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UNIT : V (2). ARGUMENTS FOR AND AGAINST DEATH PENALTY

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The death penalty is seen as the most suitable punishment and effective deterrent for the worst or rarest of the rare crimes. Capital punishment, also called the death penalty, is the execution of an offender sentenced to death after conviction by a court of law of a criminal offence. It is the highest penalty awardable to an accused. Generally, it is awarded in extremely severe cases of murder, rapes, treason etc.

Thus, the morality of the death penalty is debatable and many criminologists and socialists all across the globe have been long demanding abolition of the death penalty.

Arguments: In Favour of the Death Penalty

Retribution: One of the key principles of retribution is that people should get what they deserve in proportion to the severity of their crime. This argument states that real justice requires people to suffer for their wrongdoing and to suffer in a way appropriate for the crime.

Each criminal should get what their crime deserves and in the case of a murder, criminal deserves death.

Deterrence: Capital punishment is often justified with the argument that by executing convicted murderers, we will deter would-be murderers from killing people. It is often argued that the death penalty provides closure for victims' families. There are many examples of persons condemned to death taking the opportunity of the time before execution to repent, express remorse, and very often experience profound spiritual rehabilitation. Thomas Aquinas noted that by accepting the punishment of death, the offender was able to expiate his evil deeds and so escape punishment in the next life. It demonstrates that the death penalty can lead to some forms of rehabilitation.

Arguments: Against the Death Penalty

The statistical evidence doesn't confirm that deterrence works. Some of those executed may not have been capable of being deterred because of mental illness or defect.

Some capital crimes are committed in such an emotional state that the perpetrator did not think about the possible consequences. Death has been prescribed in rape cases since 2013 (Sec. 376A of IPC), still, rapes continue to happen and in fact, the brutality of rapes has increased manifold. This compels one to think of the death penalty is an effective deterrent to crime.

Execution of the Innocent: The most common argument against capital punishment is that sooner or later, innocent people may get killed, because of mistakes or flaws in the justice system.

According to Amnesty International: As long as human justice remains fallible, the risk of executing the innocent can never be eliminated.

People who oppose Capital punishment are of the view that retribution is immoral, and it is just a sanitised form of vengeance.

Death has been abolished as a form of punishment in most of the developed countries. **The UN Secretary General's report on the death penalty presented to the Human Rights Council held that "some 170 States have abolished or introduced a moratorium on the death penalty either in law or in practice, or have suspended executions for more than 10 years"**. Capital punishment doesn't rehabilitate the prisoner and return them to society.

Death Penalty in the Indian Context

Prior to the Criminal Procedure (Amendment) Act (Cr PC) of 1955, the death penalty was the rule and life imprisonment an exception in India.

As per Section 354 (3) of the Cr PC, 1973 the courts are required to state reasons in writing for awarding the maximum penalty. The situation has been reversed and a life sentence is the rule and death penalty an exception in capital offences.

Moreover, despite a global moratorium against the death penalty by the UN, India retains the death penalty.

India is of view that allowing criminals guilty of having committed intentional, cold-blooded, deliberate and brutal murders to escape with a lesser punishment will deprive the law of its effectiveness and result in travesty of justice..

The Indian Penal Code prescribes 'death' for offences such as

- Waging war against the Government of India. (Sec. 121)
- Abetting mutiny actually committed (Sec. 132);
- Giving or fabricating false evidence upon which an innocent person suffers death. (Sec. 194)
- Murder (Sec. 302);

Some other criminal statutes that provide for the death penalty as a form of punishment:

- ❖ Direct or indirect abetment of sati is punishable with Death penalty under the Commission of Sati (Prevention) Act, 1987.
- ❖ Under SC and ST (Prevention of Atrocities Act), 1989 giving false evidence leading to the execution of an innocent member belonging to the SC or ST would attract the death penalty.
- ❖ Besides these, rape of a minor below 12 years of age is punishable with death under Protection of Children from Sexual Offences (POCSO) Act, 2012.
- ❖ Financing, producing, manufacturing as well as the sale of certain drugs attracts the death penalty for repeat offenders under the Narcotic Drugs and Psychotropic Substances Act, 1985.
- ❖ Unlawful Activities (Prevention) Act, 1967; Army, Navy and Air Force Acts also provide the death penalty for certain specified offences committed by members of the armed forces.

Rarest of Rare Cases: When the murder is committed in an extremely brutal, ridiculous, diabolical, revolting, or reprehensible manner so as to awaken intense and extreme indignation of the community. When total depravity and cruelty are the motives behind a murder.

Conclusion. India is awaiting execution of Nirbhaya's rapists; the delay in the execution of the death penalty has taken the sting out of the

punishment. This is the reason why Hyderabad police encounter in Disha's case was hailed by a large populace. In this context, there is a need to expedite investigations at the hands of a well trained and equipped police system ably supported by fast track trials to reinforce the faith of the public in our legal system.