



DEATH SENTENCE: IT'S EFFECTIVENESS IN CRIMINAL LAW ADMINISTRATION IN INDIA

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ABSTRACT

Sentencing to death a person as a mode of punishment is in practice in India and has been debated for a long time. The debate revolves around whether death sentence should continue as a mode of punishment or should it be abolished in India. Many countries in the world have already abolished death sentence. But till date India is continuing with the practice of death sentence. The question that arises is whether death sentence as a mode of punishment helps in effective criminal administration in India. There is no doubt that death sentence involves measure that is barbaric in nature. Does the provision for awarding death sentence actually helps to check crime or crime rate? Also there is no strict yardstick against which death sentence is passed. The concept of 'rarest of the rare cases' being applied in awarding sentence of death is itself questionable. Imposition of death sentence violates human rights. Abolition of death sentence is in keeping with the provisions laid down in International Instruments like International Covenant on Civil and Political Rights, 1966 (ICCPR) and its Second optional protocol in 1989 and Universal Declaration of Human Rights, 1948 (UDHR). India is standing on the edge of the global trend to do away with death sentence or to continue it. The issue regarding death sentence has become a complex one because of the acceptance of concepts of human rights and dignity. Death sentence is criticized because of its inhuman treatment irrespective of its practice in India or anywhere. Abolition of death sentence has acquired such an importance today because it affects the most valuable and cherished right i.e. right to life.

Keywords: death sentence, abolition of death sentence, human rights, punishment

Introduction

Death sentence in the history of punishment has always held an important position. Right from olden days, death sentence as a punishment was very common. Death penalty was issued for offences that would in today's time appear to be very minor.

The draftsman of the Indian Penal Code (IPC) Sir James Fitzjames Stephen mentioned "no other punishment deters man so effectually from committing crimes as the punishment of death.... The threat of instant death is the one to which resort has always been made when there was an absolute necessity of producing some results." (Mahajan, 2006, p. 150).

Death sentence as a form of punishment was provided by the framers of the IPC. However, death sentence as a mode of punishment was to be applied very carefully. In 1955 by way of an amendment to

the Criminal Procedure Code, the requirement for giving reasons for not awarding death sentence was done away with. Prior to this amendment, it was obligatory for the courts to give reasons as to why they have not awarded death sentence. Under the new Criminal Procedure Code, 1973 while awarding death sentence in a case the courts have to record reasons for doing so. "It is clear that the provisions regarding death sentence have gradually been liberalized in favour of guilty persons." (Mahajan, 2006, p.150).

Death sentence does not hold good under the International human rights standards. Indian criminal justice system awards death sentence for certain type of offences. India has ratified the ICCPR but not its Optional Protocol on Prohibition of Capital Punishment. The international standards set forth by the United Nations (UN) like in UDHR under Article 5; UN Economic and Social Council (ECOSOC)

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resolution No. 15 of 1996 demands abolition of death sentence or allow it to be used at a minimum level ensuring defendants fair trial. In spite of these death sentence is very much prevalent in India. With globalization India needs to keep pace with the other countries. Being a member of the extended international family, any sort of inhuman acts (carried out by the States like hanging a person) should be done away with. Full regard should be made to the international obligations.

Legal scenario regarding death sentence in India

Following cases dealt by Supreme Court of India (SCI) regarding death sentence actually reflects the stand point of India on the issue of death sentence.

- *Raghubir Singh v. State of Haryana*, (1975) 3 SCC 443 - In this case although SCI accepted the contention that the murder was treacherous, death sentence was reduced to life imprisonment.
- *Rajendra Prasad v. State of Uttar Pradesh*, (1979) 3 SCC 646- In this case “the appellant was sentenced to life imprisonment in a previous case but released on Gandhi Jayanti day. He again committed murder and was sentenced to death by the Sessions Judge and his death sentence was confirmed by the High Court. However, the same was converted into life imprisonment by the Supreme Court.”(Mahajan, 2006, pp 151-152).
- *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684- In this case the dissenting judgment of Justice Bhagwati sets a standard in itself. In his dissenting judgment he said sentence of life imprisonment be given instead of death sentence and also pointed out that the international trend was towards abolishing death sentence. Justice Bhagwati also mentioned about the Indian penal Code (Amendment) Bill, 1972 “which sought to narrow drastically the judicial discretion to impose death penalty and tried to formulate the guidelines which should control the exercise of judicial discretion. The Bill was passed by the Rajya Sabha in 1978 but it lapsed on account of the dissolution of the Lok Sabha. That indicated the direction in which the change was taking place.”(Mahajan, 2006, p.153). In his dissenting judgment he also mentioned the viewpoints of Jayaprakash Narayan, Andrei Sakharov, Victor Hugo and Mahatma Gandhi against capital punishment. He also mentioned how death

penalty is cruel, barbaric and inhuman in nature. Once a death penalty is awarded it is not revocable. There may be miscarriage of justice while awarding death sentence. Once that death sentence is awarded, it is not possible to mend the miscarriage of justice and thus an innocent person loses his life. Award of death sentence effects both physically and mentally. Justice Bhagwati is of the view that the death sentence does not serve any reformation, denunciation or retribution and deterrence purpose. “The civilized goal of criminal justice is the reformation of the criminal and death penalty means the abandonment of this goal for those who suffer it.”(Mahajan, 2006, p. 155). He also rejected the view that death penalty deters potential murderers. Justice Bhagwati made some recommendations in order to remove the arbitrariness present in death sentence. Death Sentence should be imposed only if the SCI comes to the conclusion that the offender is a serious threat to the society and it is in interest of society that offender should be eliminated.

Does Death sentence acts as a deterrent?

There has been a debate as to whether death sentence acts as a deterrent. Death sentence acts as deterrent is the argument put forward by the advocates of death sentence. But those who are in favour of abolishing it says that death sentence has never acted as deterrent. The main arguments of the retentionists are –

- a) it is more effective than any other penalty in deterring from murder;
- b) it is more economical than imprisonment;
- c) it is necessary to restrain the public from lynching criminal;
- d) it is the only penalty with certitude.

Because those who are sentenced to life imprisonment generally procure pardon in sympathy.” (Sharma, 2004, p.1). This itself raises a common question in my mind- does a person who is about to commit a murderer think as to how courts dealt with other person who committed murder? Had he thought so, he might not have committed the act. Or even if he gave a thought about it, he may still continue with it thinking that there will be way out. So how can we say that death sentence awarded to another person will act as deterrent on the other member of the society who wants to commit murder. Death penalty has been in our country for such a long time. But has it been able to make our society a

crime free society? People irrespective of the penalty carry out crime.

But on the other hand the argument advanced by those who want abolishment of death sentence is that the death penalty “is not more effective than imprisonment as a deterrent that it reduces the certainty of punishment, that it degrades the natural respect for human dignity of life further it tends to promote killing, that error of justice is irreparable, and that it has incalculable adverse effect on the prisoners on whom it is inflicted.”(Sharma, 2004, p.1).

Another argument in favour of death sentence is in order to deal with incorrigible offenders who are threat to the society is by way of sentencing them to death. One more argument forwarded is that State awarding death sentence as a punishment acts as substitute for private revenge and so it is necessary.

In its thirty fifth report, the Law Commission of India laid down reasons for capital punishment with a deterrent effect. “Every human being dreads death. Death, as a penalty, stands on a totally different level from imprisonment for life or any other punishment.” (Mahajan, 2006, p.150).

Death penalty is not a solution for curbing crimes. “There is a myth that has persisted as well, that better crime control involves more severe penal laws with harsher penalties.” (NLUD, 2018,p.9). In India, death penalty casts a severe disproportionate effect on the socially and economically vulnerable people. This is a serious matter and thus does not favor retention of death sentence. It has been mentioned by National law University, Delhi in its Death Penalty India Report, 2016 that good number of prisoners (more than 75% of prisoners) who are awarded death sentence belongs to the socially and economically vulnerable category.

Sentencing in India

In India, the position is that death sentence is given in ‘rarest of the rare cases’. The doctrine of rarest of rare cases is itself ambiguous and vague. Nowhere do we find what the exact definition of ‘rarest of rare cases’ is. Judiciary have come up with parameters to judge what case will amount to ‘rarest of rare cases’ and what not. In doing so there is no uniformity. Analyzing judgments wherein death sentence had been awarded basing on ‘rarest of rare cases’ would show that there is no uniformity in its application. The application of rarest of rare cases is depended on the subjective satisfaction of the judge.

The Guarantee of equal protection is available in substantive as well procedural matters. In *State of West Bengal v. Anwar Ali* (1952) SC P 289, it was said “All litigants who are similarly situated can avail themselves of the same procedural rights.” However, awarding death sentence actually does away with this guarantee. Situation may be where persons who are guilty of an offence may be given different treatments- one may be awarded the death sentence and the other may be sentenced to life imprisonment or acquittal or pardon. Justice Bhagwati also made mention of the fact that trial system in India violates the concept of equality. Also there is no uniformity in the decisions of judiciary in capital punishment.

Validating death sentence on the ground of it being deterrent is unjustified. Evidence cannot be satisfactorily adduced that countries where death sentence is awarded, there the crime rate has reduced and vice versa. Brutal punishment like death sentence can hardly deter a person. Death penalty is not an effective deterrent. (Hood, 2002, p.230).

Death sentence is also criticized on humanitarian ground. Nobody is born criminal. Crime needs to be treated on humanitarian ground. The core purpose of punishments should be rehabilitation and reformation. Death sentence as such does away with this purpose of rehabilitation and reformation.

Major argument put forward for the abolition of death sentence is that there is no satisfactory statistics that shows that death sentence acts as a deterrent. “Statistics establish that the overwhelming majority of killers commit the offence in momentary aberration. Majority of them is perfectly ordinary people without any criminal record. Most of the killings are for anger, jealousy and quarrels. Many of the killers feel terribly abashed after committing the act and a few of them commit suicide later. It is vehemently argued that even in these extreme and relatively rare cases of professional criminals the cause of deterrence is served as much by long imprisonment, as by death sentence.” (Sharma, 2004, p.3).

Conclusion

There can be no denying to the fact that death sentence is barbaric in nature and violates gross human rights of a person i.e. the right to life. Imposing such a barbaric punishment will not act as a deterrent. What is required is abolition of death sentence and rather aim at bringing about a reform in the murderer. The concept of ‘tooth for tooth’ has to be done away. In our country we award death

sentence because we have such provision in our statute books. Had this provision been not there in the statute book, we would not have awarded death sentence to the offenders. India needs to keep pace with the developments at the international level. With countries all over the world abolishing death sentence, it is time that India too takes such a step.

The criminal trial of the country is not satisfactory when it comes to awarding death sentence. What needs to be aimed at is reformation of the offender and not taking away his life. Justice Bhagwati on reformatory aspect of punishment mentioned in the case *Nartoem Singh v. State of Punjab*, AIR 1978 SC 1542, "Civilization has progressed too far to tolerate the primitive law of a tooth for a tooth and eye for an eye. Today the accent in penology is more on the reformation rather than retribution or deterrence. To be condemned prisoner death means liberation from life long sufferings. The capital sentence in reality punishes the dependant, kith and kin of a dead convict, for no fault of theirs. As we move towards twenty first century, this abominable sentence should be abolished by law for life is noble, continuing capital sentence is irrational." By way of reformation of the accused, there will be better utilization of the human resource.

At last the author would like to quote the words of Ostrovosky:

"Men's dearest possession is life, and since it is given to him to live but once, he must so live as

not to be scared with the shame of a cowardly and trivial past, so live as not to be scared with the shame of a cowardly and trivial past, so live as not to be tortured for years without purpose, that dying he can say, All my life and my strength was given to the first cause in the world the liberation of mankind."

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