BLOGS

Notes on Death Penalty in India

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Introduction

The death penalty is a form of punishment that is given to individuals who have committed heinous crimes such as murder, terrorism, and treason. It is considered to be the most severe form of punishment in the world. In India, the death penalty is awarded under the Indian Penal Code (IPC) for specific crimes. This post aims to provide an overview of the provisions and applications of the death penalty under IPC.

IPC and Death Penalty

Section 302 of the IPC states that any person who commits murder shall be punished with the death penalty or imprisonment for life. Murder is defined under **Section 300 of the IPC** as the intentional killing of another person without any justification or excuse. However, not all murders are eligible for the death penalty. The death penalty is only applicable when the murder is committed in specific circumstances such as when it is committed with the intention of causing the death of a public servant, when it is committed during the course of committing a robbery, or when it is committed along with another person who has already been awarded the death penalty.

The death penalty can also be awarded under **Section 376E of the IPC**, which deals with the punishment for repeat offenders of rape. Under this section, if a person is convicted of rape for a second time or more, he can be punished with the death penalty or imprisonment for life. This provision was added to the IPC in 2013, following the Delhi gang-rape incident in 2012, which sparked widespread protests across India. The provision was added to ensure that repeat offenders of rape are dealt with severely.

Apart from murder and rape, the death penalty can also be awarded under other provisions of the IPC. For example, under **Section 121 of the IPC**, a person can be punished with the death penalty if he is found guilty of waging war against the Government of India. Similarly, under **Section 122 of the IPC**, a person can be punished with the death penalty if he abets the waging of war against the Government of India.

However, the death penalty is not awarded for all offenses. For example, the death penalty is not awarded for offenses such as theft, fraud, and forgery. This is because these offenses do not involve violence or the loss of life. The death penalty is reserved only for the most serious crimes, which involve the loss of life or pose a threat to the security of the state.

Due Process under Death Penalty

The death penalty is awarded only after a fair trial and due process. The accused has the right to legal representation and can appeal against the verdict. The Supreme Court of India has also laid down guidelines for the award of the death penalty. In the landmark case of ***Bachan Singh v. State of Punjab*** (1980), the Supreme Court held that the death penalty should be awarded only in the rarest of rare cases. The court further stated that before awarding the death penalty, the court must consider all the circumstances of the case, including the nature of the crime, the background of the accused, and the possibility of reform.

Rarest of Rare Cases Doctrine

The “rarest of rare cases” doctrine in India refers to the legal principle that the death penalty should be imposed only in the rarest of rare cases where the crime committed is of an exceptionally heinous nature and shocks the conscience of society. This doctrine was first introduced by the Indian Supreme Court in the landmark case of ***Bachan Singh v. State of Punjab*** (1980), where the court held that the death penalty should be imposed only in the rarest of rare cases, after taking into account the aggravating and mitigating circumstances of the crime and the individual.

The rarest of rare cases doctrine has been further developed and refined in subsequent cases, and is now a well-established principle of law in India. However, there is still ongoing debate over the application of the doctrine, with some arguing that it is applied too broadly, and others arguing that it is not applied rigorously enough.

Sentencing Procedure

The Indian Supreme Court tends to consider different factors while considering whether a person should be awarded the sentence or should the same be curtailed. In this regard, one of the most striking cases is **Jawed** ***Khan @ Tingrya v State Of Maharashtra***.

A death sentence imposed by the High Court for conviction on rape and murder charges. In this case, the Supreme Court established a clear connection between the convict's prison behavior and his capacity to reform. While imprisoned, the Appellant took part in a Gandhian Thoughts test held by the Sahyog Trust, which was based on Mahatma Gandhi's life and beliefs.

The Court also observed that the Appellant had completed the B.P.P. (Bachelor Preparatory Programme) at Indira Gandhi National Open University ("IGNOU"), which qualified him for entry to the B.A. course, and was currently enrolled in the B.A. course at IGNOU. All of this was deemed evidence on record by the Court to demonstrate that the Appellant was on the road to repentance and may have even become reformed. As a result, the Court commuted the execution penalty to life in jail.

Controversy around Death Penalty

Despite the guidelines laid down by the Supreme Court, there have been instances where the death penalty has been awarded in controversial cases. For example, the hanging of Afzal Guru, who was convicted of involvement in the 2001 **Indian Parliament attack**, has been criticized for being politically motivated. Similarly, the hanging of Yakub Memon, who was convicted of involvement in the 1993 Mumbai bombings, has been criticized for being carried out hastily, without allowing him to exhaust all legal remedies.

The death penalty is a controversial issue, with strong arguments both for and against it. Supporters of the death penalty argue that it serves as a deterrent and is necessary to ensure justice for the victims and their families. They also argue that certain crimes are so heinous that they deserve nothing less than the death penalty. On the other hand, the side highlights how traumatizing the entire process is. This is better explained in the next section.

Mental Health and Death Penalty

In the case of ***Shatrughan Chauhan v Union Of India***, the Supreme Court heard a group of writ petitions submitted by or on behalf of 15 death row inmates contesting the Governor's and President's rejections of their mercy petitions. In two of these requests, the commutation of a death sentence to life imprisonment was requested due to mental disease.

Insanity/mental illness/schizophrenia is a critical supervening factor that should be examined by this Court in determining whether the execution penalty could be commuted to life imprisonment under the facts and circumstances of the case. The Supreme Court also stated that holding a prisoner in suspense for many years while the President considers his clemency plea causes anguish, adverse physical conditions, and psychological stress on the convict under death sentence.