

LEGALFOXES LAW TIMES

SIGNIFICANCE OF VICTIM'S PAIN AND SUFFERING OVER FEIGNED HUMAN RIGHTS FOR GUILTY HEINOUS CRIMINALS WHILE SENTENCING: EVALUATION

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Start with describing some horrendous cases from around the world.

This paper deals with different scenarios and problems faced while sentencing when it comes to punishing Heinous criminals such as accused's age, mental illness or disorders; delay in sentencing, Human Rights, Loopholes in existing Laws of the country, Ambiguity in United Nations Policies, et-cetera. The study signifies the importance of recognizing these problems and obstacles so that proper solution could be discovered to prevail justice in the society. The research reveals the necessity of actions needed from the Judiciary to implement existing Laws wisely by practicing precise Interpretation of Statutes and Legislation of the country to amend existing laws by learning from the previous failures to triumph justice in order to not get stuck with the same hurdle. It focuses on overcoming the similar kind of obstacle next time with more prominent approach. The result indicates the lack of Deterrence in existing laws; lack in carrying out the correct Implementation, Amendment in laws as required and continuation in drifting the general public in believing actual justice is prevailed to cover mistakes for political reasons.

Keywords: Heinous Criminals, Sentencing, Loopholes, Justice, Insufficiency and Amendment

INTRODUCTION

Law in every country has different approaches when dealing with the Heinous criminals or Rarest of Rare cases. It has nothing to do with country for the person to be Evil, Wicked, Psychopaths, Pedophiles, Necromaniac killers or sex offenders or to kill and torture people. Every country has to handle such criminals. The way of dealing with such cases mostly depends on the development stage of that country. Some countries believe in Execution while some in maximum life imprisonment. Mode of execution also differs from country to country. Some are:

1. HANGING:

It is one of the most common methods of execution. In this process includes a calculated drop to cause neck fracture and instant loss of consciousness. It is notably used in country such as India, Japan, Malaysia, Pakistan, Singapore and Iran.

2. SHOOTING:

It is also a very common method. Can be applied:

- By a single shot (such as a shot to the back of a head, as in China, Belarus and by various means in Russia before Russia put a moratorium on capital punishment. Similar process is used in Taiwan where prisoners are sedated beforehand.)
- By a single machine gun, as previously practiced in Thailand and elsewhere.
- By firing squad.
- Allegedly, by excessively powerful weaponry such as anti-aircraft guns, according to various media sources, practiced in North Korea.¹

3. LETHAL INJECTION:

¹McKirdy, Euan (February 28, 2017). "N. Korea executed 5 security officials, S. Korea says". cnn.com.

First used in the United States in 1982, lethal injection has been used by five other countries since then, which are China, Taiwan, Thailand, Guatemala, and Vietnam.

4. EXECUTION:

Only the United States and the Philippines have ever used this method. It is now legal in some U.S. states only to replace injection at the request of the prisoner or if injection is impractical.

5. GAS INHALATION:

Only the United States and Lithuania have ever used this as a capital punishment method. It is now legal in some U.S. states, only to replace injection at the request of the prisoner or if injection is impractical.

6. BEHEADING:

It has been used at various points in history in many countries. One of the most famous forms is execution by guillotine². Now used only in Saudi Arabia with a sword.

7. STONING:

Stoning is a method of capital punishment where a group throws stones at a person until the subject dies from blunt trauma. It has been attested as a form of punishment for grave misdeeds since ancient times. Its adoption in some legal systems has caused controversy in recent decades. It has been a legal or customary punishment in Iran, United Arab Emirates, Iraq, Qatar, Mauritania, Saudi Arabia, Somalia, Sudan, Yemen, northern Nigeria, Afghanistan, Brunei, and tribal parts of Pakistan, including northwest Kurram Valley and the northwest Khwezai-Baezai region.³

SOME ANCIENT METHODS-

ANIMALS:

- Crushing by elephant.

²a machine for beheading by means of a heavy blade that slides down in vertical guides.

³*The Independent*. London: independent.co.uk. [Archived](#) from the original on 2013-10-06. Retrieved October 4, 2013.

- Devouring by animals, as in damnatio ad bestias (i.e., as in the cliché, "being thrown to the lions"), as well as by alligators, crocodiles, piranhas and sharks.
- Bites by snakes (e.g. the "Snake pit" of Germanic legend).
- Tearing apart by horses (e.g., in medieval Europe and Imperial China, with four horses; or "quartering", with four horses, as in The Song of Roland), variant with tearing apart by camels was sometimes used in the Middle East.
- Trampling by horses (example: Al-Musta'sim, the last Abbasid Caliph in Baghdad)

OTHERS:

- Practice where Criminal is Tied to the mouth of a canon which is then fired.
- Boiling to Death.
- Alive burial.
- Burning.
- Falling.
- Slow slicing.

Main criticism to these ancient practices were that they were executed even for less serious offences such as theft or burglary which resulted in making these practices inhumane throughout the period of time.

THE STUDY

World has witnessed many atrocious, evil, barbaric, cruel, Heinous criminals for past many years. Sentencing in these cases has faced many problems throughout history and sadly triumph in present too.

HEINOUS CRIME

Definition: Crime as we know is an illegal action that is punishable by law (differs from country to country). Heinous means extremely evil, brutal and wicked. In Layman's term these are the cases that boil people blood and make them seethe with vengeful rage.⁴

Why people commit Heinous Crimes?

Based on decades of research and experience, people are able to identify a series of factors that, independently and in concert, helps to understand why people commit Heinous crimes. Such understanding is essential in order to fashion thoughtful, principled, and just responses to Heinous crime.

Theories of crime causation⁵—known as etiological theories—have evolved and matured since their origin in the mid-eighteenth century. Namely:

1. Biological theories
2. Economic theories
3. Psychological theories
4. Political theories
5. Sociological theories

RESEARCH

(Through Case study)

NIRBHAYA CASE

“Nirbhaya” the Survivor, is the pseudonym used for the rape victim of the infamous 16 December 2012 Delhi gang rape incident on an empty bus with tinted windows, by six males, one of whom was a minor, aged 17.

⁴“RETRIBUTION AND REVENGE.” Heinous Crime: Cases, Causes, and Consequences, by Frederic G. Reamer, Columbia University Press, NEW YORK, 2005, pp. 85–128. JSTOR, www.jstor.org/stable/10.7312/ream13188.5. Accessed 3 June 2021.

⁵<https://blog.ipleaders.in/theories-causation-crime/>, Last visited March 2021

The friend when tried to protect Nirbhaya, was beaten up by the perpetrators. Nirbhaya was not just sexually violated but her body was mutilated beyond human imagination. Her intestines were pulled out, and private parts mutilated. She later died of multiple organ failure, internal bleeding and cardiac arrest on the 29th of December.

Convicts were hanged in 2020⁶ after 8 years⁷. The minor involved was released in 2015 after three years (maximum punishment for minor) in reform facility. It created topic of issue about convictions for minor in Heinous crimes committed by minors.

According to EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR), it is against the law for the courts to give heavier punishment than was available at the time commencement of offence. Problem is that biological age prevails over mental age of the criminal in India. Nevertheless, little effort was given by enforcing The Juvenile Justice (Care and Protection of Children) Act, 2015

The Act provides for children between 16-18 years to be tried as adults for Heinous crimes. The three types of offences defined by the Bill are: (i) a Heinous offence is an offence that attracts a minimum penalty of seven years imprisonment under any existing law, (ii) a serious offence is one that gets imprisonment between three to seven years and, (iii) a petty offence is penalized with up to three years imprisonment.⁸

By the standing committee on human resource development it was also observed that the Act violates some constitutional provisions and said that the approach towards juvenile offenders should be reformatory and rehabilitative. They ignored the fact that their observation should have focused on Heinous crimes committed by children between 16-18 years of age.

UNCRC United Nations Convention on Rights of the Child states that, signatory countries should treat every child under the age of 18 years in the same mannered and not try them as adult. Conventions should be amended or upgraded with the course of time because they are

⁶"India hangs four men over 2012 Delhi bus gang rape and murder". www.aljazeera.com. Retrieved 21 March 2020.

⁷JUSTICE DELAYED IS JUSTICE DENIED

⁸PRS Legislative research, PRS Blog Apoorva. <https://www.prsindia.org/theprsblog/juvenile-justice-bill-2015-all-you-need-know>

treated as a blue print by other countries. However, many countries⁹ who have ratified the same convention “try juveniles as adults, in case of certain crimes” which should be followed by India and other countries as well.

Victim’s Suffering: JUSTICE DELAYED IS JUSTICE DENIED

William Edward Gladstone (the former PM of England) cited this phrase means if justice is not carried out at right time then even if it is carried out later it is not real justice, because when there was demand of justice there was lack of justice.

This maxim is the principle basis for right to speedy trial and other related laws and rights to prevent unfairness to the victim who have hope left in timely and effective Justice. This phrase is mostly used when legislation, execution, or judiciary acts slowly in resolving issues because of several reasons such as the case is too sensitive and has entered into the public domain which creates Public Pressure, the case is too complex, the existing system is too complex or overburdened, or because the issue or party in question has political favor or other powerful backups.

NITHARI KILLING CASE, 2005

Case where Nithari killers raped victims including several minors, killed them and ate their bodies. Number of their victim’s was more than 12. This case was handed over to CBI in 2007 because of public pressure. The agency submitted the charge sheet in 2008. It is quite shocking to see the whole process of execution of trials and sentencing that has occurred in this case. In 2017 businessman Moninder Singh Pandher was acquitted due to lack of evidence and his domestic servant Surrender Koli was ordered to be hanged till death in 2017.¹⁰

⁹U.K, FRANCE, GERMANY

¹⁰<https://blog.ipleaders.in/need-know-nithari-serial-killings/>

There is very less recent updates in this case on the Internet after 2017. Whereabouts of Moninder are surprisingly unknown. The fact not to ignore is that there is no final judgement in case.

PROBLEM WITH EXECUTION

- Huang Yong (China): killed 17 teenage boys, executed
- Wang Biang (China): 45 murders, 10 rapes, executed.
- FaridBaghlani (Iran): killed 15 including minors, executed.
- EsmailJafarjadeh (Iran): murdered 9 young girls in 2017, executed
- Francisco das Chagas Rodriguez de Brito (Brazil): Pedophile who sexually abused, murdered and mutilated between 30-42 young men from 1989 to 2003, sentenced to 217 years of imprisonment. However maximum one can serve in brazil is 30 years. Then what is the major significance of giving 217? Person will ultimately be released after 30 years if still alive.
- Josi Paz Bezerra (Brazil): He is also known as marumki monster, sexually violated, tortured and murdered more than 20 women, was sentenced 30 years imprisonment and released in 2001.
- Pedro Rodriguez Filho (Brazil): 70 murders, 40 of them were prison inmates yet was sentenced to imprisonment of 127 years while neglecting the fact that major part of his victims were prison inmates.

Guilty Committed different level crimes yet punished in almost same manner concluding the fact to Heinous criminals punishment will be same either you normally kill people or brutally, even the number of killing people doesn't matter.

VICTIM'S VICTIMISATION

NAYOUNG CASE (SOUTH KOREA)

In 2008, Man brutally raped a 11 year old giving her life-long physical damages to the girl. He used mental and physical weakness criteria called "Sim shin miyak law" during trial, released in

2020. Returned to his home that is the neighborhood of the victim. Can this be called justice for the victim?

Laws should be made empathizing with the pain of the proven victim. Person proven guilty should not have right to be treated as a 'person'. It is unfair to treat a guilty as a person only for the sake of human rights. Empathizing with victim during sentencing of the accused should be the priority of judges. Punishment should impact mind and inner being of the guilty.

JUNKO FURUTA (JAPAN)

JUNKO FURUTA, a 17 year old girl who was kidnapped, confined with apprehension to kill her family if she tried to escape, tortured for 44 days and murdered. Boy named Hiroshi known to Junko as her schoolmate offered to her home safely after some boys attacked her on her way home (planned by Hiroshi himself) but led her to a warehouse, threatened with his connection to Yakuza (some sort of Mafia like organization)and raped her. After that kept her in his house and gang raped her with three of his friends named Jo, Shinji, and Yushuji using her family details to threaten her that if she didn't do exactly what they said they will send Yakuza to vanish her whole family. All four of them had history of gang rape.

At their Base (Hiroshi's house) they forced Junko to call off the police search, to convince her parents that she was on a run away. She was beaten, starved, raped multiple times a day, sodomized, hung from the ceiling to be used as a punching bag, dropped huge barbells all over her body, burned her, and mutilated her private body parts. Two more were involved with them named Tetsuo and Koichi. On Jan 4 1989, Junko died after boys tortured her with any means possible. Afraid of being penalized for murder, the group wrapped her body in blankets and shoved her into a travel bag. They then put her body in a 55-gallon (208 liter) drum and filled it with wet concrete. Around 8:00 p.m., they loaded it and eventually disposed the drum into a cement truck in Kōtō, Tokyo.¹¹

¹¹"Rapist, Murderer Given 20-Year Sentence". The Daily Yomiuri. Sunday 13 July 1991. Page 2.Retrieved from LexisNexis on 29 September 2009.

On 23rdJan 1989, two boys were arrested for another rape case. While investigation Hiroshi mistakenly confessed for Junko's murder. Everyone was arrested due to being underage, their identity were kept anonymous for the public but were revealed by a journalist believing that "whoever is capable of committing such Heinous crime do not deserve anonymity". In July 1990, Hiroshi was sentenced to 20 years in prison. Minato got 5-9 years (In 2018, Minato was arrested again for attempted murder after beating a 32-year-old man with a metal rod and slashing his throat with a knife), Yasushi 5-7 years, Jo served 8 years in juvenile prison and released in 1999 (In July 2004, arrested for assault and sentenced to 7 years in prison).

Sentencing in this case is the worst for such a brutal and Heinous crime. Many believed that the sentences were too light for the severity of the crimes committed. The crime was believed to be the "worst case of juvenile delinquency" in post-war Japan.

CONCLUSION

Why a person who is proved guilty for Heinous crimes deserve to have human rights? Why Human rights come into the picture when everything is proved beyond the doubts in the court? Even after it is proved that person has committed something so horrendous which no human being can imagine to do.

People who think (or, raise flags of human rights for proved Heinous criminal) "guilty person in case of Heinous crime are also human" need to ask themselves two questions and answer YES/NO:

1. Are you a Human?
2. Do you imagine yourself doing the same acts that 'guilty person in Heinous crime' has committed?

If your answer is YES for the second question then automatically, answer to your first question cannot be a Yes.

Isn't it enough that law has made it a part of human right and professional ethic to treat every accused or defendant as a client even if they think they are dealing with an actual criminal?

Rights of Defendant or Accused

Right of Innocent until proven guilty, not having burden to prove is given to a person for the sake of human right. Law says that even accused have human rights until proven guilty. That is a right too because it might be possible, defendant is not actually guilty or he she might be falsely charged. It is also a professional ethic to help your client without judging because of the society, news or any other prejudice. It should not involve any sort of unfair means.

Article 11 UNIVERSAL DECLARATION OF HUMAN RIGHTS¹² provides:

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Even the rights that are provided to an accused to defend himself/herself is for the sake to not let any innocent falsely suffer because law want to protect innocent person.

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AUDI ALTERAM PARTEM – no one should be condemned unheard.

PRINCIPLE OF NATURAL JUSTICE Right of fair hearing

The Omnipotency inherent in the doctrine is that no one should be condemned unheard. In the field of administrative action, this principle has been applied to ensure fair play and justice to affected persons. Its application depends upon the factual matrix to improve administrative efficiency, expediency and to mete out justice. The procedure adopted must be just and fair. The expression AUDI ALTERAM PARTEM simply implies that a person must be given an opportunity to

¹²UDHR is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).

defend himself. This principle is a sine qua non of every civilized society. Corollary deduced from this rule is *qui aliquid statuerit, parte inaudita altera aequum licet dixerit, haud aequum faceret*¹³. The rule of fair hearing is a code of procedure, and hence covers every stage through which an administrative adjudication passes, starting from notice to final determination¹⁴.

Real criminals use the fact, that law in every country believe, no innocent person should be falsely accused or proved guilty while believing on only facts that says he/she is guilty. Even if it cost a criminal on loose. But they should not be able to use it after they are proved guilty. Duty of law is same when it comes to protect the innocent or to punish the criminal. They both hold equal importance.

Leniency in punishing a guilty of Heinous crime makes it unfair for the victim. Even the real victim is found after the final verdict by the court. When Judgement is announced, not only guilty but the real victim is announced too.

‘Humans are also Animals’ this Phrase is commonly used to compare while addressing any person who had committed something that is not supposed to be done by a human. **“COMPARING SHOULD BE DONE TO FIND DIFFERENCES NOT THE LIKENESS”** We need to remember that we WERE an animal, now we ARE EVOLVED as Humans. So we need to ACT like it.

Humans are part of evolution. Humans have evolved within the history of primates. There might be a reason that ancestors chose to evolve. They chose to live a decent life using their brain and body, to have complex brains enabling the development, having different cultures and languages, to have the ability to communicate systematically using words, symbols, body gestures/posture, and facial expressions and went through all the evolution to be better than before.

¹³he who shall decide anything without the other side having been heard although he may have said what is right will not have done what is right.

¹⁴<http://www.legalserviceindia.comhttp://www.legalservicesindia.com/article/1860/Audi-Alterem-Partem-Right-to-fair-hearing.html> ISBN 978-81-928510-1-3

Giving excuses for your heinous acts by comparing yourself to animals because of ancestral relationship is just like saying “if father was a criminal that means his children got to have criminality in their genes”.Both are codswallop in my point of view.

When criminal is studied in the criminology many reasons come out for a person to become a criminal. Most commonly used is disturbed childhood that led to any psychological disorder.

Whatever the reason may be but Heinous crimes should not be justified with some excuse to relief the guilty from the punishment. Believing in rehabilitation and giving second chances is a good thing but believing on it blind folded is dangerous. Punishing in such cases is important to inflict the seriousness of their horrendous acts; rehabilitation could be given after that, if necessary.

Every person is equal before the law. Law should treat everyone equally until the real guilty and real victim is found after the trial and through the Judgement.A judge is bound to behave fairly and it is his/her duty to give maximum punishment to the guilty. Judge is bound to act only according to the punishments provided by the law or legislation that is why Legislation needs to work hard here in this scenario. If legislation will also learn from the bad precedents that lacked due to already existing law, it will help them to reform and introduce new necessary laws definitely to meet today’s societal realities for the better delivery of justice.