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Death penalty in India: Need of the hour

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Abstract

Mere criticism of crime is not enough; it must be pushed to its logic end that crime does not pay by punishing the offenders. Punishment means, "It is the redress that the commonwealth takes against an offending member" punishment is some sort of social censure and not necessarily involving physical pain. Many experts have questioned whether a capital punishment has any greater deterrent value than a sentence of life in prison without parole. When criminals are sentenced for life, long sentences inside the prison without liberty, luxurious comfort, isolated from family, friends, and society that would be more ideal painful deterrence than death. There are some justifiable grounds for abolition of death penalty; it is revengeful, it is immoral, society has a no right to take life that is incompatible with modern morality and human rights, and India believes in non-violence philosophy.

Keywords: death penalty, non-violence, revengeful

Introduction

Death penalty is a legal process where a person is put to death as a punishment for a crime committed by him. In order to punish a large number of offences, death penalty is used both today as well as in ancient times. The death penalty is a travesty of justice. It is barbaric and does not deter crime.

A big question mark on the actual efficacy of such form of punishment in India came to the attention after four convicts of Nirbhaya Gang Rape Case getting hanged to death in Delhi's Tihar jail on 20th march, 2020. Even, the International Court of Justice Condemned the Execution of Convicts, and urged the government to abolish death penalty. In recent years, there has been increase in granting death penalty especially for grievous sexual offences and for murders. According to the fourth edition of 'The Death Penalty in India: Annual Statistics' published by Project 39A of NLU-Delhi, the number of death penalty awarded for murders involving sexual offences in 2019 was at the highest in four years.

The Validity of a Death Penalty in India

In India, death penalty is handed out by the method of hanging by the neck. This method has been in practice ever since the British times and has not been abolished till date. Death penalty derives its' constitutionality from an exception clause [NO person shall be deprived of his life or personal liberty except according to procedure established by law] of article 21. It is fascinating to note that during the constitutional assembly debates one of the founding fathers of the constitution and the main architect of the constitution, Dr. B.R. Ambedkar was in favour of abolishing death penalty. Section 53 of the Indian Penal Code 1860 provides for a death sentence and section 368 of the Code of Criminal Procedure provides power to High Courts to confirm death sentences.

In the land mark case of Bachan singh v. State of Panjab, Supreme Court has laid down that death sentences would be given in 'rarest of rare cases.' Further, court held that the judges' discretionary power to impose the death sentences, are well guided by the Indian Penal Code, Indian Evidence Act and Code of Criminal Procedure 1973 which do not offend Articles 14 and 21 of the constitution.

There's always chance to execute an innocent person. How to solve this problem?

A thorough review of several cases of death penalty discovered that the Irretrievable error of justice is most practical reason for its abolition. Unlike life imprisonment, executed death sentences would not give opportunity to judiciary to correct its error of judgment. According to the Death Penalty Information Centre more than 152 death row prisoners have been declared to be not guilty and realized from prison from 1980 to 2019 in USA. This information leads to the logic that some other innocent might have been executed.

Yet people's mind is not free from the fact that it is judges who decide between life and death of criminals, because even in similar cases there is different findings. In Dhananjoy Chatterjee v. State of West Bengal case, a young 18 years school-going girl was raped and murdered on 05.03.1990. In this case Supreme Court imposed death sentence upon the accused and he was executed in 2004. In similar case of Shankar Kisanrao Khade vs State of Maharashtra, the Supreme Court awarded life imprisonment to the accused committing rape more than one occasion and murder of a girl of 11 years.

Delay in Execution of Death Penalty

The death punishment delivers a "double punishment" that of the execution and the preceding wait, and this is a mismatch the crime. Many offenders are kept "waiting" on death row for a very long time. Due to such a long delay in the judgments of the judiciary, a convicted person has to be given treatment because of the mental torture he undergoes since he starts to lose the hope to live. One prisoner on the death row said that 'When anyone is tortured like I was, it no longer matters whether you did it or not, you will agree

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to anything to make the torture stop.'

In the case of Devender Pal Singh Bhullar vs. State (NCT) Of Delhi, a Khalistani terrorist was responsible for an attempt made on the life of Shri Sumedh Singh Saini (Senior Superintendent of Police) and Shri Saini's car was blasted by remote control. As a result of blast caused by using 40kgs.RDX, 9 persons were killed and 17 were injured. He has been suffering from schizophrenia due to the mental torture because his execution kept on being delayed for 8 years. Due to the extreme delay faced by him in conviction on 31 March 2014, the Supreme Court commuted his death sentence to life Imprisonment on the ground of supervening circumstance of delay of 8 years in disposal of mercy petition.

Abolition of Death Penalty

There is no convincing evidence to show that death penalty does act as a deterrent. Its deterrent effect remains unproven. Death Penalty in its actual operation is discriminatory, because it strikes mostly against the poor and deprived sections of the community and the rich and the affluent usually escape from its clutches. This circumstance also adds to the arbitrary and capricious nature of the death penalty. According to statistics released by Project 39A of NLU Delhi 74.1% of the prisoners sentenced to death in India are economically vulnerable and 25.9% are non-vulnerable.

Death penalty is against the human decency and has been abolished in several countries, according to the Amnesty International, at the end of 2018, 106 countries (a majority of the world's states) had abolished the death penalty in law for all crimes, and 142 countries (more than two-thirds) had abolished the death penalty in law or practice

The Law Commission in its 262nd Report has called for the abolishment of the death penalty in all cases except for those relating to terror and waging war. Legislation enacted by the Tripura Assembly has also called for the abolishment of the death penalty in India.

Conclusion

Death penalty is an important and controversial issue in our judicial system. Therefore, death penalty is itself an offense against humanity. Death penalty is supported by some, and adamantly opposed by some others, but God has given us life and no state has the right to take it. Thus, the process of death sentence should be declared unconstitutional and as an offense against human rights. The government must take into consideration the negative aspects of sentencing to death and must take steps to delete such provisions relating to death sentence away from the law. The process of death sentence is long and therefore the convicted prisoners undergo both physical as well as mental torture. There is a continuing need to explain to people why capital punishment is wrong. To conclude, in the words of Mahatma Gandhi:

'I cannot in all conscience agree to anyone being sent to the gallows. God alone can take life because He alone gives it.'

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