
DEATH PENALTY: RECENT TRENDS IN INDIA

Vikram Singh Nehra

B.Com, LLB & NET(LAW)

ABSTRACT: The fact is that capital punishment is the most barbaric and brutal provision of any state. However it has its own history and for all persons convicted of murder, life imprisonment is the rule and death sentence an exception. Nevertheless, it is very necessary to make constitutional provision in a civilized society in the perspective of human rights implementation in a human manner. The present research paper highlights the legal aspects of death penalty and its emerging trends in India.

KEYWORDS: Death Penalty, Revenge, Punishment, Retaliation, Human Rights.

INTRODUCTION: The prevention of breaths by unnatural means is not justice, it is revenge. In some primitive societies, the revenge was an important element in inflicting Punishment, the motive was of little importance. The retaliation in the same fashion meant more to satisfy the feeling of the victim or his relatives than to deter the offender in repeating the same conduct in future or to placate the God or to maintain the societal equilibrium.

HISTORICAL BACKGROUND: Capital punishment is the most barbaric and brutal. From the earliest times of the history of law known to the present day, the capital punishment has existed. Its enormity and the process may vary. In the middle ages in Europe and America, the capital punishment was given to the persons for committing even the offences like perjury or counterfeiting of currency notes which in the modern times cannot be considered as serving any purpose. The trial of RAJA NAND KUMAR is a sad history of Indian legal system where death sentence was awarded to Raja Nand Kumar on the application of English law on the charge of forgery. Capital punishment existed in ancient India also Manu has prescribed death punishment for certain offences. Capital punishment is justified due to its deterrent effect which deters others from adopting the same course of conduct. In the ancient time the concept of welfare state was not in existence, the police states were in existence judicial as well as police administration was in the hands of king so concepts of humanity and welfare of public were not in existence.

Death penalty by public hanging; the public hanging was also prevalent so as to have deterrent effect on others. In America, even a lifeless body after execution was encased on the gibbet for exposing it to public view. In the U.S.A. . . . the last public execution took place on 14-08-1936 at Owensboro, Kentucky. In Attorney General of India V/s Lachma Devi and others, The Hon'ble Supreme Court through C.J. P.N. Bhagwati, D.P. Madon, J. and G.L. Oza, J. held that the

execution of death sentence by a public hanging would be a clear barbaric practice and violative of Article 21 of the Constitution. The court expressed its happiness that no jail manual of state provided death penalty by public hanging.

The capital punishment is declining in most of the European and in Latin America countries it was abolished in England. In some countries it has been abolished, revived and re-abolished.

POSITION IN INDIA: Capital punishment is prescribed in India for various offences under Indian Penal Code and also other Acts. The offences for which capital punishment is prescribed under I.P.C. are as follows.

1. Waging war against the Government of India. (section 121)
2. Muting and its abetment (section 132)
3. Giving or fabricating false evidence upon which an indent person suffers death (section 194)
4. Murder (section 302)
5. Abetment of a suicide of women or an insane or an intoxicated person (section 305)
6. Dacoity accompanied with murder (section 396)
7. Attempt to murder under sentence of imprisonment if hurt is caused in such attempt (section 307)
8. Kidnapping for ransom (section 364-A)

JUDICIAL PRECEDENT: Despite the general trend in world-wide thinking that death penalty does no good and the judicial decisions in India restricting the scope of death penalty and declaring section 303 as unconstitutional in Mithu V/s State of Punjab, AIR 1983 S.C. 473.

Section 354 (3) of the Criminal Procedure Code, added to the Code in the year, 1973, requires a Judge to give “Special reasons” for awarding death sentences. In the year 1980, the Apex Court propounded the “rarest of rare” doctrine in the land mark Bachhan Singh case and since than

“The life sentence is the rule and death sentence, an exception”

This adoption of the new benchmark was witnessed in the recently decided Graham Staines, Jassica Lal and Priyadarshini Mattoo murder cases, wherein the Apex court refused to impose the capital punishment on the ground that these did not fall within the Category of “rarest of rare”.

One of the greatest reason for criticizing death penalty is that, in India, a person who is awarded death sentence is executed only by hanging, which is considered cruel and inhuman and stands in violation to Article 5 of the Universal Declaration of Human Rights which says, “No one shall be subjected to torture or to cruel inhuman or degrading treatment of punishment”.

In India, after all legal deliberations are over with due case, there is still an option for the convict to escape under mercy petition that is sought from the president or the Governor. There are landmark judgments of Supreme Court wherein the Supreme Court declared that death penalty should be given only in “rarest of rare” cases.

In *Bachan Singh V/s State of Punjab* AIR 1980 S.C. 898 the Supreme Court ruled that death sentence should not be passed except in “rarest of rare” cases.

In *Machhi Singh v/s State of Punjab*, the supreme court laid down that made cases “rarest of rare” and thus could invite the death penalty. The following points were established by the court; manner of commission of murder, motive for murder, anti-social or socially abhorrent nature of the crime, magnitude of the crime, and personality of the victim of murder.

There should be a suitable punishment for every offence and crime either against the person or the state.

In *State v/s Hazara and another*, the two accused were engaged by a lady to construct her kitchen. When the lady left the house for her office, in the house were left the two accused persons and her adoptive mother. The accused persons tied the mouth and throat of the mother from the back and also tied her hands with saree. Then they took up the key from her, opened the almirah and took out cash and ornaments. She died due to asphyxia. The accused were held guilty under section 302 read with section 34 and section 379. I.P.C. AS They knew that the act would in all probabilities cause death. But the High Court commuted the death sentence to life imprisonment holding it not a “rarest of rare cases”. 1987 Cr.L.J. 857 (CAL)

CONCLUSION: Thus, in India the law is not incorrect in granting death to the person guilty of “rarest of rare” crime: In India, death for such person is a must, so as to set precedents for the society and to bring in a sense of fear in the minds of the people who are involved in crimes of grave nature. According to the Article 5 of universal human right declaration death penalty is barbaric but it is necessary to deter the instinctive criminals (moral monster) but there should be taken into consideration some safeguards in imposing the death penalty because for error there is no chance to correct such error so death penalty should be given only rarest of rare cases and in some specific kinds of Crimes, like grave nature crimes or heinous crimes and there should not be any unreasonable delay in the execution of death penalty because it is also amount to the violation of article 21 of the constitution. If there is any death penalty after examination of all safeguards and giving the all opportunities, found guilty and death sentence is confirmed then execution should be without unreasonable delay. Lastly it would not be incorrect to say that “LIFE IMPRISONMENT IS RULE AND CAPITAL PUNISHMENT IS AN EXCEPTION” only in “RAREST OF RARE” cases.

REFERENCES:

1. Criminology, Penology and Victimology: Central Law Agency. Author Dr. S.S. Srivastava 4 edition page no. 229,230,231.
2. LAWZ magazine page no.26. Sep. 2015.
3. Mithu v/s state of Punjab, 1983 Cr.L.J. 812(S.C.) AIR 1983 473.
4. Bachhan Singh v/s State of Punjab AIR, 1980 S.C. 898
5. Machhi Singh v/s State of Punjab AIR, 1983 S.C. 957.
6. State v/s Dalal Hazara and others 1987 Cr.L.J 857(CAL).
7. Article 5 of Universal Human Rights Declaration