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Poonam Rani
Research Scholar MDU,
Rohtak, Haryana, India

Constitutional and statutory provisions related to death sentence in different countries

Poonam Rani

Abstract

This research paper describes the constitutional and statutory provisions related to death sentence in three countries namely USA, U.K, and Saudi Arabia. In recent times there is a debate related to abolition or retention of capital death sentence in India and some other countries also, so in this general the provisions related to death sentence in above mentioned countries is discussed. It is tried to find in research paper whether these countries abolished or retaining the death sentence, if abolished when and why they abolished it and if retaining what are the provisions related to it in these countries and what procedure they are adopting in execution and awarding of death sentence.

Keywords: Death Sentence, substantial law, constitutional law, procedural law, execution, abolition

Introduction

Death sentence is the ultimate punishment that is imposed by any society for any crime committed against the law of the land. In the primitive society the offences were punished by brutal and excessive methods of execution. But with the advent of civilized countries the punishment was governed by a predefined law of the land. This chapter deals with the constitutional and statutory provisions related to death penalty in all the three subject countries of the research which can be studied under the following headings.

Constitutional & Statutory Provision Related To Death Penalty In USA.

The Substantial Laws

The laws created by the state legislatures and the US Congress which define certain acts as illegal for which a penalty is determined such as death penalty or any other punishment. In USA there are three categories of jurisdictions that are authorized to award death penalty namely 50 states, the federal government, US military. The Statutory Law defines the offences punishable by the state. Most of the states and the federal government and the US Military has almost similar offences that are punished by death penalty which can be short listed as follows.

Aggravated Murder which includes felony, murder^[1] or any other form of murder committed during commission of a crime such as child murder, murder of an on duty police officer, murder of a rape victim.

Some other crimes are there which are said to be committed against the state like treason, espionage and drugs trafficking in large scale and are punished by death penalty.

To discuss who are eligible for death penalty to be awarded various case laws have discussed and finally a list can be prepared. In the leading case Ford V Wainwrights, the US Supreme court decided that a legally insane person cannot be awarded with death penalty. Legally insane person is different from mental illness and still mentally ill people are executed in USA.

Talking about the appropriate age of awarding death penalty. The Supreme Court of USA had given different verdicts from Thompson v. Oklahoma in 1988 where the Supreme Court decides that a person can be punished with death penalty at the age of 16 only. Later this decision was overruled. In the case of Stanford v. Kentucky in 1989 the age for execution for those who committed the offences at the age of 17 years was said to be constitutional.

Corresponding Author:
Poonam Rani
Research Scholar MDU,
Rohtak, Haryana, India

Finally in 2004 in *Cooper v. Simon* ^[2] the honorable Supreme Court decided that the accused should be of 18 years at the time when the offence is committed so that the death penalty awarded can be executed and can't be called unconstitutional according to the constitution of USA. This decision was based on those developing standards of decency that were implicit in the 8th Amendment of US constitution.

The question of mentally retarded being executed were finally decided on the basis of standard of decency evolved in the 8th constitutional amendment in the case of *Atkins v. Virginia* in 2002 and now even the mentally retarded offenders who meet the required legal standards of certain IQ are not allowed to be executed. Mandatory death penalty has been rejected in the leading cases of *Roberts v. Louisiana* in 1977 and later in *Sumner v. Shuman* in 1987.

The Procedural Laws

The procedure followed by the U.S. Supreme court prior to 1968 which was effectively followed in the case of *Powell v. Alabama* ^[3] was said to be against the constitutional values of American constitution and it was said that none of the accused were provided with any defense attorney nor they were given any rights to effective assistance which were an essential requirement of the 14th constitutional amendment. There have been many cases in the history of the US Supreme Court that are a question mark on the believe of the jury to be opposed to death penalty and collectively it has been accepted that the due process needs to be accepted without considering the personal views of the judges. The sentencing had been a very interesting issue in the process of justice delivery and there are many precedences already where the punishment was for the lesser crimes when the evidences supported the same rather than awarding life imprisonment or death penalty. Fairness in the capital punishment process has been the key requirement and every opportunity to prove one's innocence should be provided to the accused. Race could never be considered as any element by the juries. There have been great deal of inconsistencies among the inside accounts and the private papers of justices of the Supreme Court while dealing with Death Penalty. There are sever inconsistencies in the process adopted by the supreme court may that be the preliminary opinion or the final opinion and most surprising this inconsistency is visible all along the timeline.

The Constitutional Law

The constitution of America seems to be ambiguous in nature. It has been a very difficult job of the justice to interpret the constitution literally making logical inferences in order to make enforcing 'stare decisis' while delivering a decision. Various amendments have been made to make the constitutional process for death penalty to be fair and just for all. The fifth amendment of the constitution provided for jury trial and prohibited the depriving of life not according to Due Process of Law. The fourteenth amendment was also enacted to give support to the provisions of eighth amendment by enforcing prohibition of depriving life not according to Due Process of Law by the state.

The eighth amendment act confers prohibition on brutal and uncommon punishments and fourteenth amendment determines the result of appeals constitutionally against the capital penalty both these amendments are the backbone of the constitution of USA.

Constitutional & Statutory Provision Related To Death Penalty in UK

Constitutional Law

The United Kingdom does not have any one specified document which can be called as a constitution of UK. The constitution of United Kingdom or otherwise can be called as the British Constitution comprises of the laws and the principles which actually make up the political scenario of the country. The British constitution is an unwritten or can be called as an uncodified document, which basically comprises from four sources namely:

1. Statute laws which includes the laws passed by the legislature
2. Common law which comprises of all the laws established through the judgments of courts.
3. Parliamentary conventions.
4. The work of the authorities.

The collective interpretation of all the above 4 sources lead to a similar governance as done by a written or codified constitution and fully governs the relationship between the state and the individuals and also directs and controls the functioning executive, the legislature and the judiciary similarly as a codified constitution does. The constitutional and statutory provisions related to death penalty can be studied under two heads namely.

Statutory Laws

Parliamentary sovereignty has been the most essential key feature of the British legislative constitution, the laws or statutes that are passed by the parliament of UK are the primary, highest & final sources of the law. The Parliament can therefore be changed by simply passing new statutes as an Act in the Parliament. One another imported core principle of the English constitute is the Principle of Rule of law as propounded by the eminent legal academician A.V Dicey in his legendary work of 1885 "Introduction to the Study of Law of Constitution" this book has been considered and recognized as an authority of work by the British parliament on the matters related to constitution.

The History of UK had seen a long era of capital punishment as discussed in the earlier chapter. It is eminent to discuss the provision of capital punishment in Britain which reached its highest number of crimes punished by death penalty during the 18th Century. The number of crimes punishable by death penalty reached to a height of nearly 220 in 1776.

The offences included in this list were forgery, stealing, robbing, cutting down trees etc. which were having a range of offences from serious to the trivial to the weird and hence the system of laws which had hundreds of offences punishable by death penalty is often known as the 'bloody code' ^[4]. The bloody code acted as a threat to those who thought of committing crime and especially defending the property. And a great number of Hangings in public was done for the convicts of these crimes and the only purpose was to generate deterrence among other so that they follow law of the land.

To make the death sentence the biggest fear for criminals the convict was executed immediately on the next day or to the most on the next following Monday making the punishment awarding irreversible conviction and irrevocable punishment which became a major reason for abolition of this punishment form later in the 20th Century.

Capital Punishment in the United Kingdom and its Abolition

Death punishment was used from ancient times until the second half of the 20th century. The last executions in the United Kingdom were by hanging and took place in 1964, prior to capital punishment being suspended for murder in 1965 and finally abolished in 1969 (1973 in Northern Ireland). Although unused, the death penalty remained a legally defined punishment for certain offences such as treason until it was completely abolished in 1998. In 2004 the 13th Protocol to the European Convention on Human Rights became binding on the United Kingdom, prohibiting the restoration of the death penalty for as long as the UK is a party to the Convention.

Constitutional & Statutory Provisions Related To Death in Saudi Arabia

Constitutional Provisions Related To Death Penalty

The constitution of Saudi Arabia becomes adopted in 1992 which has been amended in 2005. The constitution offers with all of the factors of management and governance may the ones be related to society, economic system, crook or the judicial administration of the state. Basically the constitution contains of the Quran and the Sunnah of the Prophet Muhammad. Article 7 of the simple device of the charter reaffirms Islamic Sharia as the muse of the kingdom, according to Article 1 of the constitution of Saudi Arabia the kingdom of Arab shall be governed by way of the Quran the God's e-book and Sunnats of His Prophet. The charter assure that there will be no crime in the country that shall be penalized or punished except underneath the sharia or the organizational law as given underneath Article 38 of the constitution. Simplest the acts finished next to the enforcement of organizational regulation shall be punished. Saudi charter additionally offers for the safety of Human Rights in accordance with the Islamic Sharia, As already discussed inside the previous chapter the crook regulation is ruled with the aid of the sharia and is categorized into 3 classes of crimes namely.

1. Huhud which might be the constant Quranic punishments prescribed for unique crimes.
2. Qisas that are the retaliatory punishments based totally on the precept of eye for a watch.
3. Tazir it's miles the overall category of the crimes that are defined by means of the national regulations and are usually punished via lashing.

Statutory Provisions Related To Death Penalty

The laws of Saudi Arabia are very strict in handling the crime, the Saudi Court imposes severe punishments for the offence^[5]. Death Penalty is the form of punishment which is awarded very frequently in Saudi Arabia. The Criminal law which is based on the Had and Qisas prescribes a long list of crimes which are punishable with death penalty.

1. Aggravated Murder is the form of murder which includes murder while doing robbery or murder including seclusion. Treachery or any other method to spread terror among the people. In such cases murder is punished by death under both Had and Qisas^[6]. Any other offence that results in death which may be result of non-intentional act are able to punishment of death penalty as Had but probably not as Qisas.
2. A special category of offences that are termed as terrorism have been called as the corruption on Earth

has been punished with death penalty by the Fatwa issued on August 30, 1988^[7]. This Fatwa prescribed mandatory death penalty although its ambit is still unclear.

3. Any act of terrorism is punished with death penalty even if there is no harm caused to life of any one.
4. Rape is punished with death penalty under the laws of Saudi Arabia as Had. Aggravated Rape that may result in death of victim is punished with death Penalty.
5. Robbery or Aggravated robbery is punished by death penalty as had by most of the schools.
6. Arson and Burglary which do not result in Death are also punished by death penalty under the Fatwa on Terrorism related activities.
7. Drug Trafficking is a severe offence underneath The Saudi Arabian laws and underneath the Royal Decree no.39 of 2005 drug trafficking, importing, exporting, manufacturing, growing or circulating tablets are punished through loss of life Penalty.
8. Adultery or Zina are serious offence for married character as Hadd and punished with demise penalty and single humans are punished with only hashes for adultery.
9. Apostasy has been punished with death Penalty as a Tazir and Hadd each.
10. In Saudi Arabia the sex relation a number of the humans of identical intercourse homosexual, gays and lesbians act has been treated as extreme offenders and is punished by demise penalty. It's far taken equal as adultery or Zina and there may be distinction of opinion on the choices among the diverse schools. The Hanbali college treats the male's sodomy and carry out death penalty as Hadd and in this the marital reputation of the wrongdoer does no longer count number. The lesbians are punished as Tazir offence under all schools, in the end the Saudi Jurisprudence is heterodox and they punish lesbians as Hadd and with loss of life penalty.
11. There have been no mentions of Treason within the codified law of Saudi Arabia. According to Amnesty worldwide Treason has been categorized as corruption on earth and is taken as Tazir i.e. Punishment for political crimes and there's no difference considered among rebel and corruption in the world. Although there is not a lot of clarity to regulation and judicial practice and death penalty as Hadd is prescribed for treason.
12. Sorcery or witchcraft are punished by demise Penalty as Tazir.
13. Saudi Arabian legal guidelines take the offenses against the army or state inclusive of treason and disloyalty even though no latest statutory legal guidelines or punishment for such offences are observed.

Conclusion

Death penalty, is a government-sanctioned practice whereby a person is put to death by the state as a punishment for a crime. It has been used in almost every part of the world. Currently, the large majority of countries have either abolished or discontinued the practice. It has existed in the USA since before the United States was a country. As of 2017, capital punishment is legal in 30 of the 50 states. UK has abolished it completely in 2004 and in Saudi Arabia Death sentences are pronounced almost exclusively based

on the system of judicial sentencing discretion (*tazir*) rather than Sharia-prescribed (*hudud*) punishments.

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