

CAPITAL PUNISHMENT- A CONTROVERSIAL ISSUE

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In recent times there is much debate on capital punishment. The hanging of Ajmal Kasab, Afzal Guru and Yakub Memon give us a good reason to discuss more about the practice of capital punishment in our country and in other countries as well. Therefore, it is important for us to know that there are number of people who consider capital punishment as inhumane whereas the advocates of capital punishment consider it a just penalty for the crimes such as serial killing, terrorism, murders, etc. However this article deals with number of cases following with laws that are made by various legislative bodies and a remarkable conclusion.

Introduction

Life is precious,
Simply because it's a gift from
GOD¹

The lines quoted above clearly throws light on the importance of one's life and no one has the right to take it easily. Even the framers of Constitution of India gave importance to LIFE under Article 21 which reads as, "no person shall be deprived of his life or personal liberty except according to a procedure established by law." Even though one's life is crucial but when it defeats the life of another or gives harm to his nation than his life's thread goes in hands of Court that decides his further life. Since the dawn of the civilization stoning, hanging and killing were a part of life. Either it is ancient period or medieval such practices had been in motion. However, the origin of capital punishment can be traced by the late 1800s capital punishment was Code of Hammurabi, introduced by the employees of Thomas Edison which contains 282 laws including the theory of "eye for an eye". Even in modern or in British regime, death penalty is strictly followed.

In India, no doubt after our independence, death penalty rate has been declined but our constitution has secured the provisions of death penalty or capital punishment.

1. Capital Crimes

Crimes for which death penalty is awarded are known as "Capital Offences" or "Capital Crimes". However capital crimes vary from state to state and country to country. For e.g. in many countries sexual crimes such as rape, adultery, etc. carry the death penalty, whereas in some countries drug trafficking, serious corruptions, white collar crimes, etc. are

¹Quotesempire.com (last visited on 11july, 2016)

punished by death. Other than this crime against humanity, economic crimes, etc. are also punishable by death.

2. Capital Punishment

Capital Punishment is also known as “Death Penalty”. It is a government sanction practice by which a person is put to death as a punishment for a crime committed by him which is considered as a capital offence or a capital crime. The sentence by which a person is put to death as a punishment is known as “Death Sentence” and the act of carrying out such a sentence is known as an “Execution”.

3. Methods of Capital Punishment/Execution

Beheading- Beheading is one of the method of capital punishment and is also known as Decapitation which associated with sharia law and is actively used in Saudi Arabia.

Hanging- Hanging as a capital punishment which is common in many countries of the world like India, Afghanistan, Japan, Iran, Kuwait, Nigeria, etc.

Stoning- Stoning is also a method of capital punishment in which stones are thrown at a prisoner until he dies. This type of capital punishment is used in many countries around the world, especially in Middle Eastern countries.

Electric Chair- Electric chair is also one of the methods of death penalty in the United States. In this method of capital punishment prisoners are killed by a strong source of energy attached to their body parts. However its use is declined after the introduction of “Lethal Injection”.

Thus there are many other methods of capital punishment like slow slicing, firing squad, etc.

4. Statistical Data

Many countries have abolished capital punishment despite some countries are still practicing it. In 2015, at least 25 countries have practiced judicial executions.

[According to Amnesty International, 140 countries have abolished the death penalty in law or practice in 2015].²

5. Position in India

From 2004-2013, Delhi, Jharkhand, Uttar Pradesh, Bihar and West Bengal were the 5 states that comprised almost 57% of all death sentences awarded in the country among which Uttar Pradesh and Jharkhand were second where death sentences were commuted

²The Death Penalty Worldwide, available at: www.infoplease.com/ipa/AO777460.html (last visited on 9july,2016)

to life imprisonment.³ In 2014 Indian courts sentenced 64 people to death while at least 607 people were executed worldwide.⁴ In 2015, 1 person was executed in India.

6. Position in Other Countries

In China, data regarding death penalty is considered as State secret. However, Iran, Pakistan and Saudi Arabia contributed the rate of 89% of all executions recorded in 2015. In Saudi Arabia 158 people were put to death in 2015. Iran also executed juvenile offenders whereas in Pakistan 326 people were put to death in 2015 according to Amnesty International.⁵ In 2015, Fiji, Madagascar, The Republic of Congo and Suriname, abolished the death penalty. Indonesia carried out 14 executions for drug related offences.⁶

7. Cases

i. India

Dhananjay Chatterjee was hanged on 14 August, 2004 for rape and murder. Seema Gavit and Renuka Shinde's mercy pleas were rejected by the President after the Supreme Court confirmed their death sentence. However, 24 mercy pleas were rejected by the President Pranab Mukherjee including that of Ajmal Kasab, Afzal Guru and Yakub Memon.

Ajmal Kasab

Ajmal Kasab was a Pakistani militant who was convicted for murder, waging war on India, possessing explosives and other charges by Mumbai Special Court for which he was sentenced to death by Bombay High Court on 21 February, 2011 and by Supreme Court on 29 August, 2012. At last Kasab was hanged on 21 November, 2012 in Yerwada Central Jail in Pune. This hanging was the death penalty to be implemented in India since 2004.

Afzal Guru

Afzal Guru was convicted of 2001 Indian Parliament Attacks for which he was sentenced to death. He was scheduled to be hanged on 20 October, 2006 however, he was hanged on 9 February, 2013 at Delhi's Tihar Central Jail.

Yakub Memon

³In 10 Years, Indian Courts Handed Down 1,303 Capital Punishment Verdicts by ChaitanyaMallapur, available at: scroll.in/article/744...punishment-verdicts (last visited on 9 July, 2016)

⁴India One of Top 10 Nations Where Death Sentences were Handed Out Last Year by Kounteya Sinha and Anahita Mukherji, available at: m.timesofindia.com/...handed-out-last-year-... (last visited on 9 July, 2016)

⁵Death Sentences and Executions in 2015 | Amnesty International, available at: <https://www.amnesty.org/latest/2016/04> (last visited on 10 July, 2016)

⁶Death Penalty 2015: Facts and Figures | Amnesty International, available at: <http://www.amnesty.org/news/201/04> (last visited on 10 July, 2016)

13 serial explosions were given the name of Bombay Bombings that took place in March 12, 1993.⁷ Yakub Memon was the brother of Tiger Memon who was one of the prime suspects of these bombings and Yakub Memon was convicted for these Bombay Bombings of 1993 and was hanged on 30 July, 2015 in Nagpur Central Jail.

8. International Cases

i. Saudi Arabia

Saif al-Hadissan was found guilty of smuggling a large amount of hashish for which he was executed in the Al-Asha region of eastern Saudi Arabia.⁸

Abdullah al-Zaher, A teenage boy was arrested at the age of 15 years and was the youngest in a group of juvenile offenders who was put on death row as part of a crackdown on political dissent.⁹

ii. United States

George Stinney Jr. became the youngest person in the 20th century to be executed in US over the killing of 2 white girls aged 11 and 7.¹⁰

iii. California

Clarence Ray Allen, 76, was executed at San Quentin in California for triple murder. He received three lethal injections and then he was given an extra dose of potassium chloride that stops the heart and was declared dead.¹¹

iv. Iran

⁷1993 Mumbai Blasts: 13 Things You Must Know by Akrita Reyar, available at: <http://zeenews.india.com/exclusive/1993-mumbai-blasts-13-things-you-must-know-6176.html> (last visited on 11 July, 2016)

⁸Second Saudi Arabia Execution After Ramzan Pause, available at: http://timesofindia.indiatimes.com/world/middle-east/second-saudi-execution-after-ramzan-pause/articleshow/48254406.cms?from=mdr&utm_source=taboola_mobile&utm_medium=cpc&utm_campaign=toi_mobile&utm_term=elmedia-theindependent (last visited on 11 July, 2016)

⁹Abdullah al-Zaher: Saudi Arabia is about to behead a teenage boy for attending a protest aged 15, available at: www.independent.co.uk/news/world/middle-east/abdullah-al-zaher-saudi-arabia-is-about-to-behead-a-teenage-boy-for-attending-a-protest-aged-15-a6776696.html (last visited on 11 July, 2016)

¹⁰Youngest person executed in US cleared of murder-70 years after his death..., available at: www.mirror.co.uk/...>crime (last visited on 11 July, 2016)

¹¹Clarence Allen, 76, Executed- CBS, available at: www.cbsnews.com/news/clarence-allen...News (last visited on 11 July, 2016)

Reyhaneh Jabbari was a woman who was convicted for murdering Morteza Abdolali Sarbandi, a former intelligence ministry worker in Iran for which she was executed by hanging on 25 October, 2014 in a Tehran prison.¹²

9. Legislative Comments

The Indian Penalty code, 1860 provides the following laws which covered the death penalty which are-

According to Sec.120B of IPC, reads as anyone who commits an offence of criminal conspiracy shall be punished with death, or imprisonment for life, or imprisonment for a term of 2 years or upwards.

According to Sec. 121 of the IPC, says that anyone wages war or attempt to wage against the government of India, shall be punished with death or imprisonment for life & shall also be liable to fine.

If mutiny is committed by an officer, soldiers, sailors or airman, in army Navy or Air force of the Government by India, in consequence of that abetment, shall be punished with death or with imprisonment for life or imprisonment of either description for a term which may extend to 10 yrs, and shall also be liable to fine according to Sec 132 of IPC.

According to Sec.194 of IPC, states that if anyone fabricates false evidence intending to cause any person to be convicted of an offence which is capital by the laws, shall be punished with imprisonment for or with imprisonment for a term extent to 10 years, shall also be liable to fine, if such innocent person be convicted and executed in consequence of false evidence, the person who gives such false evidence shall be punished either with death or the punishment herein before described.

Anyone who commits murder shall be punished with death or imprisonment for life and shall also be liable to fine under Sec 302 of IPC.

Under the Section 305 of IPC, if any person under the age of 18 years of age or any insane person or any person in state of intoxication commits suicide, whoever abets the suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding 10 years, and shall also be liable to fine.

Section 307 of IPC, says that whoever does an act with such intention that if he does an act that caused him death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may be extend to 10 years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishments is hereinbefore mentioned.

¹²Iran Hanging of ReyhanehJabbari condemned, available at: <http://www.bbc.com/news/world-middle-east29769468> (last visited on 11july, 2016)

Attempts by life convicts: When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

If anyone causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with a term which included imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, or with death under section 376A of IPC.

If anyone who has been previously convicted for an offence punishable under section 376 or 376A or 376D and is subsequently convicted for an offence punishable under said sections shall be punished with imprisonment for life which mean imprisonment for the remainder of that person's natural life, or with death under section 376E.

Under Section 396 of IPC, if 5 or more persons, who are conjointly committed dacoity, commits murder in doing dacoity, shall be punished with death, or imprisonment for life, or imprisonment for a term which may extend to 10 years, and shall be liable to fine.

Under section 364A of IPC, anyone kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death or imprisonment for life, and shall also be liable to fine.

The Section 303 of IPC says that anyone, being under sentence of imprisonment for life, commits murder, shall be punished with death. This section was struck down as unconstitutional by the Supreme Court in *Mithu v State of Punjab* in 1983.¹³

10. Anti-Terror Legislations:

Under The Explosives Substances Act, 1908, Sec. 3(b) says that anyone for causing an explosion which is likely to endanger life or to cause serious injury to property, shall be punished with death, imprisonment for life, and shall also be liable to fine.

Under The Arms Act, 1959, section 27(3) says that anyone uses, acquires, possess or sell the prohibited arms resulting the death of any person, for such act or use shall be punishable with death. But this section was repealed and was declared unconstitutional in *State of Punjab v. Dalbir Singh*.

Unlawful Activities Prevention Act, 1967, section 10(b)(1) says that anyone aiding or promoting illegal association or possesses unlicensed firearms, ammunition, explosive or other instrument which can cause significant damage to any property, or resulted with an injury, shall be punished with death or imprisonment for life, and shall also be liable to fine.

¹³ Bare Act of Indian Penal Code, 1860

According to Section 5 of the Defence of India Act, 1971 says that if anyone contravenes, with the intent to wage war against India or to assist any country committing external aggression against India, shall be punished with death or imprisonment for life, or imprisonment for a term which may extend to 10 years and shall also be liable to fine.

Under Army Act,1950, Section 34, offences include an abandoning one's post, discouraging others from acting against the enemy; casting away one's arms; communicating with the enemy, assisting the enemy; treacherously waving a flag of truce; false alarm during war; leaves his post without relief; being a POW, voluntarily aiding the enemy; sleeping at the post as a sentry, imperiling success of army, navy, air force; causing capture of aircraft; using false air signals; failing to fully carry an order into effect. Any person does, he shall be punished with death. Army Act also includes section 37 and 38(1) for mutiny act and desertion and aiding desertion respectively.

Section 3(1)(i) of the Maharashtra Control of Organised Crime Act, 1999 says that any person commits an offence of organized crimes resulted in the death of any person, shall be punished with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees 1 lakh.

Such Sections are also includes in Karnataka Control of Organised Crime Act, 2000 and Andhra Pradesh Control of Organised Crime Act, 2001.¹⁴

11. Laws Made in other countries regarding Death Penalty

In China, lethal injection and shooting are the methods which are authorized by China's Criminal Procedure Law, 1996. Shooting execution was discontinued in 2010. For a meanwhile, they used firing squad which is a mixture of barbiturates and potassium chloride. But due to the cost of firing squad, they were switchover to lethal execution. In China, crimes punishable by death were aggravated murder, homicide murder, causes explosion, spreads poisonous, radioactive substance, rape resulted to death, fake medicine, robbery which resulted to death, military offenses, terrorism offenses, arson, kidnapping results in death, drug trafficking, economic crimes such as graft and bribery, treason, etc. It excludes juvenile offenders, pregnant women, elderly and mentally ill.

In Saudi Arabia and many gulf countries, crime and punishment is based on Sharia law i.e. based on Quran and Hadith which specified the punishment in different crimes such as rape, murder, blasphemy, armed robbery, repeated drug, apostasy, adultery, witchcraft and sorcery. For instance, adultery is death by stoning. The methods they used were stoning, firing squad, beheading with a sword, crucifixion and lashing. Executions may occur within prison boundaries or in a public square, depending on court ruling. In Saudi, death is awarded in such offences such as murder, seclusion, treachery, acts of terrorism i.e. corruption on Earth, consumption of alcohol, rape resulting to death, arson, burglary, drug

¹⁴ Death Penalty Research project, available at www.deathpenaltyindia.com (last visited on 9July,2016)

trafficking, drug possession, adultery, apostasy, treason depending to king, espionage, military offenses, etc.

Capital punishment is also used currently in U.S.A and 32 States In 1972, death penalty was struck down in *Furman v Georgia* case. But in *Gregg v Georgia* case, it starts the legality of capital punishment again.

In California, under the Criminal Practices Act of 1851, death penalty was a part of a punishment awarded in the specified crimes. Earlier persons were also mentioned at the time of execution but in 1891 the place of execution i.e. within the walls of one of the State prisons designed by the Court, prisons were San Quentin State Prison and Folsom Prison, and warden replaced the sheriff. In 1937, capital punishment replaced with the legal gas. For 25 years, there were no execution and in 1973, death penalty became unconstitutional, made mandatory for criminal cases. In 1977, it specified the special circumstances especially the matters involve in penal code. In 1993, it allows to choose either lethal gas or lethal injection as a method of execution. In 21st century, after the long debate and the method of legal injections and death penalty, on 8th November, 2016 California Death Penalty will be repealed.

Conclusion

Life is one time offer, Use it well.¹⁵

It is appropriate to say this line as God has gifted us a life. It is we who decide to choose our way of living. Some people spend their whole life to serve another. But some people give troubles to the society. To overcome such things, every country steps up to establish laws which are strict in nature. For these reasons, death penalty becomes one of the debatable subjects whose end can still not be achieved. The favour of death penalty is that citizen of our country needs a tough action which can secure their fundamental rights and order of the society. They consider it as fair conclusion made for the sufferers. But some people consider it inhumane, cruel to humanity. It considers as a third degree torture.

At last, we are of the view that capital punishment should be estimated according to the situation and circumstances of the matter.

¹⁵ www.pintrerest.com (Last Visited on 13 July, 2016)