

## PRIMAL INCARCERATION

-ISHIKA GUPTA & MAHIMA GANGWANI

### ABSTRACT

“It’s better to kill one sinner rather giving opportunities to hundred more sinners.”

India is the fostering country and day by day crime rate is proliferating heinously. This research paper is mainly focusing on the most severe penance announced in India. Indian judiciary most of the time fold their hands to announce this form of punishment as it is considered the last limit of punishing any maximum level of crime. The concept of death penalty emerges in 1608 in Britain and it influenced the America to use of the death penalty. Europeans understand at that time the new world and brought primal incarceration in practice. This is the research paper mainly focusing on status of primal incarceration in Indian society, rarest of rare cases, comparison between different nations regarding capital punishment. We as the researcher are emphasizing the pros and cons of the capital punishment and it should not be abolished from our country as the nature of crime is taking place in our society which is beyond any human memory and another for the self-realization of any offender who has committed such a villainous crime. The atrocious attitude of criminals should be suppressed as it is spreading like a fire in the nation and it’s the burning point for Indian judiciary to award punishment equivalent to the crime rather exempting the criminal.

**KEYWORDS:** *Fostering, Penance, Incarceration, Primal, Villainous, Atrocious, superfluous, artefact, yard bird, Punishment, mildness, Proliferating, grievous, heinous, momentous.*

### INTRODUCTION

India is the vast and populous territory with large number of crimes and criminals. For committing crimes criminals are always punished. The term “punish” derived from the old French word punir and “punishment” derived from the word punissement which means imposition on the undesirable act which is inexcusable in the eyes of laws. Whenever any Punishment is awarded it is awarded for a motive that is whether to set an example for the

society or to discourage the offenders to do wrongs against society or wrongdoer should suffer the pain for the offence committed against the society. In India there are many forms of punishment against wrongdoers i.e. imprisonment, life imprisonment, fine, capital punishment etc. Our main focus is on primal incarceration which means capital punishment or death penalty. Crimes for which primal incarceration is announced are known as capital crimes. It is the process in which offender is hanged by the state for his/her criminal offence. Death penalty means hanging somebody till death. Capital punishment is a severe form of punishment and granted for the crimes which are grievous and villainous. The concept of death penalty differs from countries to countries judicial system. In many of the nation death penalty is abolished and many considered it as immoral in nature. The Europeans brought capital punishment in practice in 1608 and first execution recorded is of captain George Kendall in the Jamestown colony of Virginia in 1608. The concept of death penalty is the crucial part of Indian judicial system and criminal system. Primal penalty has always been the point of discussion not only in India but also in other developed countries because when this punishment was declared both central and state authorities were questioned on the basis of whether it serves a positive behavior towards the society or not.

### **CAPITAL PUNISHMENT IN INDIA**

The scenario of India regarding capital punishment is different from other countries. In India this form of punishment is granted in the grievous situations as according to Article 21 of Indian constitution which states that “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”. This article is considered as important right of every citizen as it promises to secure each and every individual’s life from any evil. In India the first death penalty was awarded to Nathuram Godse and Narayan Apte in the Mahatma Gandhi Assassination case on 15 November 1949 in independent India. Since 1991 total number of executions took place in India are twenty-six, and the recent execution was in 2015. According to Amnesty International London based report India imposed death penalty on seventy-five offenders in 2015 but it executed only one at that time. Indian judiciary in past 10 years, sentenced 1301 persons to death but only four have been hung till death in this entire period. Since independence the total no. of execution took place is 52. In our India the capital punishment is awarded in rarest of rare cases which means crimes which are at extreme

culpability. This doctrine emerges in the case of *Bacchan Singh v state of Punjab* where supreme court upheld the death penalty and treated as constitutional but ordered that it should only be announced in the rarest of rare cases, cases which deserves the highest punishment on land and which are at extreme culpability against the society. This was considered as the landmark judgement in India. Another landmark judgement passed by supreme court in *Santosh Kumar bariar v state of Maharashtra* in this case supreme court held that *life imprisonment is the rule but death penalty is an exception*. When the death penalty needs to be awarded the the court has to considered section 354(3) crpc. This section states that death sentence should only be awarded in the cases for which life imprisonment is insufficient. The court should specify the specific reason to award this type of punishment. The year 2008 consist of the case *Prajeet kumar Singh v state of Bihar*. In this case court held that death sentence would be awarded only *“when a murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arose intense and extreme indignation of the community”*. Another president judgment passed by supreme court in *Machhi Singh v state of Punjab* is that there was a family dispute that escalated into violence. This case resulted in legal president being set on when the death penalty should be applied in Indian courts the two conditions taken into considerations i.e. (1) If any crime is committed which is uncommon in the society and crosses the limit of brutality death sentence is awarded (2) if life imprisonment is inadequate regarding the crime committed and the level of crime is unequal regarding the circumstances court can grant death penalty. In IPC section 303 is constitutional but after the case of *Mithu v state of Punjab*. this section was struck down by the supreme court in IPC which provided for mandatory death punishment for offenders serving life sentence. In this case this section was held unconstitutional. The reason behind is that the if the death penalty is mandatory then it is meaningless to hear the convict on the question of sentence and it becomes superfluous.

## LEGISLATION OF INDIA

There are number of legislations performed by the parliament of India provides the provision for death penalty.

- The foremost was Sati Pratha which is about the burning alive to any widow women when death of husband take place along with husband's soul. Under the Commission of

Sati Prevention Act 1987-part II section 4(1), whosoever directly or indirectly commits sati, abets the commission of sati shall be punishable with death penalty.

- Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act 1989). This act was formulated to provide protection to SC, ST members against the offences committed regarding them. Under the section 3(2)I of the act states that whosoever presents the false witness in the capital punishment cases against the member of scheduled caste or scheduled tribes amounts that the person conviction and execution, carries the death penalty.
- Narcotic Drugs and Psychotropic Substances (NDPS) Act was enacted with the applicability to provide compulsion of death penalty for a third offence “large scale narcotics trafficking”
- Anti-terrorism act 1997 formulated for the conviction of the people for terrorist activities and it was specially formulated after the bombing of Mahram Ali, a member of the Shia militant organization and there is punishment of death penalty in India for committing such crime.
- The Criminal Law Amendment Act 2013 (Nirbhaya Act), this legislation was passed by Lok Sabha on 19<sup>th</sup> March 2013 and by Rajya Sabha on 21<sup>st</sup> March 2013 which states the amendment of IPC, CrPc, 1973 on laws related to gangrape or rape done more than one time, and the ordinance is passed that whosoever leads this crime which results to brutal killing, death or persistent vegetative state of a person should suffer the punishment of death penalty. The amendment to this act took place especially after 2012 Delhi gangrape to introduce the death penalty for rapists and molesters.
- Section 302 of IPC defines punishment for murder. In the cases of murder also death penalty is awarded when the murder leads to the highest brutality of killing as the sentence of death has to be based on intention and action of offender rather than a crime committed. In India death penalty is imposed for murder but in rarest of rare cases and sometimes it is commuted to the life imprisonment.
- Death penalty is imposed in India for cases relating to arm forces such as Navy Act 1950 and the Indo Tibetan Border Police Force Act 1992.

- Under section 120b,121,305,302 of IPC which deals with criminal conspiracy, waging war against nation or government, abetting any child to suicide respectively are all punishable offence in IPC resulting in death sentence.
- The criminal law amendment act 2018 passed in India which imposed direct death penalty to those rapists committing rape of a child under 12 years of age

### **EXECUTION OF DEATH SENTENCE**

In India the scenario of execution of primal incarceration is carried out by hanging by the neck until death there are many methods of executing the death penalty but in India the two of them are in practice (1) hanging (2) shooting.

❖ **Hanging:** This is the method in India which is found to be a long and in most of the cases this method is adopted to execute the penalty. This method of execution has more weightage in India as compared to any other method. In this a person is hanged till death and a person who is executing is tapdropper. In ancient times the tap droppers were more handsome and professionalists in their work as compared to today's modern era. Since independence most of the cases of death penalty took place under this type of execution. Some of the criminals got death penalty by hanging are as follows:

- **DHANANJOY CHATTERJEE:** He was accused of raping and then murdering a fourteen-year-old girl, Hetal Pareek. He was living in the village near Kolkata. After some time he left that and started working as security guard. Hetal Pareek the victim was living in the apartment where he is working as security guard. According to the official verdict of the court it was proved that he raped the girl and choked her till her death. And this crime was considered rarest of rare by the court. And declared to be hanged as he was assigned the duty to protect and secure the society and this crime is against the people and against article 21 of Indian constitution. The date of his execution was 25 June 2004. But it was delayed as mercy plea was filed by his family but it was rejected by

former president APJ Abdul Kalam and his death penalty executed on his 39<sup>th</sup> birthday 14 august 2004 at Alipore jail in Kolkata.

- **MOHAMMAD AJMAL AMIR KASAB:** Kasab was the terrorist and was the part of the famous group that was responsible for attacks in Mumbai. After this terrorist attack 11000 pages charge sheet was filed against Kasab which makes the case stronger and second complicated point aroused is that he is not stuck for his saying in the proceedings and supreme court announced death sentence against him. Mercy plea was also filed under president Pranav Mukherjee and was get rejected. Finally, he was hanged on 21<sup>th</sup> November 2012 at yerwada jail in pune.
- **AFJAL GURU CASE:** In this case five-armed terrorist attacked the Indian parliament which led to the death of eight security guards and a gardener. Behind all these situation Afzal gurus was accused for being the master mind. This case was transferred to the special cell of Delhi police which was successfully able to arrest the Afzal guru. During this case the special court was formed for the Prevention of Terrorism act which finally sentenced him to death on 18 December 2002 but with various pleads case was extended till February 6, 2013. Lastly plea was rejected by the former president Pranav Mukherjee and he was hanged on 9<sup>th</sup> February 2013. This execution was named as a secret mission.
- **YAKUB MENON:** This was the last hanging in India uptill now. He was accused for terrorism done in 1993 in Mumbai. He was the major part in sponsoring the 13 blasts in which life of 257 people was taken. He was directed by his brother tiger Menon and underworld mafia Dawood Ibrahim. The two mercy appeals were taken and rejected. Whole night case proceedings were initiated. On 30<sup>th</sup> July 2015 in morning his death sentence was executed at central jail Nagpur.

❖ **Shooting:** This is another method of execution death penalty in India but most of the execution took place in India by hanging. But there are some provisions where

the execution can be done by shooting. The army act, the navy act and the air force act provide the death sentence in the form of shooting.

### **WOMEN'S HANGED IN INDIA**

In India death sentence is announced and executed only for two women's uptill now namely Seema Gavit and Renuka Shinde. They both were sister and found accused for kidnapping and killing five children in western state of Maharashtra. The main purpose was to abduct the children and use them for the purpose of begging. Total 13 children were abducted but evidences regarding only five children were found. They both were convicted in 2001 and death penalty was executed in 2004 at yerwada jail pune.

### **REASON BEHIND THE PHRASE CONVERSION, 'HANGED' TO 'HANGED TILL DEATH'**

According to legal terms primal incarceration is always defined as the method of hanging any criminal till death. The interesting mystery is behind this phrase "hanged till death". Before independence our judicial system uses the phrase "to be hanged" him/her. In India whenever, capital punishment is announced the judge always use to write to be "hanged till death" and not just "to be hanged". According to section 354(5) of CRPC 1973 states that the person whomsoever against primal incarceration is announced should be hanged by the neck till his death because it makes clear for the individuals that he should be hanged till he dies but the phrase to be hanged only specify that only a person should be hunged no matter he dies or not.

Regarding this phrase an incident took place in 1900s which is also known as historical case. In 1900 the revolt against the british raj introduced. A man was charged for an offence against some British officers the man for his offence taken before court of law. A man was accused for participating in revolt against the british and being a rebel court found him guilty. The judge decided to award exemplary punishment against him. The motive behind punishing the accused was to set example so that this type of offences would not be repeated in near future. The court also decided to hung him in front of the public. Pandit Motilal Nehru was lawyer regarding the case at the time of execution of his death penalty Nehru asked the authority to halt the hanging and the accused was thus saved and brought down by the authority. Before the court Nehru argued that the order passed by the court "to be hung" is fulfilled as it was not clearly

mentioned that how long the accused is to be hanged. After this historic case in the legal era, the phrase “to be hanged” was amended and is used as “hanged till death”. This amendment was made in the law for the concept of death punishment after this landmark case in history.

### **STATUS OF DEATH PUNISHMENT IN DIFFERENT COUNTRIES:**

The status of India in every aspect is different from other foreign countries. India was counted among top tenth to award the punishment of death but recently there has been no death penalty executed in India. The last was executed in 2015. In comparison with 2013-14 statistics there was number of death punishment awarded in this year. In last eight years maximum no. of death penalty executed in 2011 are least in comparison of 2009. From 2007 to 2014, 649 death penalties were pronounced in India but out of that only two were executed, one was in 2012 i.e. Ajmal Kasab and second in 2013 i.e. Afzal Guru.

Across the world there are various countries which are on path of giving punishment through death. Some of the countries has abolished it from their judicial system and some had retained it. In India the death penalty is executed by hanging till death but in different countries across world there are many other forms of execution which are adopted. Some of the methods include beheading, hanging, lethal injection and shooting. In 2014 at least 607 people were hanged in 22 different countries

According to Amnesty International verdict in year 2017, 142 countries had abolished the punishment of death from their judicial system. the verdict says that 170 states have either abolished it or introduced it. However according to this report in past five years 33 countries have carried at least one execution. There are four countries which are responsible for 84% of execution in 2017 (Saudi Arabia, Iraq, Pakistan, Iran) among this country's china is not included as its statistics are state secret but it was estimated china carry out thousands of executions each year. According to human right organization it was recorded that at least 2591, death sentences in 53 countries in 2017, and in some country's death sentences are commuted. According to Amnesty there are 106 countries where use of capital punishment is prohibited by law. There are seven countries which permit the death sentence only for serious crimes. Such as during the times of war. There are 29 countries which have permission to award death penalty but never executed from past 10 years. 56 countries retained death penalty laws and either carried out the

executions. Thailand is a non-member country which carried out its execution in 2013. The Malaysian government was trying to abolish the death penalty. About 1200 people are in death row in Malaysia. In total 23 people were executed in the U.S. last year. Washington state became the 20<sup>th</sup> to ban the death penalty in October 2018. There are 21 countries which had not carried out the execution from past 10 years and also not have abolished it. Some of the countries quarter, Zimbabwe, Uganda, Bahamas.

## CONCLUSION

After analyzing this complete research, according to our opinion primal incarceration should be awarded to the offenders at the considerable extent. Capital punishment is the penance which is mentally and physically so unbearable for the people but in this blood shaded world, horrific criminals are day by day increasing the number of villainous crimes. And the question is that when such horrific criminals don't even think once before killing those innocent people then why Our judicial system delays their penance in granting such a painful punishment by giving them the privilege of mercy petition. So, mildness should be manifest where it entails but not there where it is superfluous. In a country like India if we have to consummate something then we have to agitate someone because death row is a biggest nightmare for yard bird. If a person will endure something then only he will conceive something because it is important for fraudster to pine over till his last gulp. It is obligatory to set a prototype to avoid upcoming repercussion so that we can conjecture a preferable lucid. It is said that when infant does a wrong by stealing a pencil or a coin then his mother thrashes him pitifully similarly when criminal does a crime adversely he should be also slaughtered in once. Officially the working bench should cornerstone on the awaiting attention cases because there are many families which anticipate the yearning for neutrality because it acts like yardstick for the country as well as for individual. It's the grave demand to pay attention on the momentous things rather on trifling matters. Now its very due season to detach the false face and to corrode the mask of admirable artefact.

“It looks very amicable to spot a hummingbird in the unclogged sky but it's precarious to perceive yard birds in open air”