Death Sentence and Criminal Justice

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ABSTRACT

Injustice anywhere is a threat to justice everywhere!!! As quoted by Martin Luther King clearly states that a single act of injustice can lay down the whole system of just and prudent acts. But justice is not confined to a particular section of the society. Capital punishment is one such area in the field of granting justice which is highly questionable. It grants justice on one side and takes away the basic right t life of the other. Due to its dual impact, this issue is highly debatable among critics and intellectuals of the society. Capital punishment is not like bed tea which is served every morning but the intensity of the crime forces to do so. It is necessary in order to eliminate the garbage of our society. The crime committed becomes so grave that it compels the court to justify the victim. Now the question arises is if this is the only method to grant justice? Is the concept of an eye of an eye and a tooth for a tooth appropriate for a civilized society? Elaborating it to Indian context, the torture before the accused gets punished by the court makes his life even more heart rending. Indian legislators try hard to curb this issue but then again relief to the one party causes ache to the other. In such a situation, molding the laws seeing the situation and intensity of the crime would be a better alternative rather than sticking to the written words because every crime has a different story and effect.

Keywords: Capital Punishment, Criminal Injustice, Human Rights, Indian Legislations

INTRODUCTION

Capital Punishment is one of those extreme punishments that creates fear in the mind of extreme punishments that would create fear in the mind of any sane person. It is to be very sparingly applied with special reasons in cases of brutal murder and gravest offences against the state. About abolition of capital punishment, debates are raging the world over amongst social activists, legal reformers, judges, jurists, lawyers and administrators. Criminologists and penologists are engaged in intensive study and research to know the answer to some perplexing questions on Capital Punishment. They wonder if it would really control the aura of committing crimes. Would giving such punishments make the criminals think even if their own life is at stake

OBJECTIVES

1. To have a analysis of the extent of capital punishment in our country
2. To have a detailed analysis of the Human Rights convention laws and its implementation in favor of convicts.
3. To have a glance over the verdicts of law of professionals and critics on this issue
4. To have a keen study on the different commentaries on the Indian legislations relating to this issue

RESEARCH QUESTIONS

1. Whether capital punishment is sufficient to attain the objectives of Punishment?
2. Whether complete elimination of criminals through capital punishment will eliminate overall crime from the society?

3. Whether complete elimination of crime from society is at all possible without harsh punishment?

REVIEW OF LITERATURE

Bhumika N. (2012), had written in her article whether death penalty violating under article 19, 14 and 21of the Indian constitution. Krishna Ayer judge express their view in Rajendra Prasad case death sentence is violated U/A 21,19,14 of Indian constitution. One more Jagmohan Singh case death penalty could not violated under article 19 of the Indian constitution. One must agree with the Hon’ble Krishna Ayer. Death penalty is violated under art 21,19,14. Constitution of India capital punishment is not rule it is an exception of judgments today one need to unanimous judgment so secure and protect the people and society.

Srivastava S.& Srivastava P.K. (2011) have written in their article some countries such as Britain and Germany are against the capital punishment they had abolished death sentence but India and America have retained death sentence and impose suggestion exceptional crime and special reasons. Rustam S. (2012). Has written in his article the Mahatma Gandhi is the thrust of the reformative theory of punishment .One line “An eye for an eye and the whole world blind” it was an old jungle law criminals as inhuman this theory is slowing the nature of the modern society

Ajmal Kasab's death penalty confirmation of the Naroda - Patiya massacre case and the Supreme Court's expression of helplessness in not awarding the death penalty, the human dignity of the judge Jyotsna Yagnik's invocation - 26/11 terrorist attack, the punishment - the death penalty, go to the heart of the constitutional unviability. We are qualitatively different, in terms of punishment he should receive, but our collective response associated with the two crimes culpability will struggle to make any meaningful difference.

RESEARCH METHODOLOGY

The method adopted for the research is basically content analysis of the available secondary data. Content analysis is a methodology in the social sciences by which texts are studied as to authorship, authenticity, or meaning. Content analysis is a summarizing, quantitative analysis of messages that relies on the scientific methods (including attention to objectivity, inter subjectivity, a priori design, reliability, validity, generalizability, reliability, and hypothesis testing) and is not limited as to the types of variables that may be measured or the context in which the messages are presented or created.

In this research the methodology of content analysis is used for analyzing internet data comprising of various articles, news articles, reports of various institutions etc. & books on the relevant topic to bring forth useful& appropriate information as it is the doctrinal type of research.

INTERNATIONAL ARENA

Capital punishment is one of the most debated issues around the world. The UN General Assembly recognised that in case of capital punishment there is a need for high standard of fair trial to be followed by every country. Procedures to be followed must be just, fair and reasonable. For example the UN Economic and Social Council (ECOSOC) in resolution No. 15 of 1996 (23 July 1996) encouraged member countries to abolish death sentence and recommended that those countries who retain it must ensure defendants a speedy and fair trial.

Article 5 of the Universal Declaration of Human Rights 1948 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 7 of the International Covenant on Civil and Political Rights (ICCPR) 1966 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. By several resolutions the United Nations suggested protection of human rights of the persons facing capital punishment which were again approved by Economic and Social Council in resolution No. 50 of 1984 (26th May ,1984).
On 3rd May 2002 the 13th protocol to the European convention for the protection of Human Rights and Fundamental Freedoms was open for signature of member states which provides for the total abolition of death penalty in all circumstances. Most of the countries in the European Union have abolished death sentence. Capital Punishment has been recognized as cruel, degrading and inhuman punishment which infringes upon the basic human rights of the accused as expressed in article 3 of the European Convention on Human Rights.  

**PENOLOGICAL THEORIES**

There are several theories of punishment such as deterrent theory, preventive theory, retributive theory, reformative theory, rehabilitative theory and so forth.

Deterrent theory of punishment emphasises more on protection of society from offenders by eliminating offenders from society.

According to this theory there are certain objectives of punishment that criminals should be deterred from breaking the Law, and deterrent punishment such as capital punishment should be an example to society and persons who have tendency to commit similar crime; and that if any one commits such a crime, he will be punished in the same manner. In this way it prevents people from breaking the law and it reduces crime rate in the society by elimination of criminals. Therefore, this theory has four justifications (1) Prevention, (2) Isolation, (3) Elimination and (4) Exemplary threat to potential criminals in the society.

**INDIAN LEGISLATIONS**

The Indian Penal Code, 1860 (IPC) is the Public Law and substantive Criminal Law which defines crimes and prescribes punishments. Section 53 of the IPC provides for death sentence and imprisonment for life as alternative punishments.

On January 21, 2014, the Supreme Court in the case of Shatrughan Chauhan v. Union of India, commuted death sentences of 15 death convicts to life sentence. These death row convicts approached the apex court as a final resort after their mercy petitions were dismissed by the President of India. The Court in this batch matter held that various supervening circumstances which had arisen since the death sentences were confirmed by the Supreme Court in the cases of these death row convicts had violated their Fundamental Rights to the extent of making the actual execution of their sentences unfair and excessive.

In 1962, the Law Commission undertook an extensive exercise to consider the issue of abolition of capital punishment from the statute books. A reference to this effect was made to the Law Commission when the third Lok Sabha debated on the resolution moved by Shri Raghunath Singh, Member, Lok Sabha for the abolition of capital punishment. The Law Commission released its 35th report in 1967 recommending retention of death penalty.

Many of the conclusions arrived at by the Law Commission were based on deductions on general elements of cultural and social life as it existed then.

The report also observed that the suggestion that capital punishment may be abolished for a fixed period of time as an experiment was fraught with the risk as between its abolition and reintroduction there could be an intervening era of violence and reintroduction of capital punishment may not have the desired effect of restoring law and order.

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1. For details see 13th protocol to the European convention for the protection of Human Rights and Fundamental Freedoms.
2. (2014) 3 SCC 1
JUDICIAL COMMENTS ON PRESENT DAY ADMINISTRATION OF DEATH PENALTY IN INDIA

While considering the question of constitutionality of death sentence, the Supreme Court in Bachan Singh, treated the penalty of death as belonging to a category of its own. But the Court in Bachan Singh also took notice of the fact that death penalty as a punishment has found mention in the Constitution in the section on mercy powers of the Governor and the President of India.

Propounding of the “rarest of rare” standard as a rigorous test to be fulfilled in all cases where the Courts award death sentence has in its heart the conception of death penalty as a sentence that is unique in its absolute denouncement of life for a penal purpose. As part of this characterization of death penalty standing in its own league, the Court devised one of the most demanding and compelling doctrines in law of crimes as existing in this country. Emergence of the “rarest of rare” dictum was very much the beginning of constitutional regulation of death penalty in India.

CONCLUSION

Death as a penalty has plagued human mind perennially. Death sentence must fulfill the conditions for protection of human rights in Criminal Justice Administration in India. This is a problem in Indian socio-legal system. Delay in execution is not infrequent which is a violation of accused basic human rights including right to live with dignity which is enshrined under article 21 of the Indian Constitution and the Universal Declaration of Human Rights. The accused in death sentence who is waiting for execution of punishment is living with terror of death every moment he is waiting for. Delay in execution is another punishment on him which is inhuman, degrading and must not be allowed in any civilized society.

REFERENCES

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