

INTERNATIONAL TRENDS ON CAPITAL PUNISHMENTS

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ABSTRACT

Today more than thirds of the Member States of the United Nations have either abolished the death penalty or do not implement it. For instance, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) permits the use of death penalty in certain limited circumstances it's also provides that "nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any state to the present covenant." In 2007 the General Assembly adopted a resolution on a moratorium on the use of the death penalty (A/62/149). In 2010 the third resolution was approved and it read "States that still maintain the death penalty to progressively restrict its use, to reduce the number of offences for which it may be imposed and to establish a moratorium on execution with a view to abolishing the death penalty. States which have abolished the death penalty are called upon not to reintroduce it.

The author of this paper will focus on three important aspects in this paper, which is the International Context on Capital Punishments, Member States Developments and OHCHR activities to abolish Capital Punishment.

HUMAN RIGHTS VS. DEATH PENALTY

It was always been a difficult task to define Death penalty as a Human rights issue. The movement to abolish death penalty however begun in 1994 when the United Nations General Assembly moved a resolution to restrict capital punishment. The result of such a memorandum was that 74 countries abstained from voting hence it failed. It failed because countries like Singapore; Trinidad and Tobago argued, “Death penalty is not a human rights issue.”¹ Similarly many other countries like Switzerland, Spain argued for abolition of death penalty stating that death penalty constitutes “a flagrant violation of the right to life and dignity.”

South African Constitutional Court stated under the new constitution that “The rights to life and dignity are the most important of all human rights and this must be demonstrated by the state in everything that it does, including the way in punishes criminals.”²

US SUPREME COURT ON DEATH PENALTY

In the United States of America, the States of New Jersey, New Mexico, Illinois and Connecticut have abolished the death penalty. The Supreme Court of the United States has made a number of important capital punishment decisions.

*Furman v. Georgia*³

Furman was burglarizing a private home when a family member discovered him. He attempted to flee, and in doing so tripped and fell. The gun that he was carrying went off and killed a resident of the home. He was convicted of murder and sentenced to death.

The question before the court was whether the imposition and carrying out of the death penalty in these cases constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments?

The Court's one-page per curiam opinion held that the imposition of the death penalty in these cases constituted cruel and unusual punishment and violated the Constitution. The Court

¹ R. Hood, *The Death Penalty: A World-wide Perspective* 8 (2d edit. 1996) Schabas;

² World Coalition Against the death penalty: <http://www.worldcoalition.org>; The International federation for Human rights: <http://www.fidh.org/-english> (Last Accessed 23rd April 2017)

³ *Furman v. Georgia* 408 U.S. 238 (1972)

looking at three cases struck down the death penalty in many states and set up the standard that punishment would be considered "cruel and unusual" if any of the following were present:

- It was too severe for the crime;
- It was arbitrary (some get the punishment and others do not, without guidelines);
- It offends society's sense of justice;
- It was not more effective than a less severe penalty.

Gregg v. Georgia

The Court in this case however overruled the decision given in *Furman v. Georgia* and upheld the newly passed law and stated that the death penalty was not always cruel punishment.

INTERNATIONAL CONTEXT

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) permits the use of death penalty in certain limited circumstances it's also provides that "nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any state to the present covenant."⁴In 2007 the General Assembly adopted a resolution on a moratorium on the use of the death penalty (A/62/149). A subsequent resolution (A/63/168) on this matter was adopted in 2008, with increased support for the resolution. In 2010 the third resolution was approved and it read "States that still maintain the death penalty to progressively restrict its use, to reduce the number of offences for which it may be imposed and to establish a moratorium on execution with a view to abolishing the death penalty. States which have abolished the death penalty are called upon not to reintroduce it.

OHCHR considered it in this context, and furthered the advocacy at the global level through a series of global panel discussions on key elements of death penalty debate.⁵ The Human rights movement cannot be separated from the movement for abolition of Death Penalty. The Universal Declaration of Human Rights (UDHR) Article 5 states. "No one shall be subject to torture, or to cruel, inhuman or degrading, treatment or punishment." It also recognizes that

⁴ Hart, Jr., Henry M., 1958, "The Aims of the Criminal Law," Law and Contemporary Problems; Hart, Herbert L.A., 1968, Punishment and Responsibility: Essays in the Philosophy of Law, Oxford: Oxford University Press

⁵ Nietzsche, Friedrich, 1887, On the Genealogy of Morals, tr. Walter Kaufmann, New York: Vintage, 1969

each person's right to life. The International Convention on Civil and Political Rights, to which India is a party and which has been ratified by 144 states, encourages the abolition of Death Penalty.

The European Convention on Human Rights, 1950, ratified by 41-member states of the Council of Europe, provides via Article 3 " No one shall be subject to torture or inhumane treatment or punishment." The 2nd Protocol to the International Convention on civil and Political Rights adopted by the United Nations General Assembly with its Resolution on 44/128 of 15th December 1989, is the world's first pact of universal scope at ending Death penalty.

DEVELOPMENT SINCE THE 2007 RESOLUTION BY MEMBER STATES

There have been developments by the member states since the 2007 General Assembly (GA) resolution. The Secretary General submitted three reports (A/63/293, A/765/280 and A/67/226) to the General Assembly on the implementation of its resolutions on moratorium on the use of the death penalty. One of these reports confirmed the global trend towards abolition of the death penalty, the important role played by moratoriums in those States that seek to abolish it and possibilities for further work on the issue.⁶

Currently around 150 of the 193 Member States of the United Nations have abolished the death penalty or introduced a moratorium, either in law or in practice. The Dominican Republic, which prohibited the death penalty in 1924, adopted a new constitution in January 2010, which guarantees the right to life and reconfirms the prohibition of the death penalty.⁷ In Australia, the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010 entered into effect on 14 April 2010. It amends the Death Penalty Abolition Act 1973 and extends the application of the current prohibition on the death penalty to state laws. Legislative amendments to abolish the death penalty are currently pending in parliament in Burkina Faso, Bosnia and Herzegovina, Guatemala, Lebanon, Mali and the Russian Federation.

⁶ Hartman, J.F., 1983. Unusual punishment: the domestic effects of international norms restricting the application of the death penalty. P.655.

⁷Hood, R. and Hoyle, C., 2014. *The death penalty: A worldwide perspective*.

The African Commission on Human and Peoples' Rights adopted a resolution in November 2008, which urged States parties that retain the death penalty to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty. A study on "the Question of the Death Penalty in Africa," prepared by the Working Group on the Death Penalty of the Commission, was officially launched in April 2012.⁸

OHCHR STEPS TOWARDS ABOLITION OF DEATH PENALTY

The High Commissioner for Human Rights consistently advocates for the universal abolition of the death penalty, under her mandate to promote and protect the enjoyment and full realization of all human rights. In 2009, the High Commissioner recalled the reasons for her opposition to the death penalty in all circumstances, including the fundamental nature of the right to life, the unacceptable risk of executing innocent people by mistake, the absence of proof that the death penalty serves as a deterrent, and the inappropriately vengeful character of the sentence.

OHCHR sends official communications to the relevant authorities and issues public press releases addressing the question of the death penalty, and provides technical support to Member States, civil society organisation and other relevant interlocutors on the abolition of the death penalty. The events considered the progress towards abolition of the death penalty in the Middle East and North Africa (MENA), Africa, Central Asia, the Caribbean and Europe regions. The objective was to gain more support at the General Assembly's forthcoming debates on the moratorium resolution aiming for the total abolition of the death penalty.

It is now important the two essentials to understand two important ideas of Capital punishment from an International context:

Deterrence

Though deterrence is often presented as a major reason for retaining the death penalty, the lack of any evidence to prove the same imply the opposite. Professor Barry Scheck of the United States pointed to the recent study of the National Academy of Sciences entitled Deterrence and the Death Penalty, which analysed if there is a scientific basis for the assertion that the death

⁸Id.

penalty lowers homicide rates. The report concluded “research to date on the effect of capital punishment on homicide rates is not useful in determining whether the death penalty increases, decreases, or has no effect on these rates. The key question is whether capital punishment is less or more effective as a deterrent than alternative punishments, such as a life sentence without the possibility of parole. Yet none of the research that has been done accounted for the possible effect of non-capital punishments on homicide rates.”⁹

A survey of research findings on the death penalty and homicide rates concluded that “it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.”

Wrongful Convictions

Public confidence in the death penalty, particularly in the United States, has been shaken in recent years by the number of people who have been released from death row with evidence of their factual innocence

Mr. Kirk Bloodsworth, a United States victim of wrongful conviction and death sentence, recounted his extraordinary story. He was convicted of murder based on mistaken identification by five witnesses and spent almost nine years in prison, two of those on death row awaiting execution in a gas chamber. On a re-trial, his death sentence was vacated and he was sentenced to life imprisonment. He recounted how he spent all of his time in prison fighting to prove his innocence, signing letters, “Kirk Bloodsworth A.I.M — an innocent man”.¹⁰

According to retired Chief Justice of India, PB Gajendragadka, “*A judge is yet to be born who has not committed a mistake*” “The most well-known case of an innocent person being hanged is Kehar Singh in the Indira Gandhi assassination case (1989 AIR 653). Although it is still not officially accepted as an error, many judges have acknowledged that the evidence in the case was shockingly insufficient and that an innocent man was hanged. Every judge has to discover the ‘special reason’ to bring the case under the category of ‘rarest of rare’ and there is every possibility of committing an error of judgment, which will be an infringement of Article 14, 19 and 21 of the Constitution.

⁹ Hood, R., 2001. Capital Punishment A Global Perspective. Punishment & Society, pp.331-354

¹⁰ Bedau, 1998. *The death penalty in America: Current controversies*. Oxford University Press.

CONCLUSION

Universal states of mind to capital punishment have advanced with the learning that each criminal equity framework, however advanced, is defenceless to blunder and unsuccessful labour of justice. Universal human rights law, perceiving that powerlessness, commands that reasonable trial ensures must be executed in all capital punishment cases. The comprehension is that those confronting capital punishments ought to be managed extraordinary assurance and certifications to guarantee a reasonable trial above what's more, past those managed in non-capital cases. Actually, the predominant law and practice in far an excessive number of retentions nations over the Caribbean,

Africa and Asia don't give the level of security required in capital cases. Unless and until states can meet generally acknowledged principles, capital punishment ought not be implemented. An excessive number of nations hold capital punishment without accepting accountability for the correct organization of criminal equity; many states neglect to give procedural insurances in capital cases.

A precondition, under universal law, for forcing a definitive punishment is that the examination, arraignment and trial have been led with immaculate decency and appropriateness. Very frequently, capital trials miss the mark concerning these guidelines. Yet, notwithstanding when procedural certifications are enhanced and the security of law is given to all people, wrongful feelings and unnatural birth cycles of equity will in any case happen. The probability of wrongful feelings can be diminished, however the hazard that blameless individuals will be executed can never be wiped out inside and out as there is no impeccable equity framework.

In 2015, there were 28 executions and 49 new capital punishments, the most minimal numbers in decades. Seven states have surrendered the practice altogether since 2004, for an aggregate of 19 that at no time in the future have capital punishment. Numerous others have not executed anybody for quite a long time. Also, just three states — Texas, Georgia and Missouri — were in charge of all executions a year ago.

A lion's share of Americans still bolster the death penalty, however the rate favouring it has dropped from around 80 percent in the 1990s to around 60 percent now. At the point when

surveys offer a decision amongst death and existence without any chance to appeal, individuals generally split uniformly.

In the previous 14 years alone, the Supreme Court has banished the execution of a few classes of individuals: minors, the mentally handicapped, and those sentenced a wrongdoing other than murder. In that last case, chosen in 2008, Justice Anthony Kennedy composed for the court, "When the law rebuffs by death, it hazards its own particular sudden plummet into mercilessness, transgressing the protected responsibility regarding conventionality and limitation."

Taken together, these signs have driven a few abolitionists to infer that the conditions for completion the death penalty completely are currently as ideal as they may ever be. That contention got a noteworthy lift last June, when Justice Stephen Breyer, in a long dispute from a 5-to-4 deciding that enabled Oklahoma to continue with its harsh deadly infusion tranquilizes convention, proposed he would be interested for a situation testing the legality of capital punishment itself.

Various reviews have found that capital punishment criminal suit costs citizens significantly more than arraignments looking for life without the chance for further appeal. For instance, in Colorado, where the Holmes jury now needs to spend the following a little while hearing confirmation, the state will spend roughly \$3.5 million, instead of a normal of \$150,000 if the state had not looked for capital punishment, as indicated by the American Civil Liberties Union.