

Review Article

CAPITAL PUNISHMENT

Dr. S. K. Singhal, Dr. Anish Singhal, Dr. Ashish Singhal, Dr. Neha Haswani

Dr. S. K. Singhal, Medical Director and Professor & Head, Forensic Medicine& Toxicology, A.C.P.M. Medical College, Dhule, Maharashtra, India

Dr. Anish Singhal, Assistant Professor, Physiology, KVG Medical College& Hospital, Sullia, Karnataka, India

Dr. Ashish Singhal, Resident, Plastic Surgery, A J Institute of Medical Medical Sciences, Mangalore, Karnataka, India

Dr. Neha Haswani, Assistant Professor, Microbiology, Yenepoya Medical College, Mangalore, Karnataka, India

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Author for correspondence:

Dr. Anish Singhal

Assistant Professor,

Department of Physiology,

KVG Medical College& Hospital

Sullia- 574327

Karnataka, India

9886978200, asksinghal@gmail.com

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Abstract:

In the last 70 years almost 100 countries have banned death penalty. During the meeting hosted by UN Human Rights Council in Geneva on 4th March 2015, the UN Secretary General Ban Ki - moon declared that death penalty has no place in the 21st century. China executes thousands of people every year and USA is regularly awarding this punishment. 84 countries still retain this penalty. The advocates of Death penalty defend it on the ground that it has deterrent effect, is a certain type of punishment, is cheaper and that wrongful conviction is remote. Death penalty is no longer acceptable in modern society and a call to abolish it is made on the ground that it is inhuman, unnecessary, degrading, violative of fundamental rights and that it is not essential since crime rates can be controlled even without it and there is no spurt in homicidal cases on its abolition.

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Introduction:

The term capital punishment is derived from the word “Caput” meaning head, since in the ancient times decapitation was the main mode, the presently employed methods include lethal injection, electrocution, gas chambers, firing squad & hanging etc. The seventh century B C Code of Hammurabi, Code of Athens, 5th century B C Roman Law & Kautilaya’s Arthshashtra, all had provision of death sentence. Since recent times there is a trend to abolish this penalty. In the last 70 years almost 100 countries have banned death penalty. During the meeting hosted by UN Human Rights Council in Geneva on 4th March 2015, the UN Secretary General Ban Ki-moon declared that death penalty has no place in the 21st century. China executes thousands of people every year and USA is regularly awarding this punishment. 84 countries still retain this penalty. The advocates of Death penalty defend it on the ground that it has deterrent effect, is a certain type of punishment, is cheaper and that wrongful conviction is remote. Death penalty is no longer acceptable in modern society and a call to abolish it is made on the ground that it is inhuman, unnecessary, degrading, violative of fundamental rights and that it is not essential since crime rates can be controlled even without it and there is no spurt in homicidal cases on its abolition.^{1,2,3, 4}

Aim of Study:

To study the constitutional validity of capital punishment, changes and trends in India, how effective is death penalty, present status and as to why it should be abolished

Materials:

All the relevant studies and reports in and outside India, related to the topic were analyzed and incorporated.

Provision of Death Penalty in India:

Death penalty is provided under Indian Penal Code, 1860 (IPC) Sec – 121, 132, 194, 195 (A), 302, 305, 307 (2), 364 A, 396, 376 A & 376 E. Also the various defense services acts NDPS 1985, SC & ST act 1989, Explosive Substances Act 1908 & the various acts governing control of organized crime have provision of death penalty.⁵

Constitutional validity of death penalty

The constitutional validity of capital punishment as being violative of article 14, 19, 21 was challenged before the Supreme Court in Jag Mohan Singh vs. State of UP (AIR. 1973, SC-947), Bachan Singh vs. State of Punjab (AIR 1979, SC – 916), Deena vs. Union of India (AIR. 1980, SC – 898) and it was held that the Death penalty is not violative of the constitution.^{6,7,8}

Changes and trends in death penalty in India

In the period 1950 – 55, the normal sentence for murder was death and whenever the court preferred to award lesser sentence, a reason was to be recorded under section 367 (5) of Cr. P.C. In 1955 this section was omitted and therefore it was not binding on the court to give reasons for not awarding capital punishment. In 1973, the Cr. P.C. was amended and the new section 354 (3) required the judge to state specific grounds for imposing death penalty, hence between 1973 – 80 imprisonment for life was the rule & the capital punishment was an exception. In Bachan Singh vs. State of Punjab, (AIR 1980, SC – 898), the SC held that life sentence was normal and death penalty should be awarded in “Rarest of rare” cases only. However till today it is difficult to prescribe what exactly is rarest of rare cases and it solely rests on the sweet will of the judges. Three recent presidents K.R. Naryanan, APJ Abdul Kalam & Pratibha Patil played a key role to practically end executions after 1997. In USA 1407 executions have been effected since 1976, 15 being women, largely by lethal injections (1232). In Australia the last execution in 1967 was by hanging.^{2,5,8,9}

How effective is death penalty?

The wisdom of proponents of capital punishment is a matter of animated debate and it has evoked a new interest as those condemned individuals who have the funds can prolong their case for years and those who do not have money silently and promptly go to the gallows.^{1,9}

In its origin, the death penalty was to placate Gods. Then came the theory of revenge, that the one who willfully wronged must be forfeited. Then was added the element of deterrence, that death penalty discourages criminal conduct. The eminent dean of law, Dr. George W. Kirchway in 1923 illustrated the wrongfulness of this claim. Murders committed in fit of rage, heat of passion are relatively immune to the deterrent effect. Even in premeditated homicides, fear of death penalty may create a brutalizing effect, inspiring more violence.¹⁰

The advocates of death penalty hold that it is more certain than imprisonment which may be terminated by escape, pardon or parole. Actually the death sentence is seldom imposed, many times commuted and rarely executed. Death penalty is held to provide incapacitation and recidivism i.e. there is no chance of repetition or reoffending.¹

Death penalty is defended on the ground that it is less expensive; however, it is proved that the costs are heavy because of length of trial, closed custody and security. Those who advocate death sentence consider wrongful conviction a remote possibility; however, it is known that mistakes occur due to mistaken identification, framed up or suppressed / destroyed evidence, hostile witnesses and excessive zeal on the part of investigators, prosecutors and politicians.^{11,12}

Death penalty has no deterrent effect

In India during 1953 – 1963, an average of 128 persons were executed per year but it had no effect on the number of murder cases which increased every year by 2.32% to 3.56%, between 1992 – 2012 there was virtual moratorium on death penalty. Dhananjay Chatterjee

was executed in August 2004, Mohammed Ajmal Amir Kasab in 2012 and Afzal Guru in 2013. Despite increase in population murder cases decreased significantly. In USA, the south has the highest murder cases inspite of the fact that it accounts for over 80% of the executions. The various antiterror legislations with scope for death penalty have been ineffective in checking terror attacks. Death penalty awarded to rape accused in several cases have failed to act as deterrent, and similarly public executions by beheading, stoning or by firing in Saudi Arabia, North Korea, Iran and Somalia have failed to deter criminals.^{13,14}

Present status of death penalty

The Amnesty International in reference to death sentence imposed on Mr. Zulfikar Ali Bhutto, former Prime Minister of Pakistan, had stated “we regard death penalty” to be cruel, inhuman and degrading and we feel that inherent in any trial, there is a risk of miscarriage of justice. In December 1977, the international conference, at Stockholm called upon the United Nations to declare death penalty as illegal. In India Mr. Jaya Prakash Narayan, Acharya J. B. Kriplani & others issued on appeal on 19.3.1978 to abolish death penalty. In 2012, 682 executions were reported in 21 countries, 314 in Iran, 129 in Iraq, 79 in Saudi Arabia & 43 in USA. China, Belarus & Vietnam do not publish its statistics. In Singapore since 1990, more than 420 persons were executed mainly for drug trafficking. In December 2014, 188 people were sentenced to death in Egypt for killing eleven police-men. On 12.1.2015 Saudi Arabia publically beheaded a woman by sword for sexually abusing her step daughter. On 18.1.2015, Indonesia executed six drug offenders by firing. On 18.2.2015 Mr. Salil Shetty, Secretary General of Amnesty International wrote an open letter to the president of Indonesia to review all the cases with a view to commute death sentences, stop executions and revise all legislations to remove death penalty. 64 people were awarded death sentence in India in 2014. 607 people were executed worldwide in 2014. The death penalty research project of the National Law University (Delhi) has found that in India 270 people are on death row. On 29.4.2015 Indonesia executed seven drug smugglers by firing squad. On 6.5.2015, an Afghan Judge sentenced four persons to death for killing a woman accused of burning Quran. Recently, North Korea executed its defense chief for dozing off at a military event. On 17.5.2015 Egypt hanged six people for killing 2 army officers. More than 150 individuals have been hanged in Pakistan mainly for terrorist activities, in the last few months, eight being on May 28, 2015.¹³⁻²⁹

Trend towards abolition

Under the Common Wealth law, death penalty was abolished in 1973. By 1986, 46 countries had abolished death penalty and this number rose to 89 by 2002. 22 countries have stopped using death penalty, and only 84 countries now retain this punishment. Interestingly, Michigan, Venezuela & Netherlands had abolished it as early as 1846, 1869 & 1870 respectively. Some of the abolitionist countries are Argentina, Australia, Austria, Bolivia, Brazil, Canada, Cape Verde, Colombia, Costa Rica, Cyprus, Denmark, Dominican Republic, Ecuador, El Salvador, Fiji, Finland, Federal Republic of Germany, France, Holy See, Honduras, Iceland, Israel, Italy, Kiribati, Luxembourg, Malta, Mexico, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Panama, Papua New Guinea, Peru, Portugal, San Marino, Solomon Islands, Spain, Sweden, Switzerland, Tuvalu, United Kingdom, Uruguay, Vanuatu and Venezuela. Majority of the countries abandoned it on grounds of violation of right to life and dignity. The European Union has made the abolition of death penalty a precondition for entering into the union. Russia, Poland, Yugoslavia, Serbia, Montenegro and Turkey are at the verge of ending death penalty. In 2013, USA is the only country in America to carry out executions.^{3,5,10,15}

Conclusion

Abolition of death penalty is called for on the following grounds –

- 1) Majority of the murders are not pre meditated. Provocation, anger and loss of temper over shadow the sense of reasoning, deaden the intellect, chill his senses, debase his soul, blind him to the consequences and energize him to do the crime. After the cessation of temporary insanity he may become normal, may even repent for his conduct.
- 2) The death penalty has no scope for revision, is cruel for the accused and his family, degrades all concerned and violates the right to life
- 3) In no trial there is a guarantee that the trial was innocent and the punishment awarded was irrevocable.
- 4) It has been repeatedly observed that only poor and despised get this punishment, they have no means to get reprieve, respite or remission of their sentence.
- 5) Multiple studies have proved that there is no spurt in homicide when this punishment is stopped.
- 6) The physical pain and mental torture during the time one has to wait for the execution is a social paradox.
- 7) Except for the transitory trauma when such a convict is taken to the gallows or put in a gas chamber, it is not he but his family who in fact suffer because of the punishment of execution.
- 8) Considering all above, survival of death penalty is either due to lethargy or hysteria.

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