

Capital Punishment: A Violation of Human Rights – A Study

By

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1. Capital punishment refers¹ to ‘death by decapitation’ and by long back in 18th century B.C provided for death penalty for 25 different crimes², which was carried out by several methods such as:
 - a) crucifixion;
 - b) drowning;
 - c) beating to death;
 - d) burning the culprit alive; and
 - e) public hanging³

Even the India Judiciary made an unsuccessful attempt to order public hanging. Despite the fact that death penalty is sought to be eliminated,⁴ still 83 Countries impose capital punishment and under the Indian Constitution, it is retained under the clause ‘ deprivation of life by procedure established by law’.⁵

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¹ Derived from Latin expression ‘Caput’.

² See for details code of Hammurabi of Babylon.

³ This was witnessed in the public during 17th and 18th century in Paris including women in France. The India Judiciary also made an attempt to order public hanging but did not find support by high Judiciary. See details Attorney General of India Vs. Lachma Devi, AIR 1986 SC P.467.

⁴ See for details International Covenant on Civil & Political Rights, 1989.

⁵ See for details Art 21 of the Constitution relating to ‘Fundamental right to life and personal liberty’.

2. It is interesting to observe that the penal law of India⁶ provides for death penalty as one of the form of punishment.

India ratified the International Convention⁷ and as a consequence is committed to the abolition of death sentence. However, death penalty imposition is treated as an exception and not the rule and the execution of death sentence varies from the practice of other countries⁸ and India provides for execution by 'hanging' only. However, reasons have to be given for recording conviction with death.⁹

3. The death penalty issue has raised serious problems in the light of the arguments advanced by those who plead for its retention (may be described as retentionist) and those who oppose the same vehemently (known as abolitionists'. The main points of contention of retentionist relates to the argument that if capital sentence is taken away, there would be no effective justice system and crimes against innocent people would continue. It is an important deterrent to capital offence and even in the legal system when it was abolished, there is a heavy demand for its

⁶ See Section 53 of the Indian Penal Code which provides for death penalty for offences such as 'murder' and gang robbery complied with murder, waging war against the Govt., etc.

⁷ See Foot Note 4. Refer to Article 6 of the Convent which provides that 'every human being has an inherent right to life'.

⁸ In other countries, the execution takes place by way of lethal injection, Gas chamber, be-heading, electrocution as well as by shooting etc.,

See for details Sec 354 (5) of Criminal Procedure Code which provides "when any person is sentenced to death, the sentence shall direct that he be hanged by neck till he is dead".

⁹ See Section 354 (3) of Criminal Procedure Code.

reintroduction.¹⁰ On the other hand, the abolitionists argue that capital sentence is brutal, inhuman and degrading. There is no fool-proof mechanism to determine the innocent and the occurrence of wrongful execution cannot be ruled out. Mr. Martins statement that 200 cases executed were found to be innocent later.¹¹

4. The Law Commission of India stressed the modern approach to capital sentence and observed, ‘the severity of capital punishment and the strong feeling shown by certain sections in stressing deep questions of human values’.¹² The reformist approach to reform the individuals asserts that the human power to correct is lost as seen in Edigo Anamma’s case,¹³ where the apex court observed thus” “sought to reinforce reformist rationality and human punitive treatment thereby began to say for the first time”. This can be viewed as the condemned persons as victims gaining more support than the actual victims of crimes. The problem of condemned person’s family has been highlighted, as the capital punishment causing more injury than the injury suffered by the

¹⁰ In Australia such a demand permits and in USA, there is a very strong support in favour of death penalty after the 9/11 tragedy that took place in USA.

¹¹ Mr. Martin’s statement quoted by Dr. Jank Raj Jai “Presidential powers to pardon of death penalty” Regency publications, New Delhi – P.2006 (P.14-P.15).

¹² See the 35th Regent of Law Commission of India.

¹³ AIR 1974 SC P.299.

victims. In Jag Mohan's case,¹⁴ Justice V.R.Krishna Iyer prepared the ground for ameliorating the death penalty cases, where he observed thus" "It is obvious that the disturbed conscience of the State on the vexed questions of legal threat to life by way of death sentence has sought to express itself legislatively, the stream of tendency being towards cautions partial abolition and a retreat from total retention" (underlined author) . Despite the fact that the Judges do not wish in favor of its imposition, they feel that they are bound to the law, as it is found to be followed.¹⁵ The 35 Report of Law Commission, while giving reasons for retention of capital sentence suggested the necessity of undertaking a study for a period of 12 years i.e., from 2000 to 2012.¹⁶

The UN General Assembly passed a resolution of a non-binding nature calling for a global moratorium of execution of death penalty with a view to its eventual abolition.¹⁷

5. In a series of cases decided by the apex court, guidelines for imposition of death penalty were laid down which could be summarized as follows:-

¹⁴ AQIR 1973 SC P.947.

¹⁵ See Justice Stanley Mork of California's observation in Yale Law Journal Vol. 82 No.6 P.1138.

¹⁶ See Para 55 of the report.

¹⁷ See the proceedings of UN 2007-2008 (Para 51).

- i) A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases, when the alternative option is unquestionably foreclosed;¹⁸ and
- ii) In determining the culpability of an accused and the final decision as to the nature of sentence, a balance sheet to be drawn up and in doing so, the mitigating circumstances had to be given full weight so that all factors are considered before the option is exercised;¹⁹
Thus the principle of the rarest of the rare cases which have emerged can be stated thus:-
 - a) where there are no mitigating circumstances;²⁰
 - b) where the accused would be a menace and threat to the harmonious and peaceful co-existence of the society.²¹
- iii) Murder of six members of a family at night for money;²²
- iv) Murderer in the position of domination and the position of trust as the head of the family murdering his wife and five children (aged 1 to 16) in his own house;²³

¹⁸ Bachan Singh Vs. State of Punjab, AIR 1986 SC P.898.

¹⁹ Machhi Singh & others Vs. State of Punjab, AIR 1983 SC P.957.

²⁰ Surender Singh Vs. stte of Uttaranchal (2010)10 SCC P.611

²¹ .C.Maniappan Vs. State of TN (2010)9 SCC P.567.

²² M.A.Antony Vs. State of Kerala (2009)6 SCJ P.899.

²³ Jagdish Vs. State of MP (2010)1 SCJ P.762.

- v) Murderer as a paying guest for a continuous period of (4) years brutally executing three defenceless children and attempted murder on their parents, who survived the attack with multiple injuries;²⁴
- vi) Wife in collusion with her husband murdered not only her step brother and his whole family including their children and parents and sister so as to deprive her father from giving property to her step brother and his family;²⁵
- vii) Murderer who raped and murdered a six-year old girl (act reaching the lowest level of humanity);²⁶
- viii) Accused as a leader of the gang and committing murder in the most barbaric manner and also deterring others from challenging the supremacy of the accused in the village;²⁷
- ix) Accused, while on parole, in the case of murder of his first wife (sentenced to life imprisonment) murdering his second wife and daughter;²⁸

²⁴ Prajeeth Kumar Singh Vs. State of Bihar 2008 (2) ALT (CrI) P.452 (SC).

²⁵ Ram Singh Vs. Sonia (2007)3 SCC P.1.

²⁶ State of UP Vs. Satish (2005)3 SCC P.114.

²⁷ Holiram Bordoli Vs. State of Assam (2005)4 SCJ 40.

²⁸ Saibanna Vs. State of Karnataka (2005)2 ALT (CrI) P.272 (SC).

- x) Accused persons killing three adults and murdering two children in a property dispute in order to exterminate the entire family;²⁹
- xi) Murdering the friend and thirteen members of his family including small children for a flimsy reason (visit of the accused and stay in the friend's house being objected);³⁰
- xii) Accused sacrificing the child of another for appeasing Goddess Kali to promote his fortunes on grounds of superstition;³¹
- xiii) Accused deliberately planned and executed his two innocent children, wife and brother-in-law;³²
- xiv) Accused, a domestic servant, killing three children and attempted to kill the fourth member of his employer in order to take revenge for the decision to disperse with his services and robbery was also committed;³³
- xv) Accused persons firing on the occasion of a marriage feast killing thirteen persons and injuring eight others and later killing the parents of a prosecution witness;³⁴

²⁹ Karan Singh Vs. State of UP (2005) 6 SCC P.342.

³⁰ Gurmeet singh Vs. State of UP (2006)1 ALT (CrI) 53 (SC).

³¹ Sushil Murmu Vs. State of Jharkhand (2004)2 SCC P.338.

³² State of Rajasthan Vs. Kheroj Ram (2003) 8 SCC P.224.

³³ Om Prakash Vs. State of Uttaranchal (2003)(1) ALT CrI P.296 (SC).

³⁴ Gurdev Singh Vs. State of Punjab (2003) 2 ALT CrI P.240 (SC).

xvi) The accused was accommodated by one of the victims (who was his aunt) despite her family who gave t\him an opportunity to make an honest living as a tailor, committed murder of his relatives and well-wishers (including one young child). After the commission of the crime, the accused absconded from judicial custody for nearly four years. There was no proximity of any resource or rehabilitation³⁵ and

xvii) Where the murder was grotesque, diabolical, revolting

Or

Accused is a menace to society and continuous to be so, threatening its peaceful and harmonious co-existence.

And

When the court believes that the accused cannot be reformed or rehabilitated and continues with his criminal acts.³⁶

6. Detention of many years is considered as a ground for commuting death sentence with imprisonment of life was done by the Supreme Court. However, it has been observed that the view of the apex court has not been consistent.³⁷ This being so, an

³⁵ Praveen Kumar Vs. State of Karnataka (2003)12 SCC P.199.

³⁶ Surender Holi Vs. state of UP AIR 2011 SC P.970.

³⁷ In Dhananjaya's case 14 years detention was not considered for commutation.

appropriate amendment is required to prescribe the number of years in detention for the purpose of commutation to life imprisonment.

7. Since death penalty is irrevocable in nature and goes against reforming an individual and also deprives the society of the benefit of human resource of the individual executed, its abolition deserves consideration. The rarest of the rare cases need codification until it is abolished. Since it has been found that several persons executed were later found to be innocent, it will be an insult to the criminal justice system, if an innocent person is executed. It is therefore, desirable to retain imprisonment of life, by deleting death sentence, and also prescribe a levy of heavy fine equivalent to the loss caused to the family by the death, needs to be considered.

Imprisonment must be supplemented by adequate monetary compensation to provide relief to the victim's family. Life of the individual needs to be spared.

Until the abolition of death sentence, criminal justice system should ensure the ascertainment of guilt with greater certainty and no doubt should exist in this regard. There is a need to popularize the alternatives in the place of death penalty. As

suggested by Mr. Justice P.N.Bhagwati in Harbans Sing's case,³⁸ each and every aspect of the case should be examined before coming to the final conclusion. There should be an automatic review of death sentence cases by the Supreme Court, sitting as a whole, and such sentences should be affirmed by the unanimous decisions of the whole court. The death sentences are indeed a gross violation of Human Rights.

³⁸ (1982)2 SCC P.101.