

Death Penalty: Justified or not?

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Abstract-

Death sentence as a punishment has been subject to controversies since long. The moral and humanitarian questions attached to death sentence. Capital punishment or death sentence being one of the harshest punishment known to man has taken a gradual humanised change over the years. The question that is constantly debated upon is that when should capital punishment be awarded or should it be awarded in the first place ? what sort of crime or offence would demand a capital punishment ? should a serial killer with in conscience be incriminated ?

Key Words- Death sentence, Punishment, Humanitarian, Gradual Humanised, Award, Serial Killer, Incrimination.

According to Denial Webster-“ *The law is made to protect the innocent by punishing the guilty.*” Capital punishment is the execution of a person by the state as punishment for a crime. In India, capital punishment or death penalty is a legal order passed by a court of law to execute a person held guilty of a rarest of rare crime. It is the most deterrent and horrible. The first known codification of the death penalty was in the 18th century BCE, in the code of Babylonian King Hammurabi.

Methods of Punishment- Methods of punishment can be divided into two portions. Stoning was the earliest form of execution. As history progressed more involved methods of execution were devised. Hanging by strangulation became a method of choice throughout much of the civilized world. In the middle age, executions became a sort of ceremony. It involved the whole town in a form of brutal entertainment – beheadings by guillotine, hanging on the gallows, firing squads, electric chairs, gas chambers and our most modern, the lethal injection are forms of capital punishment. Some other methods were adopted for death penalty, like- flogging, mutilation, branding, pillory, banishment.

Theories of Punishment- There are four theories in the reference of crime/offence. Which are known as- retributive theory, deterrent theory, preventive theory, reformatory theory.

- (A) **Retributive Theory-** The theory is based on ‘lex talionis’ which means ‘an eye for an eye rule’. This theory is also known as the ‘theory of vengeance’. The concept of retributive justice can be best identified as the form of justice which follows these three principles-
- Those who commit wrongful deeds or acts, paradigmatically serious crimes morally ought to have a proportionate punishment.
 - That morally good acts but good deeds without locus to any other users that might arise, if some legitimate person gives them the deserved punishment.

- c) That it is not permissible morally to punish an innocent intentionally or to inflict excessive punishments on wrongdoers.

The retributive theory has two very important doctrine-

- a) **Societal personification-** This doctrine signifies that in society, every time an atrocious crime of an extreme nature is perpetrated, that crime undertakes the form of a natural being and society behaves in a united manner to make sure justice is done.
- b) **Correctional vengeance-** This doctrine refers to when in a fit to get justice the society starts to pressures the authorities or the system to impose vengeful punishments upon the accused of creating a restrictive measure for future generations.
- (B) **Deterrent Theory-** The expression 'deter' insinuates to refrain from performing any wrongful deed or acts. The object of this theory is to prevent the criminals from attempting any crime or repeating the same crime in future. So, to set or establish an example for the individuals or the whole society by punishing the criminal with the objective of creating a fear of punishment, therefore, it may result in the people of the society will be or may be aware of the severe punishments and because of this fear of punishment may stop from committing any kind of crime or wrongful act.
- (C) **Preventive Theory-** The preventive theory of punishment pursues checks and stops prospective crimes from **even** happening by disabling criminals meaning transforming the criminal, either permanently or temporarily. Preventive punishment follows three most important techniques-
- a) by creating the fear of punishment
 - b) by disabling the criminals from committing any other crime either permanently or temporarily
 - c) by reformation of criminals to a sober resident of the society.
- (D) **Reformative Theory-** The reformative theory postulates that through the strategy for individualization and subjecting of the criminals to change through discipline. The intention of the law is always to be dynamic in nature and never to be static. The reformative techniques misconduct, first time criminals and female criminals.

Death Penalty and Legal Provisions- According to Amnesty International, human rights NGO, death sentence is **retained** by the legal system of only 58 countries at present while nearly two-thirds of the countries of the world (195) have either abolished it or have not used it for at least 10 years. Most of the countries, are in the western world while over 60 per cent of the world's population lives in countries where death sentence is still legal.

Since more than half of the world's countries have now abolished the death penalty on human grounds.

India to many consider such a reform. In 1980 the Supreme Court ruled that the death penalty under section 302 of the Indian Penal Code is constitutionally valid and is not an reasonable cruel or unusual punishment. Indian Penal Code, 180 section 121, section 132, section 194, section 195A, section 302, section 305, section 307, section 364A, section 376 A, section 376AB, section 376 DB are provided death penalty. There are some other acts with death penalties provisions, which are- Narcotic Drugs and Psychotropic Substances Act, 1985, Protection of Children from Sexual Offences Act, 2012, Terrorist and Disruptive Activities (Prevention) Act, 1985.

According to the judges view the death sentence should be awarded only in rare cases.

Arguments in favour of Death Penalty-

- a) It's the need of time. Crimes has increased rapidly. That's why 2018 criminal amendment added some more section in IPC, 1860 which is included death penalty as are section 376A, section 376 DB.
- b) It's necessary for safety in favour of person, property, nation and also the situation of law and order/peace.
- c) The capital punishment is the only method to get rid of the anti-social elements and hardened criminals.
- d) 2016 Law Commission said death penalty is must in two kind of cases- terrorist attacks are getting common day by day. We need to look after the national security. Sedition is another ground proposed by commission.
- e) Criminals are afraid of death sentence which definitely reduces the number of offences.
- f) Terror of death sentence keeps in tact the dignity and supremacy of courts and punishment system of the society.
- g) *According to Kant- " It is better if one man dies for the sake of society as a whole. In the absence of virtues, justice and righteousness, the human life will be without any value.*
- h) *According to Stephen- " Death sentence is the only effective remedy to debte the criminals."*
- i) *Lord Goddard- " Murderes should be destroyed".*

Arguments against death penalty-

- a) It is an argument given by those, who are in favour of abolishment of death sentence- offence may be hated, offender should not be hated.
- b) In welfare states and democratic nations death sentence is barbarity.
- c) 'give and take life' is the act of almighty God. Human beings should not interfere in the work of nature.
- d) It is against the reformatory theory of punishment Mahamta Gandhi Strongly favoured this theory and said –“An eye for an eye will make the whole world blind”.
- e) Criminal dies but crime alive.
- f) *J.L.Nehru said- " offence is not committed due to sin, but it is the result of deficiency of opportunities environment and social conditions".*
- g) *Justice Krishna Iyer- " The criminal should be trated as a patient in the hospital and not in the jail".*
- h) Our *economic*, social and psychological conditions are also responsible for the crime committed by the offender.

State vs Ram Singh and another SC no 114/2013- This caae is also known as Nirbhaya Case. This case is indeed the first and formost case while talking about retributive justice in India. In this judgement court sentenced death penalty to four out of six accused involved in the extremely heinous, gruesome and moralty unthinkable crime, much to the delight of the society.

D K Basu vs State of West Bengal(AIR 1997 SC 610)- The victim was kept under custody and **therefore**, the apex court held that a victim, has every right to get compensation under article 21 of the constitution as her right to life has been not honored by the officer of the state.

Mithu Singh vs State of Punjab(AIR 1983 SC(473)- The Supreme Court has held section 303 Indian Penal Code, 1860 as unconstitutional because the section has made the procedures laid down in section 235(2) and 354(3) of Criminal Procedure Code for trial meaning less.

Mohammad Ajmal Amir Kasab vs State of Maharashtra(2012) 9 SCC 1- Initially the trial court awarded the death penalty to Ajmal Kasab. After the judgment of trial court Kasab challenged this judgment in High Court but the High Court rejected the plea of Kasab and upheld the death penalty. Finally, Ajmal Kasab approached to Supreme Court to cancel his death penalty but the bench of Supreme Court upheld the judgment of the lower courts on 29 August, 2012. On 5 November, 2012 then President of India Mr. Pranab Mukherjee rejected the 'Mercy Petition' filed by Ajmal Kasab. Finally, on 21 November, 2012 Ajmal Kasab was hanged to death at Yerwada jail in Pune in a complete secrecy.

Yaqoob Memon vs State of Maharashtra(30 July 2015) Writ Petition(criminal) no.129 of 2015 – This case is also known as 'midnight hearing case'. Yaqoob Memon was found guilty of criminal conspiracy for carrying out terrorist activities and murder, aiding and abetting terrorist attacks. He was also held liable for illegal possession and transport of arms and ammunition with a view of endangering his life. And for all these crimes he was punished with severe imprisonment for 14 years and 10 years followed by a death sentence.

Jagmohan Singh vs State of Uttar Pradesh 1973 SC 947- The five judge bench of Supreme Court, by a unanimous verdict, upheld the constitutional validity of death penalty held that capital punishment was not violative of Article 14, 19 and 21. In this case the validity of death sentence was challenged on the ground that it was violative of article 19 and 21 because it did not provide any procedure. It was contended that the procedure prescribed under Cr.P.C. was confined only to findings of guilt and not awarding death sentence. The Supreme Court held that the choice of death sentence is done in accordance with the procedure established by law. It was observed that the judge makes the choice between capital punishment or imprisonment of life on the basis of circumstances and facts and nature of crime brought on record during trial.

Macchi Singh vs State of Punjab AIR 1983 SC 957- laid down the broad outlines of the circumstances when death sentence should be imposed. Justice Thakkar speaking for the court held that five categories of cases may be regarded as rarest of cases deserving extreme penalty. They are-

- 1) Manner of commission of murder
- 2) Motive
- 3) Anti-social or socially abhorrent nature of the crime
- 4) Magnitude of the crime
- 5) Personality of victim of murder

Triveniben vs State of Gujrat AIR 1989 SC 142- The Supreme Court asserted affirmatively that the constitution does not prohibit death penalty.

Conclusively, death penalty is legal and constitutionally valid in India. Section 53 of Indian Penal Code, 1860 include punishment kinds, which are- Death Penalty, Life Imprisonment, Imprisonment- Simple and Regorious, Forfieture of Property and Fine.

Reference-

- a) P. Bhattacharya : Indian Penal Code, 1860
- b) Jai Narayan Pandey : Constitution of India
- c) Ernest Raymond : We the accused
- d) Supreme Court Cases
- e) All India Reporter