

## Capital Punishment

V. Anandavenu

Student, School of Law Sastra University, Thiruvananthapuram Tamil Nadu, India

### INTRODUCTION

The paper begins with examining in detail the history of capital punishments tracing back to the middle ages. The author has described in detail the grotesque and barbaric nature of the horrifying methods inflicted upon the prisoners in the same era. Then the author has explained in detail the international scenario of executions. The article dwells into the international law on capital punishment. Under Article 6 of ICCPR the limitations pertaining to death penalty is being discussed. The author then vocalises his opinion upon the subject which is followed by a suitable conclusion.

### HISTORY:

The history of capital Punishment, when traced back to a thousand years has not been favourable to Human Rights. Indeed, there has been an everlasting war between the system of judiciary and the philosophy that a man cannot take a man's life as it has not been given to him in the first place. Death penalty was codified for 25 different crimes in the Code of King Hamurabbi of Babylon in the 18th century BC. The first recorded death penalty can be traced all the way back to the 16th century in Egypt where a member of nobility was asked to end his own life as he was accused of using magic. Ironically, during the same period the non-nobility, which includes free men and slaves, was killed by ax. Death penalty was also codified in The Roman Law of Twelve tablets, 5th century BC, and the Hittite Code 14th century BC. Surprisingly, death penalty was codified for all the crimes committed in the Draconian Law of Athens in the 7th century BC. Not only was death penalty cruel but it was also different for the slave, freeman, and the nobility, for the various crimes they committed. For example, in the Code of King Hamurabbi if a doctor killed a freeman, he would have his hand cut off, but the doctor would only have to pay a fine if he killed a slave. Also death penalty back then did not mean that the person was hanged to death. There were a variety of inhuman ways in which death penalty was administered to the convicts. The criminals were hung upside down and a saw was used to cut the body into half starting from the crotch as they would feel the concussions in the brain until the main arteries in the abdomen was cut-off. There were various methods of execution like the infamous crucifixion, in which the criminals were fixed to a wooden cross by nailing their hands until they bled to death. Jesus Christ was executed by crucifixion outside Jerusalem, approximately around 29AD. Crucifixion and other brute methods of crucifixion was abolished in the Roman Empire, by Emperor Constantine 300 years later. The most barbaric of these methods of execution was the impalement, in which the criminals were asked to sit on a sharp wooden pole and the it was raised upright. The pole would enter the body from behind and come out through the neck or chest or the shoulders. It would sometimes take days for the convict to die. It was prevalent in the Roman Empire during the reign of Vlad Dracula 15th century BC, who enjoyed watching the criminals die while having his meal. Ironically people

throughout the history have devised a variety of brutal ways to execute criminals or anyone who breaks the law, which include boiling, or skinning them alive, letting rat feed on them until they die. Brazen bull or the sicilian bull was an execution device designed by Perilaus of Athens in the reign of Phlaris the tyrant of Argentino, Sicily. The brazen bull had a door on one side and was hollow. Criminals were locked inside the bull and fire was set under the brazen bull. It was made of bronze. The head of the bull was designed with pipes and tubes in such a way that when the criminal would scream, it would sound as if a bull was screaming. Phlaris executed Perilaus in the bull for inventing something so horrendous, but the bull was used by the tyrant later. Capital punishment was given to wrongs such as disturbing the city at night, grazing from a farmers land, perjury, theft, fraud.

### HISTORY IN ENGLAND:

The legal code in the Britain between the early 17th century and the late 19th century made more than 200 crimes punishable by death. It was called 'the Bloody Code'. Many of these offences were petty including cutting down trees, theft of goods, cattle stealing, pick pocketing. Though in practise a fewer people were executed in the 18th century. Strangely execution for crimes were higher before the Bloody Code. People were mostly hanged in Britain. Though in the 13th century the ritual of 'drawing, hanging and quartering' was widely used for executing crimes of a serious nature such as treason. This meant that that convict was dragged by a rope to the place of execution, and the limbs of the convicts were cut off after they were hanged. Burning at the stake was also a method of execution used by the British for people who committed treason. Joan of Arc is believed to be executed this way. Capital punishment was rarely given to crimes other than murder, by 1830's since most of the autonomous regions did not implement the Bloody Code. In 1806 MP Sir Samuel of the House of Commons successfully abolished disembowelment (cutting and removing the internal organs) of criminals alive and removed capital punishments for some minor crimes. A lot of prominent figures like Charles Dickens had expressed distaste for public hanging. It was later abolished in 1868. By 1861 capital punishment was only given to very serious crimes such as murder and treason. In 1998 capital punishment was fully abolished in law as well as in practise.

### HISTORY IN INDIA:

An old book of Indian history on Law and Administration, in fact among the oldest, called "Arthashastra" written by Kautilya, suggests: cutting off the tongue of any person who damages the purity of a brahmins kitchen, or defaming the king or the parents, cutting the nose and ears for abetting adultery or theft, cutting off the hands of the thieves (including those whose are convicted of pickpocketing), blinding the sudras with poisonous ointments who enter the

village pretending to be brahmins or defaming the king. The book also stated the different forms of death penalties, death by impalement for theft of royal animals, death by burning for treason, death by drowning for breaching of dams or for poisoning. Men and women who committed to adultery were forced to become slaves. Brahmins were immune from execution except if they are convicted for treason. They were given other punishments. For example the figure of a dog was stamped on the head of a brahmin who was guilty of theft. In some cases brahmins had to exile if they were found guilty of any crime. They were however exempted from death penalty in most cases. Capital punishments has been carried out times since 1995, but around 25 executions have taken place in India since 1991. The Supreme court struck down Section 303 of the IPC as unconstitutional in *Mithu Vs State of Punjab*. Under this section any person who is under life imprisonment, committing murder shall be punished with death. It was held by the petitioners that Section 303 of the IPC was violative of Article 14(right to equality) and Article 21(Right to life and personal liberty).

#### INTERNATIONAL SCENARIO:

Around 102 countries around the globe have abolished capital punishment in practise. The practise of execution is still debated globally (52 countries have retained death penalty). One argument against capital punishment is this school of thought which says that if life as we know it is not a choice for humans to make, that is, if a human cannot choose whether he can be born or not, when there is no choice to be made by a human as to his existence in the world, how can there be laws that enable the state to take the life of a fellow human being. The same school of thought also says that if a man taking another man's life is punishable by law, how can the state give a punishment where in the convict's life is again taken by another man, on the orders from the state. In simple words it is arbitrary for the state to take the life of a man when it was not given by the state. The human rights activists are strictly against such punishments as it takes away all the rights guaranteed to a person. And capital punishment has not proved to reduce the crime rates. This is not completely true. In Singapore the country follows a system of capital punishments and corporal punishments (caning) for serious crimes and imposition of fines is mandatory. In fact caning is accepted as a punishment in Singapore schools. Relative to its population of approximately 56 lakh people has the one of the highest execution rates. According to a report submitted by amnesty international in the year 2017, a total of 993 executions was carried out by 23 countries. However this number does not include executions carried out in China. It is believed that thousands of people are executed in China every year but figures remain a state secret. Iran tops the list with a total number of 507 executions, followed by Iraq and Saudi Arabia, Pakistan, Egypt, Somalia, and USA.

#### INTERNATIONAL LAW ON CAPITAL PUNISHMENT:

Under Article 6 of the International Covenant on Civil and Political Rights, death penalty is only limited to the most serious of crimes and a person cannot be executed if he/she:

- Is a minor or a pregnant woman cannot be sentenced to death, or any other rights guaranteed.
- Is deprived of the right to seek pardon or commutation of the death sentence.
- Is deprived of any other rights guaranteed under ICCPR.
- If the trial was unfair.

- If the crime was not punishable by death at the time of commission.

The most serious of crimes was not defined in ICCPR. However The UN General Assembly has a set of Safeguards guaranteeing the protection of the rights of those facing the death penalty, declared that the scope of most serious crimes should not go beyond intentional crimes with lethal or extremely grave consequences. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions declared that the imposition of death penalty should be removed for economic crimes, drug related offences, victimless offences like offences against religion, moral values, prostitution, adultery, sexual orientation. ICCPR also stresses on the importance of fair trial. Article 6 clearly states that no person can be punished by death sentence if the trial wasn't a fair trial. Fair trial includes a fair chance to present defence, adherence to the Rule of Law, presumption of innocence, right to appoint a counsel, right to be tried by an impartial court or tribunal, right to appeal in an appellate court. Also the state must ensure that the accused is not deprived of any of the rights guaranteed under the ICCPR, or is subject to any inhuman and cruel treatments. The immunity against the occurrence of such breach is valid from the period of leading the execution, that is the trial, conviction, accusation, holding of a prisoner, etc. to a the taking of the life. (Method of execution). According to the report submitted by the amnesty international on death sentences and execution carried out across the globe it was held that a lot of death sentences were carried out of non-violent crimes, in defiance to the ICCPR and other treaties. A lot of executions for drug-offences were carried out in countries like Singapore, Iran, Saudi Arabia and China. Around 40% of the executions in Iran and Saudi Arabia were for drug -offences. Out of the 507 executions carried out in Iran last year, 5 were minors under the age of 18, and 80 other minors are under the death sentences. A lot of these people were forced to give out confessions because they were tortured and ill-treated, which is a clear breach to the International Law on death sentences. In some countries like Iran and Iraq, the confessions were inhumanly telecasted live on their television.

#### THE AUTHOUR'S OPINION:

Death penalty should be imposed for crimes of serious and barbaric nature and this imposition of capital punishment should not be under the discretion of a single judge( Dhananjay's case) but a properly construed statute. A state taking away the life of a person is something of grave importance because an ideal state should value human life. When this responsibility is borne by the government, it is with the greatest deliberation and caution that they should proceed as the matter in hand is concerned with the deprivation of life itself. In the case of Dhananjay Chatterjee, the court awarded death sentence to the accused for the offense of raping and murdering a minor girl. Dhananjay Chatterjee was convicted without any circumstantial evidence or direct witnesses. There is a book written by the professors of Indian Statistical institute called *Adalat-Media-Samaj Ebong Dhananjayer Fashi* (Court-Media-Society and The Hanging of Dhananjay) which criticized the judgement of the case. Dhananjay Chatterjee claimed his innocence throughout the proceedings. But this case happened in 1990 before all the advancements in forensic science and criminology. Death sentence should be imposed, but it should be imposed on convictions that are backed by

concrete evidences. In India there has only been 3 execution from 2004-2014 but around 1103 convicts have been sentenced to death. India follows a system of evaluating through the test of rarest of rare case. In the case of Bachan Singh vs State of Punjab, the court held that death sentence would be given to convicts only in the rarest of rare cases. Indian judicial system values the presumption of innocence principle which states one is not guilty unless proven. In the Bachan Singh case an FIR was registered for the offences punishable under Section 147, 148, 149, 302, 307 and 325 of the IPC and Section 25(a) of the arms act.

The doctrine of rarest of the rare case was introduced in this case. The Supreme Court laid out this doctrine, to reduce ambiguity of the courts in giving death sentences. It was held that:

1. When awarding a death sentence a judge should give a justified special reason as specified under Section 345(3), and the special reason must evidence aggravation of an special or an abnormal degree.
2. Before sentencing to death the court shall consider the mental or emotional disturbance of the accused, age of the accused, probability that the accused can be rehabilitated or will not commit such a crime again, to reduce the punishment.
3. Life sentence is a rule, and death sentence is an exception or a person convicted for murder. Only in the rarest of rare cases where the circumstances prove that there is no alternative option, and the judges decide that the facts of the case fall under the doctrine of rarest of the rare, a convict cannot be sentenced to death.

#### INDIAN CASE LAWS:

In *Rajendra Prasad V State of Uttar Pradesh*, the supreme court held that the special reasons mentioned in the Section 354(3) of the CRPC, must be the reasons in the context of the criminal and not the in the context of the crime.

In *Jagmohan Singh V State of Uttar Pradesh*, the court examined the constitutional validity of the death sentence. It was challenged that the death penalty was violative of Article 14, 19, and 21. The court held that death sentence is given by a procedure established by law and it was constitutionally valid. The court decides the capital punishment based on the facts and circumstances of the case.

The special reason in the Section 354(3) of the CRPC has been interpreted by the court various times. Mere fact that a murder is cruel or brutal or barbaric in nature, cannot be a ground to capital punishment. This was decided in *Bishnu Deo Shaw V State of Bengal* where the murderer had killed

his wife suspecting her of infidelity and also killed his son. The court awarded the life imprisonment to the convict, though the murder was cruel and brutal it could not supply to the special reasons contemplated in Section 354(3) of the CRPC.

The dilemma between awarding a death sentence and life imprisonment is a something that the courts have to deal with. Though the doctrine rarest of the rare decided by the Constitutional bench in the Bachan Singh Case, this doctrine is in such a way that ensures death penalty is in the Statute but in real it can only be given in the rarest of the rare cases. Some judges when they feel that there is a crime that is brutal, but not brutal or rare enough to award a death sentence, awarded life imprisonment for the rest of his/her span of natural life. In *Swamy Shraddananda (2)\* Alias Murali Manohar Mishra V State of Karnataka*, the Supreme Court of India decided to substitute death penalty and awarded him life imprisonment in excess of the 14 years to the rest of his life as the judges were convinced that life imprisonment was not enough or justified and the present case did not fall within the rarest of rare doctrine. The court further directed that the convict must not be released for the rest of his life.

#### CONCLUSIONS:

But if the rate of executions are this low, neither will the criminals fear the judicial system, nor will the crime rates reduce for such heinous crimes. The recent criminal law amendment ordinance in India postulates that death penalty can be given for the rape of a minor. Raping of a minor is a crime that is of extreme brutality, a crime that should not take place in a civilized society. Such crimes should be punished with mandatory death sentence. Fear has proven to be the most effective way of preventing crime. In the case of Singapore, where the law is very strict and punishments are awarded ruthlessly, crime rates are very low. But it is also important to protect the liberty of people and human rights. So capital punishment should be imposed for serious crimes. Every rapist or murderer should not be executed, because all these crimes can also be the result of circumstances which does not justify the crime but, it is not necessary that such criminals should be executed. Instead crimes like raping of children, serial killing, bomb blasts, terrorist attacks which is a serious threat to the order of any civilized society and to the people as a whole can be given death sentences and the rarest of the rare doctrine can be relaxed. And this is also in accordance with the international law on capital punishment which also follows a doctrine while evaluating the most serious of crimes.