
CAPITAL PUNISHMENT: THE HIGHEST FORM OF PUNISHMENT FOR A CRIME

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ABSTRACT

Capital Punishment is the highest form of punishment awarded in any country to maintain the law and order. Instead of focusing on the convicted, we should concentrate on preventing the crime that may happen in future. Further, we should adapt a different approach which is Reformative approach, so that one could improve himself and can leave peacefully thereafter.

There are various countries which abolished death penalty but still there are some countries which awards death sentence following different types of death punishments.

There is no credible evidence which shows that the death penalty deters crime more effectively than long terms of imprisonment. States which have death penalty laws do not have lower crime rates than the states without such laws. The criminal poses a threat to society, but he too is a part of that society and therefore should be reformed, not thrown out.

Introduction

Capital punishment, also known as *death penalty*, is the practice of executing the offender who is sentenced to *death* after *conviction* by a court of law for a criminal offense. The *sentence* ordering that an offender is to be punished with death penalty is known as a *death sentence*, and the act of carrying out the death sentence is known as an *execution*. A prisoner who has been sentenced to death after conviction and awaits execution commonly referred to as being "on death row".

Historical Background of Capital Punishment in India

The background of the Death Penalty can be traced back to 18th Century B.C. in the reign of King Hammurabi of Babylon, where the death penalty was codified for 25 different crimes. The death penalty have also been outlined in the Draconian Code in Athens, which made the death Penalty compulsory for all the types of crimes committed.

The criminals were made to serve the punishment by means as burning alive, drowning, beating to Death, impalement, etc. It was in the 10th Century A.D., that hanging became a common method of execution in Britain. In the subsequent century, under the reign of William-the-Conqueror, it was not allowed to hang the convicted people except during wars. With the passage of time, even Britain started to refrain from passing the death sentence.

Countries with no death penalty have a more lesser number of murders taking place in comparison to the countries which have the death penalty as the punishment. There has been an increase in the worldwide acceptance of the notion that Death Penalty is inhumane, cruel, harsh and a very degrading punishment. It is entirely dangerous and endorses violence, with a failed attempt of delivering public safety or of deterring violent crimes. All the major cultures, religions, and regions have abolished the death penalty. As per the statistics given by the United Nations Organization, more than 150 countries no longer have abolished it.

Does Capital Punishment violate Fundamental Rights of that Individual?

Now, a question may arise that whether Capital Punishment actually violates the fundamental rights of the convicted person who is sentenced to death penalty.

For that, we have to look into the fundamental rights written in the constitution of India. Article 21 of the Indian Constitution guarantees right to life and personal liberty to all the people

(citizens and non-citizens) which also includes the right to live with human dignity. No person shall be deprived of his or her right except according to the procedure established by law. This indicates that state may take away even the right to life in the name of Law and Public Order following the procedure established by law.

In the case of **Jagmohan Singh v. State of U.P., A.I.R. 1973, SC, 997** – The constitutional validity of death penalty came before the bench. It was argued that a death penalty deprived a citizen of all the freedoms under article 19(1) and hence is constitutionally impermissible. **Justice Palekar** observed that the court would assume for the purpose of the present argument that the right to live was basic to the freedom mentioned in article 19 and that no law could deprive a citizen of his life unless it was reasonable and in the public interest and concluded that law was reasonable and in public interest.

In case of **Bachan Singh v. State of Punjab, AIR 1980 SC 898** - The majority decision in Bachan Singh's case upheld the constitutionality of death sentence but held that it should be imposed only in "rarest of rare" cases. The "special cases" and "special reasons" substantial to justify the death penalty and required to sentence to death for proven offences.

Rarest of rare formula – The five aspects to be taken into consideration in the establishment of rarest of rare case are :-

1. Manner of Commission of murder.
2. Motive for Commission of murder.
3. Social abhorrent nature of crime.
4. Magnitude of crime.
5. Personality of victim of offence.

In the case of **Vatheeswaran V. State of Tamil Nadu (1983)2 SCC 68**, the issue of case was whether delay in the execution of capital punishment violates article 21 of the Indian Constitution and whether on this ground, death sentence may be replaced by life imprisonment. The Court held that delay in the execution of death penalty is unjust, unfair and unreasonable, which also deprives the convict of his basic human rights, guaranteed under Article 21 of the Indian Constitution i.e. right to life and personal liberty.

Do Countries with Death Penalty have Decreased Crime Rates?

Most people believe that death penalty would stop criminals from repeatedly committing crime. They also think that threat of death sentence will put off other people who may be considering committing serious crimes.

“An eye for an eye makes the whole world blind” – Mahatma Gandhi

There is no credible evidence which shows that the death penalty deters crime more effectively than long terms of imprisonment. States that have the death penalty laws do not have lower crime rates than states without these laws. And states that have abolished capital punishment show no significant changes in crime rates.

The death penalty has no deterrent effect. Claims that any such execution deters a certain number of murders have been thoroughly falsified by social science research. People usually commit murders either in the heat of passion, or under the influence of alcohol or drugs, or because they are mentally ill, giving no thought to the possible consequences of their acts. The few murderers who plan their crimes, as in the case of professional killers, intend and expect to avoid punishment altogether by not getting caught.

Crimes Punishable by Death Penalty in India

1) Aggravated Murder

Under Article 302 of the IPC, 1860, murder is a punishable offense. Similarly, in ***Bachan Singh Vs State of Punjab(1980)***, The supreme court of India held that death penalty can only be called constitutional when it is applied as an exceptional penalty in the rarest of the rare cases.

2) Terrorism-Related Offences

The usage of any explosive or such object which is likely to endanger the lives of people or cause serious damage to property is an offense punishable by death under Section 3(b) of the Explosive Substances (Amendment) Act, 2001.

3) Aggravated Rape

(i) A rapist who, during the course of the crime, causes death of the victim or causes victim to be left in a “persistent vegetative state” shall be punished by death under the Criminal Law

(Amendment) Act, 2013.

(ii) After the Nirbhaya Gang Rape case, in 2012, the repeated gang rapes were also held to be punishable by death under Section 9 of the Criminal Law (Amendment) Act 2013.

(iii) The rape of a 8 year old Kashmiri girl, Asifa Bano, caused the amendment in the Criminal Law (Amendment) Ordinance, 2018 which said that the death penalty may be imposed for the rape of any girl under 12 years of age, and the minimum punishment is 20 years in prison, along with a fine.

4) Treason

The act of Waging war or attempting to wage war against the government of India or assisting officers, soldiers, or members of the Navy, Army, or Air Forces in committing mutiny are punishable by the death penalty (under section 121 and 136 of the Indian Penal Code, 1860).

5) Kidnapping

The unlawful detaining or kidnapping of a person is punishable by death even if the kidnapper only threatens to harm the victim or actually does so (under section 364 A of the IPC).

Modes of Death Penalty around different countries

The sentence that someone should be punished with death is referred to as a death sentence and the act of carrying out the sentence is known as an execution.

There are various modes of death penalty around various countries in the world.

Most commonly used death sentences are :-

1. Lethal injection

Carried out in: China, Vietnam, USA

The lethal injection generally consists of three chemicals: sodium pentotal (an anaesthetic), pancuronium bromide (used to paralyse prisoner) and potassium chloride (used to stop the heart of prisoner).

Due to the executions by inexperienced prison staff, the executions of some of the men and women sentenced to die by lethal injection haven't run 'smoothly'. In March 2014 Dennis McGuire, an Ohio death row inmate, took 26 minutes to die by lethal injection as he lay on with his mouth opening and closing.

2. Electrocution

Carried out in: USA

After the prisoner is strapped to a chair, a metal cap-shaped electrode is attached to their scalp and forehead over a sponge moistened with saline. The prisoner is then blindfolded. A voltage of electricity between 500 and 2000 volts, which lasts for about 30 seconds, is repeatedly administered until the prisoner is declared dead.

3. Hanging by neck till death

Carried out in: Afghanistan, Bangladesh, India, Iran, Japan, Kuwait, Malaysia, Nigeria, Palestinian Authority, South Sudan, Sudan.

It is the most commonly used method of death penalty. In some countries, prisoners are weighed a day before their execution to determine the length of 'drop' necessary to ensure a quick death. If rope is too long, the inmate could be decapitated, and if it is too short, then death by strangulation could take as long as 45 minutes. Some countries, such as Iran, use cranes to publicly hang the convicted prisoners.

4. Shooting

Carried out in: China, Indonesia, North Korea, Saudi Arabia, Taiwan, Yemen.

Execution by the firing squad typically involves the prisoner being bound to a chair (sitting) or a pole (standing), with a black hood pulled over their head. Up to 20 feet away, the shooters, usually more than five, aim for the prisoner's heart.

If the shooters miss their target, by accident or intention, the prisoner can bleed to death slowly. This is often considered as a harsh form of punishment.

5. Beheading

Carried out in: Saudi Arabia

Beheading, a form of execution, is common in Saudi Arabia. A historic form of execution, beheading is carried out in public using a sword, usually in a town square or close to a prison. The convicted, who is blindfolded, handcuffed and often given a sedative, typically wears white – as does the executioner.

Countries that have abolished death penalty

According to the Death Penalty Information Center, over 70% of the world's countries have abolished capital punishment in law or practice.

Amnesty International states that at the end of 2020, 108 countries have abolished death penalty in law for all crimes, and 144 countries have abolished the death penalty in law; 28 countries have effectively abolished the death penalty by not executing anyone in the past 10 years, and 55 countries still retains the death penalty for ordinary crimes.

According to Amnesty International, there were 1480 death sentences in 54 countries globally. Furthermore, there were around 483 recorded executions in 18 countries. The majority of these executions took place in China, Saudi Arabia, Iraq, Iraq and Egypt.

If the death penalty is legal as a form of ultimate punishment for worst crimes in these countries, does not mean that everyone who resides in the applicable countries, nor the government officials who make decisions about the death penalty, are in support of capital punishment. Whether or not you agree with the death penalty as a consequence of serious criminal activity, capital punishment remains legal in the 55 countries worldwide. Of the 55 countries that still retain the death penalty, some significant ones include Bangladesh, China, Egypt, Ethiopia, India, Indonesia, Iran, Japan, Saudi Arabia, South Korea, Sri Lanka, Taiwan, and the United States.

Conclusion

The death penalty exists because some crimes shock the conscience of the society and therefore deserve to be punished harshly. However, this harsh punishment cannot take away any offender's life. The criminal poses a threat to society, but he too is a part of that society and therefore should be reformed, not thrown out.

Here's where the problem lies. In order to bring any legal change, there first has to be a social change. With the society still believing that taking away someone's life is justified in some

cases, abolishment of the death penalty doesn't seem viable in the near future. In order to bring this change, the society needs to be made aware of the shades of criminology and penology.

A common man measures every policy's worth in terms of its effect on him, and so he supports the death penalty because it makes him feel more secure. In order to change his thought, he needs to be shown a bigger picture that is more important and is broader in its aspect, which comes through the study of the fields of criminology and penology.

In the cases where the execution gets delayed, the convict, during the time of his waiting for his execution gets more terrorized which is considered as inhumane and degrading.

The issue of death penalty is aggressively debated and has attracted the general public, the government as well as the non- governmental organizations in India. Though India has approved most of the international conventions based on Human rights, still we have Capital punishment in our statutes. Our Judiciary says that capital punishment should be imposed only in the rarest of the rare cases. The Article 72 of the Constitution of India grants the President with powers such as to grant pardon etc. and to suspend, remit or commute sentences under certain circumstances.

Because of the arbitrary decisions, basic rights of accused are violated in inhumane and brutal manner which are against National Human Rights principles which envisaged in the Constitution. The facts not at all prove that imposing the death sentence has reduced the crime rates in the contemporary society; rather it has failed as a deterrent. Life imprisonment is enough for deterrence as well as for the mental metamorphosis of a human being.