

Review Article

CAPITAL PUNISHMENT Dr. DP Sapre, Dr. MD Karmarkar

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On 21st November 2012 Ajmal Kasab was judicially hanged in Yerawada jail at Pune. India showed to the world that there is zero tolerance for any terror attack anywhere. After this, there was vociferous discussion and endless arguments about death penalty its pros and cons etc. In last few weeks we all have heard and read enough about death sentences to be extended in case of Saroabjeet Singh and Guru Afzal. Let us not talk about the politics involved in this issue but this matter has opened the fresh debate on capital punishment. As such, death penalty is in practice for ages and the debate on continuation or abolition of this punishment is also centuries old.

If we look back into the history of human civilization there are many reports of death sentence being awarded for different crimes in ancient times. The crimes and the laws are well mentioned in the ancient literature. An eye for an eye or an arm for an arm which was the hallmark of barbarian era or life for life that is death penalty of the present civilized world are two sides of the same coin.

An appraisal of the administration of criminal justice of ancient times reveals that death penalty was commonly used in cases of heinous crimes. The common modes of inflicting death sentence on the offender were crucification, drowning, burning, boiling, beheading, throwing before wild beasts, flaying or skinning off alive, hurling the offender from rock, stoning, strangling, amputating, shooting by gun or starving him to death.

Ancient Romans accepted the deterrent value of death penalty. The Greek penal system also provided death sentence for many offences. The offenders were stripped, tarred and sent to death publicly.¹

Henry VIII (1491 – 1541 A.D.) who reigned in England for over fifty years was particularly infamous for his brutality towards the condemned prisoners. The history of capital punishment in England for the last 200 years recorded a continuous decline in execution of this sentence.

British Royal Commission on capital punishment was appointed in 1949 to examine the problem. As a result of the findings of this commission death sentence was suspended in England and Wales for five years from 1965 and was finally abolished by the end of 1969.¹

The penal law of Ceylon abolished capital punishment in 1956 but it had to be reintroduced as a measure of social defense consequent to gruesome murder of late Prime Minister Mr. Bhandarnaike.¹

Recent trend in America is to restrict capital punishment only to the offence of murder and rape.

The countries which have abolished capital punishment, notably, are Germany, Austria, Scandinavia, Netherlands, Denmark and some Latin American States and they reported no ill effects of abolition. As of now more than 100 countries in the world have abolished the capital punishment. India is still one such country where capital punishment is practiced even today.

The Supreme Court of India has ruled that capital punishment may be awarded in following-²

- 1) Waging war against the Government Section -121 IPC
- 2) Abetment of mutiny - IPC 132

- 3) Giving or fabricating false evidence leading to procure one's conviction for capital offence- IPC 194
- 4) Murder- IPC 302
- 5) Murder by a person undergoing a term of life imprisonment- IPC 303
- 6) Abetment of suicide by child or insane person- IPC 305
- 7) Attempt to murder by a life convict- IPC 396
- 8) Dacoity with murder- IPC 396

At present the common modes of execution of death sentence which are in vogue in different parts of the world are electrocution, guillotine, shooting, gas chamber, hanging, lethal injection etc.³

One of the methods is Gas chamber – It consists of a tall, hexagonal, steel and glass vault. It is slightly more than 8 feet high and about 6 ½ feet in diameter. Five sides of the grey steel plate hexagon include heavy windows. The inside contains one metal chair with a mesh bottom. Usually Potassium Cyanide crystals or tablets are dropped into hydrochloric acid, producing hydrocyanic gas. After pronouncement of death, the chamber is evacuated through carbon and neutralizing filters. Gas masked crews decontaminate the body with a bleach solution.⁴

Another method practiced is use of Lethal Injection- This involves the continuous intravenous injection of lethal quantity of a short acting barbiturate in combination with a chemical paralytic agent. Commonly used drugs are sodium pentothal and pancurium bromide (stops respiration) and potassium chloride (stops heart). The sedative is usually administered first.⁴

In some states Electrocution is the method of execution where the electric chair or 'The Chair' as it is known, is used. The 2000 volts of electricity at an average of nine amps is applied to the head of the prisoner with each 'Shock' sequence lasting approximately 35 – 40 seconds.⁴

Hanging is the method practiced even in India. It is the most widely used method of execution in the world today. There are four main forms of hanging-⁵

1. Short or no drop hanging
2. Suspended hanging.
3. Standard drop hanging – where the prisoner drops to a predetermined depth, typically 4 – 6 feet.
4. Measured or Long drop – where the distance the person falls when the trap doors open is calculated according to the weight and physique of the person.

Firing is also used as a method of execution in few counties. There is reportedly no protocol for the procedure. There are usually five men, one of whom will use a blank bullet so that none of them knows who the real executioner was.

The procedure adopted in our state for execution of capital punishment is as per the Maharashtra Prisons Rules, 1971. According to these rules a 'convict' means a prisoner who is sentenced to death. On admission of a convict in a prison, the superintendent shall report the admission to the State Government. He shall also report to the State Government the date fixed for his execution by the court of sessions after confirmation of the sentence of death by the High court and solicit orders of the State Government regarding date of his execution. Every convict shall, from the date of his admission to a prison, be confined to a cell in a special yard, apart from all other prisoners as required by section 30 of the Act. The state Government shall fix the date of the execution of a convict if his/her 'Mercy Petition' is rejected. The convict and relatives shall be informed about the date of execution by the superintendent.⁶

All executions shall take place at the prison to which the warrant is directed unless expressly ordered otherwise in the warrant. They shall usually be carried out in a special enclosure attached to or within the walls of the prison. No convict shall be executed on a day which has been notified as a public holiday.⁶

Execution by hanging is usually done in early morning between 4 – 5 am. A trial is taken with a dummy to determine the height of drop and the duration of suspension, evening before the execution.⁷ As a rule a bag of sand weighing 1 ½ times the weight of the convict to be hanged is used and dropped for a distance between 1.830 – 2.440 meter, it affords a safe test of the rope. Two spare ropes for each convict are kept ready. If a prisoner weighs less than 45.360kg., he shall be given a drop of 2.440 meters, if between 45.360kg.- 60.330 kg. –a drop of 2.290m. if weight > 60.330 but not > 75.300 kg. –a drop of 2.130 m.^{6,7}

The measurement of the convict's neck, height of the prisoner and the height from the drop shutter are also considered.⁷

The Superintendent, Deputy Superintendent, Senior Jailor and the Medical Officer shall be present at all executions. An Executive Magistrate deputed by the District magistrate is also present. The body shall remain suspended for 30 min. – 1hr. before being taken down and until the Medical Officer has certified that the life is extinct.⁶

As with other issues capital punishment also has its supporters as well as those who are for abolition of capital punishment. The people who want capital punishment to be continued are known as 'Retentionists' and those against are known as 'Abolitionists'.

The arguments against capital punishment are many but the pleas advanced in its favour are few. Any punishment is supposed to be for the protection of society and for the reformation of the criminal. The purpose of capital punishment is to prevent the same criminals from repeating their crime and by acting as a deterrent to other criminals and potential criminals. But in this respect capital punishment has proved to be a failure as is evident from criminal statistics of those countries where the punishment is in force. Also many crimes are usually single acts of fury or passion. They are done at the spur of the moment. It is very unlikely that the man will repeat such act in future.³

Also yet to be answered question is whether there can be more effective deterrents in comparison to capital punishment. Capital punishment is irrevocable and the error of justice cannot be rectified. Innocent people have been hanged in such circumstances in the past. Similarly in India there is great divide between the rich and poor. The rich can always get best legal services but the poor may not be able to even afford a lawyer to fight his case till the end. So it is possible that rich criminals might escape punishment but the poor one might easily reach gallows. The following case will elucidate the above point. In August 2000 a case was registered against Rameshwar & Ors under IPC 302. The sessions court Jhansi convicted all with life term. Their appeal was turned down by Allahabad High Court in 2009. The victim Bhagwan Dass reappeared in December 2010. The case was studied by the Supreme Court on 4/11/11 and looking at the facts the Supreme court ordered immediate release of Rameshwar & Ors. This was possible as the accused were not sentenced to death but were serving a life term.⁸

People who are against capital punishment have recommended other types of punishment. Government can isolate such murderers in special institutions where they can be humanely treated as patients or people of unsound mind. This can be made as a general campaign of educative and remedial treatment of crime.

In the year 2000, Amnesty international launched a campaign to secure a worldwide ban on the use of capital punishment. More than 100 countries have formally or informally

abandoned the use of capital punishment. WHO also has appealed to all countries to abolish capital punishment.

As against abolitionists there are many strong retentionists too who firmly believe in continuation of capital punishment. The people who are against capital punishment only think of the criminal. They should also think of the families that are broken apart because of the acts of criminals. If we do not punish the criminal then we throw our society into chaos and let the criminals do freely what they want.³ Those against capital punishment argue that forms of execution are horrible. Some say that capital punishment is a harsh and uncivilized way of treating criminals. But it should be realized that these criminals do not care about the lives of those they destroyed. Death penalty can never bring back the loved one to the families that have lost them. It can never bring back the innocent lives that have been taken in cold blood. If we cannot join together and defeat crime, it will take us over. According to some, like olden days executions should be made public, so that everyone can see the consequences of crimes. In such circumstances the deterrent factor would most definitely rise.

So far we have seen the different aspects of capital punishment – offences where capital punishment is awardable, world and Indian scenario, procedure of execution of capital punishment and pro and anti views about legality of capital punishment.

Finally, the reader would be interested to know our view on capital punishment. You all will agree, India has been a peace loving country, history is witness to this. Our cultures, our tradition, teach us to forgive the guilty or sinner and give him a chance to reform himself. We are no exception to this philosophy. We believe man has traversed miles of distance from barbarian era to present civilised status. With civilization comes understanding, tolerance and maturity. So we think capital punishment should be abolished, except for people involved in anti-national or terrorist activities. Other cases can be dealt with life imprisonment where the convict would get a chance to reform. At the same time the hard-core terrorists attacking religious or public places and even parliament and killing innocent people should be expeditiously tried by the judiciary and capital punishment if awarded in such cases be executed without undue delay.

But by abolition of capital punishment for other crimes let us take one more step towards civilization and social maturity.

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