeking a review of its 2017 verdict upholding the capital punishment awarded in the Nirbhaya gangrape and murder case, the Business Standard reported on May 4, 2018. The survivors mother has been pressing for a speedy execution of the capital punishment. But the convicts lawyer maintained that the state does not have the right to execute a convict. "Execution kills the criminals and not the crime... How can judiciary decide as to who should live and who should die, the lawyer for the two convicts. The new ordinance may not help prevent the sexual abuse of children either. "It would worsen the problem of under-reporting. It is crucial that the government consult with child rights groups and undertake a detailed study of the implementation of POCSO to ensure that the issue of child sexual abuse is actually addressed."²

The very purpose of capital punishment is to deter crime and its imposition has the assumption that capital punishment has a deterrent effect for curbing crime but no strong study supporting that the capital punishment is actually more affective in curbing crime than long term imprisonment exists and research says that there exists no relation

² Chaitanya Mallapur, 371 Indians are on death row; only 4 have been executed in 13 yearsm, Business Standard, 2018

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between imposition of capital punishment and life imprisonment and decrease in crime rate and the numbers aren't any different from that of countries that subject life imprisonment to that of Retentionist countries. Therefore the dissertation will revolve around the study of the very "deterrent element" of both life imprisonment (long term imprisonment) and capital punishment.

A deterrent element is the one that proves, in study, its effect to lower the crime rate. For the purpose of this dissertation it is imperative to consider the after effect of the punishment, once a convict (assuming he is guilty) has been subjected to capital punishment and life imprisonment. Does it create a sense of fear among other possible offenders and keep them from committing the same or similar crime, in simple words, does it curb crime? Does it provide a sense of justice to the victim or their family or among the masses altogether? Is it more effective than life imprisonment or long term sentences?

The society now faces a moral conflict and is at a crossroads as to what is the real purpose of this grave punishment and if it's in consonance with the moral compass and basic human rights of a person. The penal armoury of different countries with respect to capital punishment and life imprisonment has been categorised as Retentionists and Abolitionists.

All countries that continue to include capital punishment and life imprisonment in their penal armoury are categorised as Retentionists, these countries are of the view that capital punishment and life imprisonment plays a major role in keeping crime rates low as it has a deterrent effect on the people likely to commit any crime or they continue to retain the punishment as its not viewed with human rights perspective but as matter of sovereignty of a nation and some countries view it as a custom or the need of their religion, based on Islamic principles.

However, Abolitionists perceive capital punishment and life imprisonment as unnatural and something that's run its course over centuries and is too ancient to be carried into civilised societies along with the fact that how capital punishment goes against the idea of

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human rights and which is why capital punishment has been argued not in favour of, at the international level.

It can be nearly impossible to rehabilitate a die-hard criminal and send him back into the society. However spiritual rehabilitation and reformation is always possible. Moral reform of an offender is necessary as some convicts commit crime under the influence of certain emotions and situations which may never happen again as that situation and emotions were momentary and apart from certain exceptions, a person committing a heinous crime or even ordinary crimes like theft could possibly be going through psychological issues or been through instances affecting the offender mentally or emotionally in the past leading to such actions of the offenders. Which is why apart from the commission of crime, the court should look into other factors such as the childhood environment, conditions of growing up such as education and financial status, possibility of childhood trauma, situation under which the crime was committed, mental capacity of the offender, age and circumstances that led to the commission of the crime. Reformists believe that it's the character of the offender that needs to be reformed and to do so it is necessary to deal with them with kindness and empathy as being more stern will only make them resent the system more.

In POCSO cases, imposing the death penalty on the perpetrator might offer some relief to the victim and their guardians due to the phenomenon of secondary victimization, where victims face blame and insensitive treatment from society, including their own families, which can severely impact their mental well-being. While this punishment may not fully alleviate the suffering of victims, it could provide some solace as the perpetrator faces social backlash. However, it's important to note that the death penalty is reserved for the "rarest of the rare" cases, and only a small number of convicts receive this severe punishment. Recent trends indicate a slight increase in the number of death sentences for sexual offense-related murders, suggesting a potential shift in judicial approach despite the Supreme Court's prior rulings.

STATEMENT OF PROBLEM:

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Capital punishment and its constitutional validity is an overly debated issue not just in India but across the globe as this punishment is a matter of human rights involving the right to live guaranteed by the virtue of being a human.

The statement of problem of the dissertation revolves around the very deterrent element of capital punishment and life imprisonment that is assumed to be more effective than life or long term imprisonment. However there exists no strong study to prove this theory, thus this dissertation shall involve research based on case studies to analyse the problem “To what extent is the deterrent element of capital punishment more effective than that of life or long term imprisonment?”

The problem statement for the study on capital punishment in the context of the POCSO Act in India revolves around examining its implications and ethical considerations. Specifically, the study seeks to address the following questions:

What are the implications of including capital punishment in the POCSO Act for the legal system, society, and victims of sexual offenses?

What ethical considerations surround the use of capital punishment in cases involving crimes against children under the POCSO Act?

How does the provision for capital punishment in the POCSO Act align with international human rights standards and evolving societal attitudes towards punishment and rehabilitation?

What are the potential challenges and controversies associated with implementing capital punishment under the POCSO Act, considering factors such as fairness, proportionality, and effectiveness in deterring future crimes?

HISTORICAL BACKGROUND

Capital punishment is an old approval. There is basically no country in the reality where capital punishment has never existed. History of human advancement reveals that during no time period has capital punishment been discarded as a strategy for punishment.

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Capital punishment for homicide, scheme, unlawful blaze and attack or assault was extensively used in outdated Greece under the laws of Draco.

In any case, Plato battled that it should be used particularly for the sad. The Romans similarly used it for a wide extent of offenses; notwithstanding, occupants were barred for a short period of time during the Republic. This finds maintain in the discernment made by Sir Henry Marine who communicated that the Roman Republic didn't proclaim capital punishment as void anyway it wasn't utilized so it was basically organized by the demonstration of punishment or exile and the system of inquiries.

Evolution of Capital Punishment In India

India instituted the Indian Penal Code in 1861, which obliged capital punishment for homicide. Nullifying capital punishment was imparted by a couple of people from the Constituent Assembly during the drafting of the Indian Constitution some place in the long stretches of 1947 and 1949, yet no such arrangement was consolidated in the Constitution. In the accompanying twenty years, to cancel capital punishment, private individuals; Bills were introduced in both Lok Sabha and Rajya Sabha, yet not a single one of them were taken on.

It was evaluated that somewhere close to 1950 and 1980, there were 3000 to 4000 executions. It is more earnestly to evaluate the quantity of people sentenced to death and executed among 1980 and the mid-1990s. It is surveyed that a couple of individuals were hanged consistently. In the 1980 Bachan Singh judgment, the Supreme Court concluded that capital punishment ought to simply be used in the most extraordinary of interesting cases, yet it isn't clear what describes the term 'most extraordinary of the intriguing.'

PURPOSE OF CAPITAL PUNISHMENT

Specific and General Deterrence

Deterrence forestalls future wrongdoing by startling the litigant or the general population. "The two kinds of deterrence are explicit and general deterrence. Explicit deterrence applies to a singular respondent. At the point when the public authority rebuffs a singular

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respondent, the individual is hypothetically less inclined to carry out another wrongdoing on account of dread of another comparable or more terrible punishment. General deterrence applies to the general population at large. At the point when general society learns of a singular litigant's punishment, people in general is hypothetically less inclined to perpetrate a wrongdoing due to dread of the punishment the respondent experienced. At the point when general society learns, for instance, that a singular litigant was seriously rebuffed by a sentence of life in jail or capital punishment, this information can motivate a profound feeling of dread toward criminal arraignment".

Incapacitation

Debilitation forestalls future wrongdoing by eliminating the respondent from society. Instances of debilitation are imprisonment, house capture, or execution in accordance with capital punishment.

Rehabilitation

Rehabilitation forestalls future wrongdoing by modifying a litigant's way of behaving. "Instances of rehabilitation incorporate instructive and professional projects, treatment focus arrangement, and guiding. The court can consolidate rehabilitation with imprisonment or with probation or parole. In certain states, for instance, peaceful medication wrongdoers should partake in rehabilitation in blend with probation, as opposed to submitting to detainment. This eases the burden of correctional facilities and penitentiaries while bringing down recidivism, and that implies reoffending".

Retribution

"Retaliation forestalls future wrongdoing by eliminating the craving for individual avengement (as attack, battery, and criminal manslaughter, for instance) against the litigant. At the point when casualties or society find that the respondent has been enough rebuffed for a wrongdoing, they accomplish a specific fulfillment that our criminal system is working really, which improves confidence in policing our administration".

Restitution

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"Compensation forestalls future wrongdoing by rebuffing the litigant monetarily. Compensation is the point at which the court orders the criminal respondent to pay the casualty for any mischief and looks like a common prosecution harms grant. Compensation can be for actual wounds, loss of property or cash, and once in a blue moon, close to home misery. It can likewise be a fine that takes care of a portion of the expenses of the criminal indictment and punishment"³.

THE VALIDITY OF A CAPITAL PUNISHMENT

"The established legitimacy of a capital punishment was first tested in the United States of America which made the stride for the annulment of capital punishment, Pennsylvania is the principal state to nullify capital punishment. Various law specialists in the United States court have given various perspectives with respect to the unlawfulness of capital punishment. However, even after such choices were made, numerous nations have not completely canceled capital punishment. For instance, capital punishment actually exists in nations like Saudi Arabia, India, and soon In India, capital punishment is given out by the strategy for hanging by the neck. This strategy has been by and by since the time the British occasions and has not been nullified till date. S.53 of IPC accommodates a capital punishment and S.368 gives capacity to High Courts to affirm capital punishments. Capital punishment is passed out in cases known as rarest of the uncommon cases for example those cases wherein the aggregate soul of the local area is stunned to such an extent that it will anticipate that the judiciary should convey capital punishment on the charged. The Indian Supreme Court has expressed that cases in which a homicide is submitted in its limit state can be put under the domain of rarest of uncommon cases"⁴.

Impact of Death Penalty In POCSO Act

³Somya Deshwal, Capital punishment: Contemporary Issues, Indian National Bar Association

⁴ Bikram BJ (2008) Lethal Lottery-The Capital punishment in India: A Study of Supreme Court Judgments in Capital punishment Cases 1950-2006. Report of Amnesty International India and Peoples Union Liberties, India.

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The inclusion of the death penalty in the Protection of Children from Sexual Offences (POCSO) Act has sparked significant debate and discussion regarding its impact on the legal system and society at large.

Deterrence: Proponents argue that the death penalty serves as a deterrent against committing heinous crimes such as child sexual abuse. The threat of facing the ultimate punishment may discourage potential offenders from engaging in such acts.

Justice for Victims: Advocates of the death penalty contend that it provides a sense of justice for victims and their families. They argue that perpetrators of egregious crimes deserve the highest form of punishment as a means of acknowledging the severity of their actions.

Legal Challenges: The introduction of the death penalty in the POCSO Act has also raised legal challenges. Critics argue that capital punishment may not necessarily deter crime and can lead to irreversible miscarriages of justice, especially in cases where there may be errors in investigation or trial.

Impact on Society: The implementation of the death penalty in cases of child sexual abuse can have broader societal implications. It may influence public perception of the justice system's effectiveness in addressing such crimes and may contribute to a sense of closure for communities affected by these offenses.

Rehabilitation vs. Retribution: The decision to include the death penalty in the POCSO Act reflects a broader debate between the principles of rehabilitation and retribution in the criminal justice system. Critics argue that the focus should be on rehabilitation and prevention rather than punitive measures such as capital punishment.

International Perspectives: The use of the death penalty in cases of child sexual abuse is viewed differently across countries. Some nations have abolished capital punishment altogether, while others retain it for certain offenses. India's decision to include the death penalty in the POCSO Act reflects its unique approach to addressing such crimes within its legal framework.

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Overall, the impact of the death penalty in the POCSO Act remains a subject of ongoing discussion, with proponents and opponents offering contrasting views on its efficacy, morality, and implications for the justice system and society.⁵

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

The concept of capital punishment is centuries old and has been used in every community throughout history. Despite the fact that times have changed and society has progressed, this practice is being carried out in the twenty-first century. The most severe type of punishment for the most heinous crimes, such as murder, rape, waging war, and acts of terrorism, is a capital penalty, which is only applied in the rarest of circumstances. The death penalty is when a person's life is taken away because of a crime he has committed. Although it is still used in society today, it has been eliminated in the majority of countries.

In conclusion, the implementation of capital punishment under the POCSO Act raises significant implications, effectiveness concerns, and ethical considerations.

Firstly, introducing capital punishment could have profound implications for the legal system, victims, and society as a whole. It may provide a sense of justice for victims and act as a deterrent against heinous crimes. However, there are concerns about the potential misuse of the law, the risk of wrongful convictions, and the possibility of deterring victims from reporting abuse due to fear of severe consequences.

Secondly, the effectiveness of capital punishment in deterring child sexual abuse is debatable. Research suggests that the certainty of punishment, rather than its severity, is more effective in preventing crimes. Therefore, addressing systemic issues such as improving access to justice, strengthening child protection measures, and promoting awareness and education may be more impactful in preventing child sexual abuse.

⁵Debarati Halder, *Child Sexual Abuse and Protection Laws in India*, Sage Publications, 2018
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Lastly, there are ethical considerations surrounding the use of capital punishment, including questions about the sanctity of life, the potential for irreversible errors, and the moral responsibility of the state. Advocates argue that it violates the fundamental right to life and is inherently cruel and inhuman. Moreover, there is no conclusive evidence to suggest that capital punishment is more effective than alternative forms of punishment in addressing child sexual abuse.

In light of these implications, effectiveness concerns, and ethical considerations, it is essential to approach the issue of capital punishment under the POCSO Act with caution. Policymakers, legal experts, and stakeholders should carefully weigh the potential benefits and risks, while also considering alternative approaches that prioritize prevention, rehabilitation, and the protection of children's rights. Ultimately, any decision regarding the use of capital punishment must be guided by principles of justice, human rights, and the best interests of society as a whole..

RECOMMENDATIONS

- Conduct a thorough review of the POCSO Act and its enforcement mechanisms to identify gaps and areas for improvement in addressing child sexual abuse. Evaluate the effectiveness of existing provisions and consider alternative approaches to deterrence and punishment.
- Base decisions on empirical evidence and research findings regarding the effectiveness of capital punishment in deterring child sexual abuse. Consider studies on crime prevention, recidivism rates, and the impact of punishment severity on offenders' behavior.
- Prioritize preventive measures, such as education, awareness campaigns, and community-based interventions, to address the root causes of child sexual abuse. Invest in rehabilitation programs for both victims and offenders to promote healing and prevent reoffending.

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- Ensure the fairness and integrity of the legal system by strengthening safeguards against wrongful convictions, such as access to legal representation, impartial investigations, and due process rights for accused individuals.
- Center policies and interventions on the needs and rights of victims, providing them with adequate support, protection, and access to justice. Empower victims to report abuse without fear of retribution and ensure their voices are heard throughout legal proceedings.
- Engage in ethical reflection and dialogue on the moral implications of capital punishment, considering principles of human dignity, justice, and the sanctity of life. Explore alternative forms of punishment and restorative justice practices that align with these values.
- Foster collaboration between diverse stakeholders, including legal experts, psychologists, social workers, policymakers, and civil society organizations, to develop holistic and evidence-based approaches to addressing child sexual abuse.
- Align laws and policies with international human rights standards and recommendations, taking into account guidance from organizations such as the United Nations and Amnesty International on the use of capital punishment and the protection of children's rights.
- By incorporating these suggestions into policy discussions and decision-making processes, stakeholders can work towards a balanced and effective approach to addressing child sexual abuse while upholding principles of justice, human rights, and ethical responsibility.

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