

Commutation of death penalty and death row phenomenon

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Abstract

A nation's legal system is significant to how its citizens look upon issues that concern the country and its masses. Law enforcement machineries are expected to be the actual enforcers of law but the situation becomes problematic when the objectivity slips away. It leads to serious implications when the matter involves the question of life and death. Death penalty, if given without proper scrutinization, is irreversible and irredeemable. Commutation of death sentence is a form of clemency which does not absolve the prisoner from conviction completely but substitute it with much lesser punishment without relieving the criminal stigma of the crime committed. Many prisoners spend years waiting for their fate to be decided and it leads to death row phenomenon which is actually prevalent in our country. Prisoners waiting for their mercy pleas to be heard spend horrific, intolerable and excruciating days in prison. There is an inadequacy in the sentencing process and both judges and defense lawyers can be blamed for it. The people who are death row prisoners, majority come from socio-economic marginalized section and are economically vulnerable. The nature of the punishment is unique because of its daily suffering; the mental torture it causes is unforgivable. This paper would deal with all the issues related to the commutation of sentence and the initiation of death row and also would seek to answer whether or not the criminal justice system of India is an (in)famous example of "justice delayed, justice denied."

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Introduction

The main object of the criminal justice administration is the adherence to protect the society from offenders and to punish them as well. Criminal law consists of both the substantive law and the procedural law. Substantive law defines the offences from which the society must be protected and prescribes the punishments to the law breakers whereas the procedural law administers the substantive law. Considering India, the largest democracy in the world, the procedural law of the country must also be competent enough to work accordingly. The system which is, apparently, an age-old system based upon the legal system which was established by the British and has not gone through any substantial changes. Some say the system weighs in favor of the accused and some say it favors the victims of the crime but the system must acknowledge the predicament of both the sides and maintain a balance. Focusing on justice to the victims makes the society forget the fact that even the accused is a human and must not be given such punishment which would violate the principle of humanity; capital punishments like death penalty. Infliction of death as a punishment for acts which is not justifiable and hence, considered wrongful. Death penalty has existed since the ancient times. Many famous thinkers supported it but the modern abolitionist movement started with the works of the Italian criminologist, Cesare Beccaria, who in his works reiterated the inhumanity of the death penalty²;cruel, inhuman and degrading treatment of prisoners. Death penalty has either been abolished by two-third of the countries outrightly or the state is refraining from executing any such prisoner. In recent times, there is a wave of abolition of death penalty as it is considered that death penalty, once given, is irreversible and irredeemable.

Research methodology

This paper was carried out by viewing various reports on death penalty and death row phenomenon. The major report which helped a lot writing this article was Death Penalty India Report by NLU, Delhi. Commutation and death row in India, prisoner's conditions, the problem in the justice administration and possible solutions could only be accumulated through certain

²CESARE BECCARIA, ONCRIMES AND PUNISHMENTS, trans. Henry Paolucci, 1963.

articles and reports written by various institutions in India but the phenomenon of death row, which is an international phenomenon, can be located and has been worked on by prestigious universities like University of Vienna and many more. With lack of time, interviewing the death row prisoners was not possible, nevertheless, the interviews given by them which is there on the internet helped quite a lot. Their interviews and the thoughts of various jurists can still be found in the newspapers. Some international newspapers like The New York Times and The Washington Post has also covered the conditions of the prisoners.

Objective

The sole objective to write this paper is to make the people more aware about the injustice being done to the death row prisoners and those prisoners whose commutation could not be granted or rejected. What they go through and how things work for them. The society must be aware of all these things. When more and more articles get written on such issues, the more it is beneficial for the coming generation guiding them to mold their thought. Balance should be made and the society must learn to do it.

Socio-legal analysis of the problem

A socio-legal study to analyze the problem of the condition of the prisoners on a death row or whose commutation has got rejected tells us what is the reason behind such happenings. Reason might be the socio-economic profile of the people. The people who are on a death are mainly the vulnerable and extremely marginalized section of society. More than 50% are OBCs and SCs/STs who have no means of defending themselves³. The society provides less legal aid lawyers and more private lawyers. Every 100 death sentences by trial court, 4.5% gets confirmed by Supreme Court. Majority cases ends up in acquittals.⁴

³ Death Penalty India Report by NLU, Delhi.

⁴*Ibid.*

Judicial decisions

Article 21 of the constitution⁵ of the country enshrines the right to life to its citizens and the constitutionality of death penalty has been questioned many a times in the court of law. There have been some landmark cases in the country which questioned the existence of death penalty. Few of which are: -

The Supreme Court in *Mithu v. State of Punjab*⁶ struck down Section 303 of the IPC, which provided a death sentence for offenders serving a life sentence.

The Constitution bench judgment of Supreme Court of India in *Bachan Singh v. State of Punjab*⁷ said that death sentence would only be given in rarest of rare cases.

In the case of *Macchi Singh v. State of Punjab*⁸, further elucidation took place of the “rarest of the rare rule”, situations where the application of death sentence could be justified.

The Code of Criminal Procedure, 1973 explicitly provides for a separate sentence hearing.⁹ Death sentences imposed by trial courts are necessarily required to be confirmed by the High Court.¹⁰ except under certain central legislations that exclude the application of the CrPC.¹¹

Nonetheless, the clemency powers could act as a grace in the life of the prisoners who are stamped with death sentence.

Commutation of death penalty

Apart from the crimes which is listed in the IPC,1860 there are certain legislations enacted by the parliament having provisions for death penalty. However, the constitution also provides the clemency powers to the president and the governor of states under article 72 and 161 respectively. The pardoning powers include commutation of punishment. The commutation is a form of clemency which makes the punishment to its lesser form. The convict does not get

⁵ INDIA CONST. art. 21.

⁶ *Mithu v. State of Punjab* 1983, A.I.R. 473. (India)

⁷ *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684. (India)

⁸ *Macchi Singh v. State of Punjab*, (1983) 3 S.C.C. 470. (India)

⁹ Sec 235(2), THE CODE OF CRIMINAL PROCEDURE, 1973, No. 2, Acts of Parliament, 1973.

¹⁰ Sec 366(1), THE CODE OF CRIMINAL PROCEDURE, 1973, No. 2, Acts of Parliament, 1973.

¹¹ Death Penalty India Report Vol. 1.

totally absolved from conviction but gets substituted with the lesser punishment without relieving the criminal stigma of the crime committed. It reduces an unreasonably harsh sentence. Inordinate, undue and unreasonable delay in considering mercy petition constitutes torture in violation of Indian and International Law.¹² It also stated that prison officials should make sure that prisoners receive regular mental health evaluations and be given apt medical care.¹³ The executive can commute the death sentence of any offender to any other penalty provided by the Penal Code without the consent of the offender.¹⁴

How presidents have acted on mercy pleas

A data provided by the Law Commission, here's how India's presidents have dealt with the mercy petitions they received:¹⁵

- R. Prasad accepted 180 mercy pleas and rejected just one.
- S. Radhakrishnan allowed 57 mercy petitions while rejecting none.
- Zakir Hussain did not send a single man to the gallows, accepting 22 mercy pleas.
- V.V. Giri too did not reject a mercy petition, and accepted three pleas.
- Fakhruddin Ali Ahmed and N. Sanjeeva Reddy failed to touch upon any mercy petitions in their tenures.
- Zail Singh rejected 30 mercy petitions and allowed just two.
- R. Venkatraman rejected the highest number of mercy pleas i.e., 45. He allowed five petitions.
- S.D Sharma did not hand out a single commutation, rejecting 18 pleas for mercy.
- K.R Narayanan kept all mercy petitionis pending.
- A.P.J Kalam ruled on just two pleas, rejecting one and accepting the other.

¹²Shatrughan Chauhan vs.Union of India, (2014) 3 S.C.C 1. (India)

¹³*Ibid.*

¹⁴ Indian Penal Code, Ch. III, art. 54, Act no. 45 of 1860, Oct. 6, 1860. Amnesty Intl., The Death Penalty in India: A lethal lottery: A study of Supreme Court judgments in death penalty cases 1950-2006 (Summary Report), p. 5, ASA 20/006/2008, May 2018.

¹⁵Dev Goswami, No Mercy: Pranab Mukherjee rejected 30 mercy petitions as President, India Today, July 18, 2017.

- Pratibha Patil granted 34 mercy petitions and rejected five
- Pranab Mukherjee rejected 30 mercy petitions and granted four.

By the end of 2011, there were 12 women who were waiting for their execution on death row.¹⁶Pranab Mukherjee rejected 30 mercy petitions, a number greater than the combined total of mercy petitions rejected by his four immediate predecessors whereas Pratibha Patil has showed much of a grace to death convicts.

Judicial decisions

In the case of *Ediga Anamma v. State of Andhra Pradesh*¹⁷ which commuted the death sentence to life imprisonment by citing factors like age, gender, socio-economic background and psychic compulsions of the accused.

In the case of *T.V. Vatheeswaram v. State of Tamil Nadu*¹⁸, the question of delay in execution of the death sentence and whether a prolonged delay was reason enough to commute the death sentence to life imprisonment was raised. It was held that such a situation gave enough reason for the convict to invoke section 21 and get the lesser punishment. However, in the case of *Sher Singh v. State of Punjab*¹⁹, the court overruled the aforementioned judgement.

We see how commutation acts as a relief in the life of death convicts but taking so much time to answer those mercy petitions is unacceptable because at the end of the day, it's the prisoners who are facing the injustice. One cannot even envisage the conditions that they have to go through; what it is like to live in Indian Prisoners under the death sentence. The prisoners who are incarcerated, end up spending many years under the death sentence unnecessarily and it is not just limited to execution, the experience of living under such conditions is an extremely horrifying form of punishment in itself and that leads to death row phenomenon.

¹⁶Natl. Crime Records Bureau, Government of India Ministry of Home Affairs, Prison Statistics India 2011, Table 7-1, p. 121, <http://ncrb.gov.in/index.htm>, Sep. 3, 2012.

¹⁷*Ediga Anamma v. State of Andhra Pradesh*, A.I.R. 1973 S.C. 774.

¹⁸*T.V. Vatheeswaram v. State of Tamil Nadu*, 1983 A.I.R. 361.

¹⁹*Sher Singh v. State of Punjab*, 1983 A.I.R. 465.

Death row phenomenon

What exactly is the death row phenomenon? The long wait which the prisoner endures on death row or the horrifying conditions of incarceration or both? There is no agreement between scholars on the definition of the death row phenomenon. Academic discussions of the term generally identify at least two components: the length of time spent on death row and the severity of conditions that prisoners are typically exposed to.²⁰ The delays before execution is measured in years and those years spent in horrific condition tantamount to nothing in the eyes of the officials. When the abolitionist movement took its pace, just the death sentence was challenged, but with the emergence of death row phenomenon, there was more to ask with the sentence of death after a tortuous delay. Earlier, executions took place within days or within hours but now the situation is different. The time between sentence and execution is huge. One would say that the prison is an institutionalized hell for prisoners as it is, evidently, a prison within a prison²¹.

Delay alone cannot be considered as a ground for death row. Delay is insufficient as it does not have the direct adverse effect on prisoners. The condition in which a prisoner is living may not have that bad state. The prisoners who have structured their life in the prisons, there's enjoyment and discipline in their life, which is not bad whatsoever, then the condition which death row demands is unfulfilled. The moment when there is an excessive delay in the execution and that delay converges with harsh conditions, that's when human rights violation arise. If there's a long delay but with the moderate harsh conditions and moderate delay along with extreme harsh conditions, the type of sliding scale one is going through would not amount to death row. However, delay comes out to be predominant, if not the sole factor, in this whole analysis. The discussion of the death row phenomenon is incomplete without this landmark case *Soering v. United Kingdom*²² decided by the European Commission and Court of Human Rights provided a seed of legitimacy for the doctrine in tribunals around the world.

²⁰ Human Rights Advocates, Death Row Phenomenon Violates Human Rights (2012) 12<<http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/Death-Row-Phenomenon-2012.pdf>> at 16 April 2016.

²¹Patrick Hudson, *Does the Death Row Phenomenon Violate a Prisoner's Human Rights under International Law?* EJIL. 833, 835 (2000).

²²*Soering v. United Kingdom*, App No 14038/88 (Application No) A/161. (U.K.)

Psychological effects

- Sleep deprivation caused due to the uncertainty of their life.
- The reminder in their mind of their execution.
- Their fear of burden on their family who has to bear the cost of the lawyers.

Impact and implications

Death sentences are handed down without consistency, which makes them unaware of the cases against them. Many are unable to meet their lawyers due to financial problem and are not informed about the status of proceedings. Torture, inhuman treatment, investigation methods which are much violent seems usual. Absence of defense lawyers make the convicts vulnerable. As there is no time limit for responses from the ministry of home affairs regarding the petition, prisoners spend the majority of their life inside the wall. The criminal justice administration imposes severe burdens and hence, has an impact on marginalized section.

Possible solutions

People should not, at any cost, lose faith in the justice system of India. The state has constituted the Criminal Justice Administration to protect the rights of the innocent and punish the guilty. Certain things must be done to make the justice system of the country more efficient.

- Increasing the capability of Investigation.
- Finding the core of nature of crime and punishing accordingly, not more and not less.
- Bringing equality in justice. The rich and poor all must be treated equally in the court of law.
- Making the judicial procedures less expensive so that the common man can afford it.
- Need of more courts and more judges in the country considering the number of cases pending in the court.
- Need of a strong witness protection mechanism.

- Periodical review, in order to keep the system efficient, of the criminal justice system.

Conclusion

The phenomenon which we see today has been there since ages. It was not acknowledged as it is now but what is the point of acknowledging when nothing is done regarding it. The justice system needs to bring changes into the society and most importantly, within the system. The sufferings which the prisoners go through is insidious. Although, it is the basic nature of humans to survive which is why we see the filings of mercy petitions again and again as they have hope in the system. That hope must be carried on and for that drastic measures needs to be taken.