

A Study on Execution of Death Sentence

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Abstract

Punishment is a feeling of pain or suffering induced by a method of inflicting it and justified by some offence that the sufferer is said to have violated. Punishment must always match the gravity of the offence committed similarly serious crimes need severe punishment. All punishments are given with the same motive – as a penalty to the offence committed. So why does the law specify punishments? To ensure that the person who does a wrong needs to suffer for his deeds and discourage others from doing the same wrong with the fear of its punishment. The criminal justice system of India provides the following types of punishments: Death, Imprisonment for life, Imprisonment (both rigorous and simple), forfeiture of property and fines. Punishment by death is an integral part of the system as it is the harshest form of punishment. Death penalty is a constitutionally valid form of punishment but can be given only in the rarest of rare cases. Deterrence is the face of capital punishment. Societies must take up deterrents in order to fight crimes. While over 66% of the countries in the world have already abolished death penalty, India is a firm believer in this aspect. Elimination in the form of murder by the executive is fair retribution and saves potential future victims. This paper is an attempt to bring out the reasons on why the punishment of death needs to be sustained and must be used more often in cases of heinous offenders.

Keywords: death penalty, deterrence, rarest of rare, retain, abolish

Research Methodology

The Paper has adopted Doctrinal Research Methodology primarily based on Articles, Bare Acts, Books etc. and the secondary sources include websites and commentaries on landmark judgments.

Limitations

This paper is based on the understanding of data studied within a limited time period and hence time constraint is one of the limitations of this study. Further there has been many unofficial executions made by governments across the globe and the study is restricted to the ones officially recorded.

Introduction

Capital punishment (also called death penalty) is the process of executing a person as a form of punishment for committing a specific crime but only after a proper legal trial has been conducted. Punishment by death can only be used by a state, when non-state organisations claim to have executed a person they have actually committed a murder. It is not commonly or frequently used as a punishment but for particularly serious types of murder, countries treason and rape and other such capital crimes death penalty is awarded. The term 'capital punishment' comes from the Latin word "capitalis" which literally translates to the word "head" which refers to beheading. The whole world has been debating on whether their country has to retain to do away with capital punishment, India is one such country which has stayed strong on retaining this form of punishment largely due to the increasing crime rates and the fear of change of mind set of criminals. The central aim of this paper is to provide reasons for India retaining capital punishment. The papers also aims at tracing the origin and history of death penalty; to give a brief regarding the award of death sentence; and to list out the principles and stages involved in awarding this punishment.

Historical Background

The official codified history of capital punishment dates as far back as the 18th Century when the King Hammurabi of Babylon codified death penalty for 25 different crimes. The death sentence was also formed a large part of the 14th Century 's Hittite Code; in the 17th Century the Draconian Laws of Athens, which had death as the only form of punishment for all crimes. Death sentences were carried out by such brutal means such as crucifixion, drowning, beating to death and burning alive.

England

Since the 10th Century, hanging became the most usual method of execution of rough criminals in England. In the following years, Prince William "The Conqueror" did not allow persons to be hanged or otherwise executed for any crime, except during times of war. This practice would not last, as in the 16th Century, under the rule of Henry the Eighth, as many as 72,000 people are said to have been executed by the state. Some common methods of execution at that time were boiling, burning alive, hanging, beheading, and drawing. Executions were carried out for offences such as marrying a Jew, not confessing to a crime, and treason including other capital crimes.

The number of capital crimes in Britain continued to rise through the 17th and 18th Centuries. Stealing, cutting down a tree, and robbing were also included as capital crimes. Because of the severity of the punishment, many juries would not prefer to convict defendants if the offense was not serious. This led to reforms in the death penalty policies. In the mid-18th Century death penalty was eliminated for over 100 of the 222 crimes punishable by death.

India

It was first in 1931 that a bill was introduced to abolish the system of capital punishment. But during the British period of dominance in India in 1946 the British Government felt it not wise to abolish death penalty for any type of crime. But later after India gained Independence it retained all the six punishments that were introduced to them by the British including death. But the constitution had special provisions under section 367 to record reasons before providing which was eventually repealed in 1955.

Statistical Perspective

While different countries have adopted different policies and attitudes of their own they can be simply classified into the following two categories: Abolitionist and Retentionists. As of December 2017, 106 countries have abolished capital punishment for all crimes; whereas 7 countries have abolished it only for ordinary crimes but have retained it for serious crimes like capital offences. 29 countries have abolished the system in practice and 56 countries have still retained the punishment by death.

Global Statutory Perspective

The International Covenant on Civil & Political Rights (ICCPR) to which India is a party, is major piece of legislation which does not directly abolish capital punishment but its provisions namely Article 6 of the document provides certain safeguards to be followed by signatories. It includes the inherent right to life of every human being shall be protected by the state and he/she shall not be arbitrarily deprived of this right. In case of countries that have not abolished capital punishment, it shall be imposed only on serious crimes and shall not be carried on for crimes committed by persons below the age of 18 or by pregnant women. The same is further substantiated by the Convention on Rights of Child (CRC). Apart from treaties and covenants, International Criminal Courts excludes it as a permissible form of punishment.

Current Status in India

India is a retentionist country but there are certain provisions which could oppose the system. Article 21 of the Indian Constitution which guarantees 'Protection of life and personal liberty' states that No citizen protected by this constitution shall be deprived of his life or personal liberty except as according to procedure established by law. The constitutional validity of capital punishment has been questioned several times by the Indian judiciary itself.

The Indian Penal Code grants death sentence as a punishment for various offences. Some of these offences under the IPC are punishment that are considered capital crimes and are punished with death sentence are: for criminal conspiracy under sec. 120B, murder under sec. 302, waging or attempting to wage war against the Government of India under sec. 121, abetment of mutiny under sec.132, dacoity with murder under sec. 396 and others including the recent ordinance for child rape. Apart from the provisions of the IPC there are provisions for death penalty in various other legislations like the Narcotics Act and in Anti-Terrorism laws among others.

Rarest of Rare principle

The Principle of Rarest of Rare found its place in the judiciary after the landmark judgement was delivered in the case of *Bacchan Singh v State of Punjab* [(1980) 2 SCC 684] where life sentence was regarded as the common rule and death sentence as an exception to this rule. This doctrine does not have a statutory definition, it basically says that punishment by death should only be awarded to a person as a form of punishment in exceptional cases wherein the society we live in demands the extinction of life of the criminal. While determining whether the doctrine of rarest of rare applies to a particular case the court must take into account various aspects of the crime such as victim of the crime, manner of commission of crime, motive behind commission of crime, nature of crime and the criminal and the magnitude of the crime. Only after considering all of these essentials should a capital punishment be granted. The argument of misuse of the punishment is completely baseless. Apart from punishing offenders who commit heinous crimes which come under rarest of rare cases the judiciary has taken a step back not to award punishment to some other brutal offences as the accused does not pose potential harm to public at large.

Why Capital Punishment has been retained in India?

In India it is perhaps pretty evident that that the theory of reformation is a huge failure hence the fear of death would have and also had a better impact in the minds of criminals. India is one of the handful countries that has voted against the United Nations resolution and this is a result of favourable public opinion with regards to retaining punishment by death. Of late the public has witnessed brutal murders and rapes that this devilish for the society and country at large. With such anguish among the public minds it makes no sense to remove capital punishment.

Position in other countries

If we take the position of US, only 13 states have abolished the system and the rest have retained it. This only depicts the requirement to have such harsh form of punishment in such states. In case of Saudi and other Arabian countries death penalty is one of the most often used

form of punishment. Taking all the countries into consideration the crime rates have become lower with 993 executions which has seen a 4% decline when compared to previous years. So, it is not that countries have been easy on the number of executions made, they have underplayed and even reduced the number of death sentences given. With regards to methods used US uses the method of death by Lethal Injection and Indonesia has a more brutal firing squad method. The traditional electrocution used in US is now deemed illegal.

Clemency Powers

The constitution of India specifically gives this power to both the President and the Governor under Article 72 and Article 161 respectively. After the offender has exhausted all his legal remedies until the Apex Court he can apply for a plea of pardon before the Governor or the President of India. Hence they are called as “court of last resort”. There are various things they can give which includes: Complete Pardon, Commutation (lighter form of punishment than already serving), Remission (Reducing the term of sentence), Respite (lesser sentence due to a special fact) or Reprieve (Temporary stay of sentence). Filing of more than one mercy petition is permissible.

Attitude of Presidents thus far

There has been mixed response by the Presidents who have served thus far. Former President Pranab Mukherjee had rejected all 30 applications, and Former President Abdul Kalam had commuted 1 and rejected 1 of the pending applications while Former President Prathiba Patil had commuted a record 19 applications and rejected 3. Former President Venkataraman Rao rejected all the pending applications. The current serving president Ram Nath Kovind had recently rejected his first mercy plea.

Recent ordinance

Moving on from the attitude of presidents to the attitude of law makers, the recent ordinance passed by the Union Cabinet imposing death penalty on rape of children before the age of 12. Further the ordinance provides for speedy investigation and completion of the investigation within 2 months and appeals within 6 months. Other punishments with regards to the offence of rape has been increased. But this can be seen as a move only to manage the public pressure and anguish towards recent happenings. This change would also increase the risk of the victim being killed. Hence its validity can be tested only when the parliament joins.

Conclusion

The debate regarding the retention or abolition is not only with regards to legal aspects but also with regards to social and moral aspects. The society needs an effective deterrence but at the same time no innocent should be punished. But this cannot be a reason to bring down death penalty as cases punishable with death are rarely handled in courts and are given only after

extensive deliberation and careful examination at various stages of the case. Presidents must be a symbol of initiative and leadership thus preventing regular executions.⁵¹ applications are still pending.

References

Articles

Ajay Kumar & Adithya Kumar, Death Penalty in India, Indian Law Journal on Crime and Criminology, Vol.1 Issue 3

Akanksha Madaan, Capital Punishment on Rarest of Rare cases: Is it just and fair?, Manupatra Jan 2014

Dr.S.D. Moharana, A Critical study on Abolition of Capital Punishment, International Journal of Academic Research, Vol.2 Issue 1 Jan 2015

Dr. Chandrika Prasad Sharma, Death Sentence Repeal or Retention riddle (2004) PL WebJour

Dr. DP. Sapre, Capital Punishment, Journal of Forensic Medicine, Science and Law, Vol.21 No.2

Dhananjay Kashyap, Death Penalty in India, Asian Journal of Legal Studies

Ross Calvin, Rape Trial puts focus on India s' Death Penalty paradox Sept 13,2013

Russ Feingold, Oregonions for the alternative to Death Penalty

Shivani Bisht & Rakshit S Patil, Death Penalty & Crime Deterrence, November 2015

Tannu Shree, Morality & Death Penalty: Is capital punishment morally right? International Journal of Law and Legal Jurisprudence Studies Vol.2 Issue 4

Dr.Lakshmi T and Rajeshkumar S "In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes", International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.

Trishala A , Lakshmi T and Rajeshkumar S," Physicochemical profile of Acacia catechu bark extract –An In vitro study", International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

Books

Capital Punishment in India by Subash C Gupta, 2000, Pg.1; Pg. 104-105

Criminology by Siddique Ahmed 5th Ed.,2005 Eastern Book Company

Criminal law by PSA Pillai 11th Ed. Lexis Nexis

Criminology and Penology by J.P.S. Sirohi 7th Ed. Allahabad Law Agency Pg.276

Criminology and Penology by M. Pannaian, 3rd Ed.

Criminology by Girjesh Shukla, 1st Ed.,2014, Lexis Nexis, Pg 154

Criminology and Penology by NV. Paranjape Central Law Publications

The Code of Criminal Procedure by Dr.N.V. Paranjape, 6th Ed. Central Law Agency Pg.517

Cases

Jagmohan Singh vs State of UP AIR 1973 SC 947

Mithu vs State of Punjab AIR 1983 SCR (2) 690.

