



BLIND FOLD LEGAL JOURNAL

VOLUME-2 ISSUE-1

{ June 2022-Aug 2022 }

E-Mail:- blindfoldjournal@gmail.com

Website: - www.blindfoldjournal.com

An overview of death penalty in Indian legal system

Author: Stephin K.D

Abstract

In India capital punishment is awarded for the most heinous crimes. It is one of the most debated topic in the legal circle. Considering increasing views regarding the abolition of capital punishment it requires serious consideration. The existing procedure for the death penalty is not adequate because it depends on the discretion of judges. It would result constitutional arbitrariness. This article analyze whether capital punishment required in India or not by analyzing position of capital punishment in India.

Introduction

Capital punishment or death sentencing is the practice of taking life of someone as punishment for specific crime by a state. The latest study shows that 107 countries were abolished this practice. 27 countries including India maintained it in the statute but try to avoid it maximum. 7 countries maintain this punishment for war crimes alone. 54 countries retained as punishment strictly. Venezuela the first country abolished in 1863 and the latest is Kazakhstan in 2021ⁱ even though this punishment is inevitable in the criminal justice system of India today the rapid movement of human rights it became a hot topic in India.

This was considered as immoral act by state among some of the legal scholars in the country. They believed that the ultimate aim of the criminal justice system is to reform the criminals and not removing them from the society the latest law commission reportⁱⁱ gave a suggestion to abolish the capital punishment but the state decides to maintain it as a punishment in the statute. There is an inherent principle in Indian legal system that “innocent until proven guilty”. Thus awarding of any punishment is very carefully done by the judiciary. Death penalty awarded in” rarest of rare cases”ⁱⁱⁱ in India. According to Indian penal code about 400 offences are specified only 10 offences are punishable with death sentences.

Constitutional validity of capital punishment

Supreme Court held that death sentence is constitutionally valid if it is done through procedure established by law and not in public interest. First time in 1973 the validity of death sentence is was challenged in the case of jagmohan Singh^{iv}. It was challenged on the basis of articles 19 and 21 because it does not provide procedure. The five judges bench of Supreme Court held that the choice of awarding death penalty accordance with procedure established by law.

In 1979 death sentence was held unconstitutional in the case of Rajendra Prasad. Where justice Krishna eyer held that capital punishment would not justified unless it was shown that giving discretion to judge to make a choice between death sentence and life imprisonment on special reason under section 35 of the code would be volatize of article 14 of constitution of India. He pleaded for the abolition of capital punishment and retain it only for punishing white color crimes.

In 1980 Supreme Court restored validity of capital punishment in Bachan Singh^v case. It was held that Indian penal code section 302 is not violative of article 21 of constitution because article 21 recognize the right of state to deprive a person of his life and liberty in accordance with fair and just and reasonable procedure established by law again in 1992 in the case of shashi neyar case^{vi} constitutional validity of capital punishment ws challenged. Capital punishment does not serve any social purpose. Court rejected this and now it well established that capital punishment was constitutionally valid.

Should capital punishment be abolished?

Law commission report of 2015 suggested that the death penalty should be abolished for all crimes except terrorism. The main argument of death penalty supporters is that it reduce crime rate in the country. Even today the crime rate does not declined. Death penalty does not have a deterrent effect literally it is a barbaric punishment. In my opinion life in prison would be better option. The death penalty cannot be done fairly.

Most of the studies conducted all over the world reached the conclusion that maintains capital punishment does not reduce the rate of heinous crimes. Abolition of death penalty will have added benefit ensuring that the state killing of its citizen will no longer have any legitimacy and

stigmatize extrajudicial executions^{vii} countries abolished death penalty rarely reintroduced it. Philippines abolished it in 1987 but reintroduced in 1993. But it abolished again in 2006. Which means that abolishing of capital punishment would not increase of the crime rate. India cannot abolish it without the support of public opinion and legislative backing.

The ultimate aim of death sentence is to deter others. We have no empirical report supporting this view. Though India signed many international instruments on human rights still death sentence is on the statute of India. The main reason is the public support for the capital punishment in India. They are screaming for capital punishment in social media whenever any heinous crime happened in India still our people are not aware of the practical difficulties in imposing capital punishment. This punishment does not serve any social purpose. It is not serve the ends of justice. In my opinion the ultimate aim of criminal justice system should be reformation and not to removing the criminals from the society. Human factor is the key factor in the delivering of justice so it is not is to maintain a fair trial always. It is not easy to eliminate subjectivity

Suggestions

Giving long term imprisonment is a good alternative to capital punishment. It will reform the offender and release them with strict conditions. Release only when the authority satisfied that they are no longer a threat to the society. The importance should be given to the reformation if any possibility of reformation exists among the offenders. We have to ensure that the reformed offender got a chance to live life with the society. Death penalty is not a better option to the life imprisonment. It is necessary to limit death penalty in terrorism where the offenders are not ready to live a peaceful life in the society even if they got a chance to reform. It is the need of the hour not because of the moral grounds but the inconsistencies in the crime investigation i hope India will join with the nations who already abolish the death penalty and take a progressive step in the criminal justice system.

End notes

ⁱ Amnesty international homepage [http:// www amnesty.org/en](http://www.amnesty.org/en)

ⁱⁱ Law commission of india,The death penalty, (law commission of india, no.2026, 2015)

ⁱⁱⁱ Bachan Singh v state of Punjab, AIR 1980 SC 898

^{iv} Jagmohan v state of UP, AIR 1973 SC 947

^v Bachan singh v state of Punjab, AIR 1979,SC 916

^{vi} Shashi neyar v union of India and others, AIR 1992 395

^{vii} HOOD,R,Hoyale,C,(2009)"abolishing death penalty worldwide: the impact of new dynamic crime and justice vol38,no1,2009.pp.1-63

