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## **CAPITAL PUNISHMENT : A DETAILED STUDY**

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### **ABSTRACT-**

we often hear about capital punishment. In television we even find sometimes that this criminal is hanged. Do we ever imagine what crime might the person has committed or what was the procedure which was followed in giving such a harsh punishment. Whether a person can be given relief on some grounds and various other things. Here, we will try to find answers to the above questions.

### **INTRODUCTION-**

Capital punishment means death sentence to a person often referred as criminal for the serious action done by him. The 'capital' is originated from the Latin. It usually meant as to lose one head. This punishment is sentenced by court. There are different types of crime which come under the capital punishment. It includes some serious offense or it can be even against humanity. The crimes take different form in different countries. Even it sometimes vary in age. But the ultimate outcome of the above crimes is always the death penalty.

We will look here regarding the various stages from the ancient time, covering medieval, post- independence to the present time. How the laws and regulations were made in order to deal with serious offenses. Even there are some exemptions new, we will also cover it. Let's look at the following one by one.

### **DEATH PENALTIES DURING THE ANCIENT TIME-**

First, we will start with ancient time. As we know during the ancient time everything was done keeping Vedas and Shastras in mind. The Pandits used to decode the laws related to Hindus and the Maulvis use to decode the laws for the Muslims. Talking about Hindu law first. Death sentence was always part of

Hindu customs and it was never considered as inappropriate. We find mentions on the scriptures and books which have been found in the fourth century. It was believed that in order to protect the empire from the misfortune and keep people safe it was necessary. The famous writer Kalidas has mentioned about death penalty in one of his writings. The two famous incidences in the history namely Ramayana and Mahabharata also depicted that giving death penalty was necessary in order to protect the society. Coming forward, in the age of Buddha, Ashoka never denied that death penalty should not be followed. Manu Smriti which is considered the book of Hindu Laws also describes about the death penalty in detail. Not only this, famous Kautilya also wrote regarding the importance of death penalty for the safe society.

Coming to the Islamic laws related to the death penalty. Islam never believes in giving death punishment or taking life. They follow the Sharia law and the words of Quran. They have classified the crimes into three types. It includes Had crimes in which the punishment can be given by Allah alone. The next includes the Tazir Crimes. Here, the power is given to the courts to decide the matter related to the misconduct. The third is Qisas crime. Here, the cases of murder like accidental and intention murder are included. Sometimes, the punishment is reduced. Here, we seen in Islamic law the punishment differs and they never permit for taking life.

This was the status of the capital punishment that was followed in the ancient age. It was different fir Hindus and different for the Muslims. They gave the punishment of offenses based on their religious book, scriptures, laws and code of conduct.

#### DEATH PENALTIES DURING THE MEDIEVAL PERIOD-

When we talk about the medieval period the age which comes in our mind is the Mughal Period. During the Mughal period, the laws in Quran attained the

importance. Different rulers had different opinions on death punishment. In these, Akbar was basically holding the view that death punishment should be given only in very serious crimes and after a lot of discussion and debated. Even the rulers after Akbar like Jahangir and Aurangzeb believed in such ideas and followed it. There were different sorts of punishment which included nailing the prisoner and other torcher which was highly, one can say it as brutal in nature.

#### PENALTIES POST INDEPENDENCE ERA-

The rules and regulations changed related to capital punishment over the period of time. As we see, during the post-independence era. Even in year 1931, bill was brought to remove death penalty. However, when bill was introduced the British Government reacted by saying that they don't find any reason to remove the death penalty.

#### SOME SPECIAL CASES-

Looking further we find various cases where the death punishment is exempted. It include the different categories like a individual less the 18 years of age. There is an exemption given to pregnant woman, even to the special abled person.

First is the case of the minor meaning who has not attained the age of 18 years. The child cannot be given death punishment according to the existing laws. The reason behind is seen as child is still in the teenage phase. It might happen that he has committed the crime under the influence of someone. He never thought on his behalf and acted as told by someone else. Hence, if the individual re thinks of situation he can realize his mistake and will be help in his improvement. Hence, the minor is not given punishment has one chance is given to him for improvement. Even these minors are dealt with Juvenile Justice Act.

Next is the case of Pregnant woman. They are also exempted from the death sentence. Suppose, if we see that the woman has committed the crime and she is hanged. Ultimately, the child in her womb will die. The crime committed by  
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woman has to be suffered by child also. Instead the child in womb has not done anything. So, the woman who are pregnant and given death penalty are considered and the punishment is changed to life imprisonment.

Third is the case of Intellectual disabled child. It is considered that a person who does not has control over his actions is considered as disabled. If the person cannot think of his action and perform the activity then it might happen that he was unaware to the crime he committed. Hence, they are also exempted from death punishment.

#### CASES UNDER WHICH THE CAPITAL PUNISHMENT IS AWARDED-

There are several crimes for which the death punishment is given and the come under different section.

First is the situation of declaring the war against the mother country. It is in Section 121, and if a person declares war against India he can be given death punishment.

Next, is in Section 302 which includes the death punishment awarded to a person who has done a murder. He is liable to get the death punishment.

The section 305 deals that if a person has supported a minor in doing a crime or committing suicide then he can be given the death punishment.

Fourth, is Section 364A which includes to kidnapp a person can harm the person. It is basically motivated by a cause and if a person is found doing such thing he must be given death sentence.

One Section which includes to given death sentence to a person doing rape. It is included in Section 376E

Apart from these there are certain other sections which are mention in Indian Penal Code which provides information that a person doing such and such offense must be given death sentence.

There are even cases like a person engaged in the practice of Sati should be given death punishment. Even the person involved in sale and purchase of drugs should be given same punishment. Even the allegations of ST and SC can lead to death sentence.

#### PROCESS TO IMPLEMENT THE PUNISHMENT-

After the acceptance that the person has really committed a crime these process and procedures are followed.

First thing which is required is the confirmation by the high court of that state. The section 366 is considered. And person is put in jail until the confirmation comes from the High Court.

Secondly, it might happen that in some cases high court may order to carry out further investigation and to secure all the information related to the crime. It comes under Section 367 of the CrPC.

Thirdly, now the power lies with the court either to approve the penalty or make some changes in the penalty. It might happen that sometime new trial can also be ordered by the court. Nothing can be done till the time of filing the appeal is completed. It is under 368 of CrPC.

Now, everything is submitted in the court. And even passed by the High Court. It must be signed by two judges of the high court to carry the further proceedings.

Finally, the judgement which is passed by high court must be sent to Court of Session. It includes in Section 371 of CrPC.

#### EXTRAORDINARY POWERS-

These are the process which are carried. Though the high court passes the sentence, but the judgement might be delayed or transferred into other punishment. It can be done by the extra ordinary powers of the President and Governor. They enjoy the clemency power. Firstly, person can file to the (Website-lexscriptamagazine.com) 7 ([Email-riday.riday.r662@gmail.com](mailto:Email-riday.riday.r662@gmail.com))

Supreme Court but if it has been rejected then they can request the President or Governor. The President has power under Article 72 and Governor has under Article 161. The President does not enjoy the power itself but he has to take advice from the Council of Ministers in charge. Even it becomes a matter of responsibility to take the wise decision related to a prisoner. There are key points which are kept in mind while making the decision. These include- age and gender. Sometimes the varying opinion of the courts lead to change in the decision. Even when the trial is carried late or the investigation is taking more than the required time.

### PROCEDURES-

Next is the procedures carried while giving death punishment. Hanging is the first one. The person who is given death punishment is basically hanged. The second one is shooting. But this power only lies with the Acts of Army, even Navy and Force.

### FAMOUS CASE –

Among many cases there is a famous case of South Delhi when a 23 year -old girl name Jyoti was raped and tortured in a private bus. Section 376E was highlighted in it. The story took name as “NIRBHAYA CASE” which became a story of media National and International reporting. The order came against the accused and they were arrested and even death penalty. But finally in year 2020 the accused were hanged except one which was below 18 year- old.

### Conclusion-

One question might always come in everyone’s mind that if death penalty is given then why there is an increase rate of rapes and murder in our country? Why one day or other we find these things happening in and around our society. The reason behind is that though death penalty is given in our country but through a lot of process and procedures and also in very few cases the criminals are



awarded with death sentence. The punishment is not given very seriously or the actions are even not taken very quickly hence the crime rate is increasing. If we say that then we should remove death penalty, but it is not the ultimate solution. And as we have discussed before that death punishment is not the new idea or form which has been introduced. We saw earlier that it was during the ancient time, even during today. So, it has been existing since the earlier time. And looking through different motives it is necessary, though the report was prepared to abolish it but it has not been yet approved.

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