

ESSAY SERIES - ESSAY 9

**CAPITAL PUNISHMENT IN THE CONTEMPORARY TIMES - WHETHER A
NORM OR AN EXCEPTION?**

The issue of capital punishment has always been debated upon by various scholars ranging from the legal field to the human rights arena. According to the deterrent theory of criminology, it has been stated any person who exhibits deviant behaviour in the societal set-up he is living in, he or she should undergo serious punishments for the same. The rationale behind this theory was to punish the culprit for his or her wrongdoings. Manu, Yajnavalkya and other ancient thinkers have been ardent followers of this particular theory. However, the critics of this theory pin the nail in the coffin by saying that the punishments provided under this approach are barbaric and violates the human rights of the offender incessantly. The debate pertaining to right to life which has been enshrined under the realms of Article 21 of the Indian Constitution is not novel enough.

If we categorically analyze our Indian Penal Code of 1860, it would not take a moment for us decide that death penalty or capital punishment is the highest form of punishment which has been provided under the Code. Prior to the Criminal Procedure (Amendment) Act of 1955, death penalty was the generic rule in our country's legal institutional paraphernalia whereas life imprisonment was awarded only in exceptional cases. Not only this, the courts were bound to give an explanatory statement while giving out lighter punishments. But, section 354(3) of the Criminal Procedure Code, 1973 changed the course of criminal jurisdiction in the country wherein the old way of sentencing was done away with and the new rule which enunciated that life imprisonment is the general rule whereas death penalty shall the exception came in full swing.

It is worthwhile to note that the debate pertaining to the constitutional validity of capital punishment has always been an issue of contention for the Indian courts. The criminologists and sociologists of the developed countries have continuously advocated for the abolition of the capital punishment clause from the penal codes altogether. In our country as well, this proposal surfaced around the 19760s and 1970s but was vehemently rejected by the 34th Law Commission of India. But, the Indian Supreme Court navigated through these troubled waters

in the year 1973 when *Jagmohan Singh v. State of Uttar Pradesh* was decided upon. It was held that even though the death penalty which has been prescribed by the Indian Penal Code, 1860 goes against the contours of Article 21 of the Indian Constitution but still deprivation of life is constitutionally permissible if that is done according to the procedure established by law. But, unfortunately this case did not settle down the fundamental rule for the country in this regard.

One of the striking as well as landmark judgments, *Bachan Singh v. State of Punjab*, the court upheld the constitutionality of the capital punishment and propounded the dictum, “rarest of the rare cases” according to which death penalty is not to be awarded except in the rarest of the rare cases when the alternative option is unquestionably foreclosed. The Court tabled down two set of circumstances:

1. Aggravating circumstances: a. Cases of extreme brutality; b. cases of exceptional depravity; c. murder of any other public officer; d. murder of any person who had acted in the lawful discharge of his duty under section 43 of the Criminal Procedure Code, 1973.
2. Mitigating factors: a. offence was committed under emotional disturbance: b. young and impressionable age; c. no hard criminal core criminal attitude; d. the accused can be reformed and rehabilitated; e. any moral justification attached to the offence.

But this was furthered by one of the other landmark judgments; *Machhi Singh v. State of Punjab*, the Court deciphered the meaning of rarest of the rare cases by attributing certain characteristics to the same:

1. Manner of commission of the murder- When the murder is committed in a very gruesome and diabolical manner that it arouses the conscience of the community.
2. Motive of commission of murder- When the murder is committed for obnoxious motives like somebody hired an assassin who would kill anyone for some money.
3. Anti social or socially abhorrent nature of the crime- Any crime committed against any particular caste, community in specific.
4. Magnitude of the crime- Mass murders are considered to be a part of the rarest of the rare cases.

5. Personality of the victim of the murder- a. innocent child; b. helpless woman; c. somebody who is in position of dominance; d. public figure

So, this “rarest of the rare cases” doctrine essentially awards capital punishments in exceptional cases which have been categorically mentioned above. However, this debate got ignited again when the 262nd Law Commission report suggested that death penalty should be abolished for all crimes other than terrorism related offences and waging a war. But, the recommendations of this report have not been accepted by the government in power. And, therefore, the tussle between handful of legal scholars on one side and criminologists and sociologists on the side continues to operate unendingly with respect to the issue of abolition of capital punishment.