

the legal mother. The birth certificate is made in the name of the genetic parents. The US position as per the Gestational Surrogacy Act 2004 is pretty similar to that of India.

³Lack of any Enforcement law and regulatory mechanism in the process has reduced parenthood into just another commercial venture. By the time a law is formulated in our country several would have already taken undue advantages of its absence. There is no law to protect a surrogate or to ensure that she receives the promised amount. The 10th draft bill last amended in 2008, on surrogacy has simply been pending for years.

Booming business for agents and clinics

⁴Clinics and agents are formulating attractive 'Packages' to deliver baby for a sum at the end of 10 months. Rs.8 lakhs collected from a couple, the surrogate gets Rs.2 lakhs

The surrogate mother is paid in several installments at different stages of pregnancy, to ensure she does not escape. Surrogate mother is paid First installment Rs.25,000/- if her body doesn't reject the fertilized egg, during the 3 months. Second installment is Rs.25,000/- is paid at fifth month. Third installments Rs.25,000/- in the seventh month and the balance amount is paid only after she delivers the baby. The IVF costs upto Rs.1.5 lakhs, clinics spend Rs.1.5 lakhs for maintaining

the surrogate. Thus clinics get a profit of Rs.3 lakhs for every case. Every time a woman refers another to an agent for surrogacy, she receives a sum of Rs.25,000/-.

Conclusion:

The Science and Technology should focus on diabetics and infected persons, HIV, in India more than Rs.5.56 lakhs were killed in 2010 due to cancer, and there are many other skin diseases. So, where does this science and technology stand?

There is a need for strong legislation to regulate the practice of using science and technology. Many people are worried about the possibility of the surrogacy technique being misused. They feel it may allow the exploitation of poor women who may be used as "Human Machines" to bear babies

Online Marriages, online surrogacy and then also no time for parents to take care of child they go for baby cares, hostels *etc.*, and online divorce. Lack of love and affection from the parental to a child. If this is scenario by 2025 no couple will have their own child.

Apart from the above reasons there is a need to legislate necessary laws to regulate the agreements relating to surrogacy as the dispute may remain unsound, if the required laws are not made.

LAW RELATING TO CAPITAL PUNISHMENT IN INDIA : OVER VIEW

By

—RAJU KUKUNOORI, L.L.M.

Department of Law,

Osmania University, Hyderabad, A.P.

Introduction

Capital punishment is the punishment of death which is generally awarded to those

who are guilty of heinous crimes, particularly murder and child rape. In India the traditional way of awarding this punishment is "handing by the neck" till the death of the criminal. In other countries, shooting, electric chair, *etc.*..., are the various devices

3. Ibid .

4. The Hindu * Saturday, March 24, 2012.

used for the purpose of implementation of Capital Punishment.

Though the awarding of capital punishment, specially for murder, is according to age-old, tradition, in recent times there has been much hue and cry against it. It has been said that capital punishment is brutal, that it is according to the law of jungle – “an eye for an eye”, and tooth for a tooth”. It is pointed out that there can be no more place for it in a civilized country. Moreover, Judges are not infallible and there are instances where innocent people have been sent to the gallows owing to some error of judgment.

Capital punishment is nothing but judicial murder, it is said, specially when an innocent life is destroyed. Besides this, capital punishment, as is generally supposed, is not deterrent. Murders and other heinous crimes have continued unabated, inspite of it. The result of such views has been that in recent years there has been an increasing tendency in western countries to award life imprisonment instead of capital punishment. Muslim countries, generally speaking, continue to be more severe in this respect.

Despite frequent demands from all society Indian has not so far abolished capital punishment. But even in India there has been a decline in the frequency of such punishment. It is now awarded only in cases of hardened criminals and only when it is established that the murder was not the result of a momentary impulse, the result of serious provocation, but well-planned and cold-blooded. In such cases, it is felt that nothing less than capital punishment would meet the ends of justice, that it is just and proper that such pests of society are eliminated. Those who indulge in anti-social and sternest possible measures should be taken against them, specially when they are habitual offenders.

It is, therefore, in the fitness of things that India has not so far abolished capital punishment but used it more judiciously. Sociologist are of the view that capital

punishment serves no useful purpose. A murderer deprives the family of the murdered person of its breadwinner. By sending the criminals to gallows, we in no way help or provide relief to the family of the murdered. Rather, we deprive another family of its breadwinner. The sociologists, therefore, suggest that the murderer should be sentenced for life to work and support the family of murdered person as well as his own. In this way, innocent women and children would be saved from much suffering, hunger and starvation. Moreover, such measures would provide the criminals with an opportunity to reform himself. He would be under strict watch and if his conduct is satisfactory, he may be allowed to return to society as a useful member of it.

There is much truth in such views, and they must be given due weightage before a decision is taken to abolish or retain capital punishment. But capital punishment should be continued for those who commit rare of the rarest crimes such as child rape, group rape, terrorism and *etc.*

Definition of Crime – Indian Penal Code, 1860 does not define any definition to the concept of crime. So as to understand the concept of a crime by the way of its characteristics only. The main elements of a crime is *Mensrea* and *Actus reus*.

Capital Punishment – Indian Penal Code, 1860

Section 53 of Indian Penal Code, 1860 defines the various kinds of punishments which is given to the criminals in India. Under Indian Penal Code, 1860, death penalty is punishment for 13 offences.

The offences are.....

- (a) Waging war against the state (Sec.121)
- (b) Abetting waging war against the state (Sec.121)
- (c) Attempt waging war against the state (Sec.121)

- (d) Abetting mutiny actually committed (Sec.132)
- (e) Giving false evidence because of which a person suffers death (Sec.194)
- (f) Murder (Sec.302)
- (g) Abetment of suicide of a minor (Sec. 305)
- (h) Abetment of suicide of a insane person (Sec.305)
- (i) Abetment of suicide of a intoxicated person (Sec.305)
- (j) Abetment to murder by a life convict who succeed only in causing hurt (Sec.307)
- (k) Kidnapping for ransom (Sec.364-A)
- (l) Dacoit with murder (Sec.396)

Constitutional validity of Death Penalty

In the case of *Jagmohan v. State of U.P.*, 1973 SCC (Cri.) 169, the question of constitutional validity of death punishment was challenged before the Supreme Court of India, it was argued that the right to live was basic to freedom guaranteed under Article 19 of the Constitution. The S.C. rejected the contention and held that death sentence cannot be regarded as unreasonable per se or not in the public interest and hence could not be said to be violative of Article 19 of the Constitution.

Death sentence is the exception while life imprisonment is the rule. Therefore, by virtue of Section 354(3) of the Cr.PC., it can be said that death sentence be inflicted in special cases only. The apex Court modified this terminology in *Bachan Singh v. State of Punjab*, AIR 1980 SC 898, and observed – “A real and abiding concern for the dignity of human life postulates resistance to taking a life through law’s instrumentality. That ought to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed...”

Rarest of rare cases

To decide whether a case falls under the

category of rarest of rare cases or not was completely left upon the Court’s discretion. However the apex Court laid down a few principles which were to be kept in mind while deciding the question of sentence. One of the very important principles is regarding aggravating and mitigating circumstances. It has been the view of the Court that while deciding the question of sentence, a balance sheet of aggravating and mitigating circumstances in that particular case has to be drawn. Full weightage should be given to the mitigating circumstances and even after that if the Court feels that justice will not be done if any punishment less than the death sentence is awarded, then and then only death sentence should be imposed.

Conclusion

In view of the present deteriorating law and order situation in India, total abolition of death penalty would mean giving a long rope to dangerous offenders to commit murders and heinous crimes with impunity. When a clemency petition is rejected by the President, it is submitted, it shows that the whole nation and its all institutions are, though indirectly, in favour of executing that particular offender as President acts on the aid and advice of Council of Ministers and this Council of Ministers represents all Indian citizens’ voice. Moreover, the present direct consensus of the public is also in favour of retention of death penalty as evident from the raising demands of awarding death penalty for rapists and spurious drugs sellers by several feminist and social activists, legal luminaries and parliamentarians. Therefore, keeping in mind the maxim ‘*Salus populi est suprema lex*’ proper approach to issue, perhaps, will be that death penalty must be retained for incorrigibles and hardened criminals but its use should be limited to ‘*rarest of rare*’ cases. The Courts may make use of death penalty sparingly but its retention on the statute book seems necessary as a penological expediency.