



Capital punishment in India: A legal analysis

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Abstract

Capital punishment, often known as the death sentence, is a highly divisive and ethically fraught issue that has been debated for centuries. The procedure entails inflicting the ultimate sentence, namely the execution of a person found guilty of a serious crime, often murder. While capital punishment has been used in numerous civilizations throughout history, its administration and acceptability vary greatly among nations and cultures. Capital penalty supporters say that it serves as a powerful deterrent, discouraging future criminals from committing horrific actions by instilling dread of the ultimate consequences.

Opponents of death punishment, on the other hand, argue that it violates the fundamental human right to life and is a type of harsh and barbaric punishment. They argue that the possibility of erroneous convictions, irrevocable blunders, and inherent biases in the criminal justice system render the death sentence irreversible and unfair. This article will look at the various aspects of death punishment, including its definition, theories, national and international viewpoints, and reasons for and against its use.

Keywords: Capital punishment, debated for centuries, future criminals

Introduction

The word "Crime" has been adopted by the people from the Latin word "cerno" which means that I take decision, I judge and give judgement. The original meaning of the Latin word crimen is "to charge" or "to cry with grief". There is a "krima"(kpiua)word which belongs to American Greek mix language from which the Latin cognate has been taken, precisely translate that a mistake committed intellectually an offence against the community instead of committing wrong act committed against a private person or moral values. Crime means an act which is against the laws of the land and on doing such act the person who has done that becomes liable to be punished according to the provisions provided in the relevant laws of land. In other words the crime denotes an act which is against the law as well as liable to be punished by the Government of concerned country or state. Although, the word crime does not have any specific and universally known and accepted definition yet the crime has been defined by different people in different ways coming out with a common meaning that the crime is an act which declared wrong as well as liable to be punished by the law. The crime is also known as offence and the same is harmful not only to an individual but also to the entire society in any state. The commission of such kinds of acts is forbidden and punishable according to the law of the state for example Murder, Rape and Theft etc. are the acts which comes in the category of offence or crime and commission of these act's is forbidden as well as punishable by the law of the state.

Capital punishment, also called death penalty, execution of an offender sentenced to death after conviction by a court of law of a criminal offense. Capital punishment should be distinguished from extrajudicial executions carried out without due process of law. The term death penalty is sometimes used interchangeably with capital punishment, though imposition of the penalty is not always followed by execution (even when it is upheld on appeal), because of the

possibility of commutation to life imprisonment. Proponents of capital punishment argue that it serves as a powerful deterrent, preventing potential criminals from committing heinous acts by instilling fear of the ultimate consequences. They believe that by executing convicted murderers, society upholds justice and protects innocent lives. Supporters also claim that capital punishment provides closure to the families of victims, offering them a sense of retribution and justice that no other punishment can deliver.

Brief history of capital punishment

The death penalty was established in the Eighteenth Century B.C. in the Code of King Hammurabi of Babylon, where it was codified for 25 different crimes. The death penalty is also outlined in Athens' Draconian Code, which made the death penalty mandatory for all types of crimes committed. The criminals were sentenced to death by burning alive, drowning, beating to death, impalement, and burning alive. Hanging became the standard method of execution in Britain in the tenth century A.D. Except during wars, it was not permitted to hang people in the following century, during the reign of William the Conqueror.

Theories of punishment

There are different kinds of punishment that a person can face. These are

▪ Deterrent theory

Punishment is designed such that it can educate the criminals. Thus, this can reform the criminals that are subjected to this theory. This is done by creating a fear that the punishment will be repeated.

▪ Retributive theory

This theory insists that a person deserves punishment as he has done a wrongful deed. Also, this theory signifies that no person shall be arrested unless that person has broken the law.

▪ Preventive theory

This theory has used a restraint that an offender if repeats the criminal act is culpable for death, exile or imprisonment. The theory gets its importance from the notion that society must be protected from criminals. Thus, the punishment here is for solidarity and defense.

▪ Reformatory theory

The reformatory theory was born out of the positive theory that the focal point of crime is positive thinking. Thus, according to this theory, the objective of punishment needs to be reformation by the offender.

National and international perspective

National Perspective

After these theories even the real difference was not coming into hands and our country after independence believed in constitution and In *Jagmohan Singh v. State of Uttar Pradesh*, the constitutionality of the death punishment was affirmed. It was argued that the death penalty was unconstitutional since no method for giving the death sentence was established, and that the procedure under the CrPC was limited to determinations of guilt. The court found that the decision to sentence someone to death is made in line with the law, and that the judge makes the decision between capital punishment and life imprisonment based on the circumstances, facts, and nature of the offence as presented at trial. The bench unanimously determined that capital punishment did not violate Articles 14, 19, or 21.

Bachan Singh v. State of Punjab and Machhi Singh v. State of Punjab are the key cases on when the death sentence should be applied. In the former, the Supreme Court reversed its previous decision in *Rajendra Prasad*, concluding that the death sentence is not irrational as an alternative punishment for murder and hence does not violate Articles 14, 19, and 21 of the Indian Constitution. In this case, the rarest of rare doctrine was established, with the death sentence being enforced only in the "rarest of rare circumstances." The later decision summarised the former and established the broad contours of the extraordinary circumstances under which the death penalty should be inflicted. Considering the nature of the crime and the circumstances of the criminal, and taking into account all aggravating and mitigating circumstances. As a result, the resulting 'rarest of rare' theory provides as a guideline for imposing the death sentence. In *Bachan Singh*, the Court acknowledged that each case is unique and must be resolved based on its own facts and circumstances. As a result, the Court refused to establish any classification of the kind of circumstances that might warrant the death punishment. And judges were instructed to decide whether a case is the rarest of the rare, taking into account judicial principles drawn from a study of precedents about the types of aggravating and mitigating elements. The imbalance in sentencing caused by judges' preferences, the criminal justice system is unable to deal with all offences fairly. Such an imperfect sentencing system would be legally arbitrary since it would treat similarly situated prisoners differently, i.e., it would not give people convicted of identical offences with equal protection with regard to their right to life.

International perspective

Although many countries have made such abolitions, provisions relating to the death penalty are not prohibited by international law, such as the *International Covenant on Civil and Political Rights and other universal international treaties*. Noting further that as such conventions and treaties become more widespread at the international level, other instruments such as the *Second Optional Protocol and Protocol No. 6* to the International Covenant on Civil and Political Rights will also become available should. European Convention for the Protection of Human Rights Human rights. include human rights and fundamental freedoms, as well as those with few ratifications and those aimed at abolishing the death penalty. According to the international legal paradigm, Article 6 of the ICCPR is the most important and clear provision regarding the death penalty. The clauses set out in the Related Clauses state that States that have not yet abolished the death penalty are obliged to act in accordance with the laws in force at the time the crime was committed, and to act contrary to the death penalty. The provisions of this Covenant and the Convention on the Prevention and Punishment of Genocide Crimes. Although the article provides for the application of the death penalty by ratifying states, it also imposes a number of severe restrictions. At the international level, the issue of capital punishment and conviction has been transferred to the realm of human rights. This is because death sentences and convictions must be carried out within a country's borders, regardless of considerations in the country's criminal justice system. This is further supported by his HRC decision in *Judge Roger v. Canada*. The ruling states that states opposed to the death penalty have an obligation to allow such situations to arise, and that the same is required in their petitions. Such postponements and decisions by the commission further divided opinion between those in favor of abolition and those in favor of continuation.

Arguments in favor of capital punishment

- **Deterrence:** One of the main arguments in favor of the death penalty is that it can deter would-be criminals. Proponents argue that the fear of the death penalty can deter people from committing violent crimes, especially murder. They believe that the existence of harsh penalties is a powerful deterrent and protects society by deterring potential criminals.
- **Retribution and Justice:** Proponents of the death penalty argue that it is a form of retribution and justice for victims and their families. They believe that certain crimes, especially murder, deserve the highest punishment. The death penalty is seen as an appropriate response to the seriousness of such crimes, allows for the separation of the victim's family, and upholds the principle of justice by ensuring that the punishment is commensurate with the crime.
- **Allocation of costs and resources:** Proponents of the death penalty argue that the death penalty could be cheaper than a long prison sentence. They argue that imprisoning dangerous criminals for life could cost the state enormous financial losses. The death penalty is seen as a more efficient way of allocating resources and directing them towards other societal needs, such as crime prevention programs and victim support services.

- **Public opinion and democracy:** Proponents of the death penalty often point out that its implementation has the support of a significant segment of the population. They argue that the use of the death penalty reflects the will of the people and preserves democratic values. Proponents believe that the death penalty should be kept as a legitimate option because it reflects the wishes and expectations of the majority.
- **Closure and Emotional Satisfaction:** Another argument by proponents is that the death penalty brings an end and emotional satisfaction to the victim's family. They believe that witnessing the execution of a convicted felon gives them a sense of justice, that those responsible are being held accountable, and that grieving families can move on.

Arguments against capital punishment

- **Human rights:** Opponents say the death penalty violates the fundamental right to life enshrined in various international human rights treaties. They believe that all human beings have an inherent right to life, regardless of their actions, and that the state should not have the power to immediately take away this right.
- **Irreversible error:** The risk of wrongful conviction is a major concern in death penalty cases. History is filled with examples of innocent people being sentenced to death and later proven innocent. A final decision of the death penalty means that the wrongs committed cannot be undone, resulting in the irreparable loss of innocent lives.
- **Ineffectiveness as a deterrent:** Critics argue that the death penalty is not an effective deterrent to crime. The assumption that fear of death deters people from committing serious crimes is not supported by conclusive evidence. They argue that a focus on more comprehensive crime prevention strategies and rehabilitation programs would be more effective in reducing crime rates.
- **Arbitrariness and Prejudice:** There are concerns about the potential for arbitrariness and bias in the use of the death penalty. Factors such as socioeconomic status, race, and the quality of legal representation can have a significant impact on the likelihood of being sentenced to death. Opponents argue that the death penalty is unfairly applied to marginalized populations and perpetuates inequalities within the criminal justice system.
- **Rehabilitation value:** Critics believe in its rehabilitative potential and ability to rehabilitate even the most heinous criminals. They argue that societies should prioritize efforts to rehabilitate individuals and reintegrate them into their communities rather than resorting to the death penalty, which denies them opportunities for rehabilitation and personal growth.
- **International trend towards deprecation:** Momentum for the abolition of the death penalty is growing worldwide. Many countries have abolished the death penalty as a human rights violation. Opponents argue

that the international consensus on the death penalty reflects a widespread understanding that it is an outdated and inherently flawed practice.

- **Moral and Ethical Considerations:** Opponents of the death penalty argue that murder as a form of punishment violates basic moral principles. They argue that society should not tolerate the deliberate killing of human lives, even for heinous crimes. They believe in the inherent value of human dignity and advocate for more humane alternatives that respect that principle.

Conclusion

The introduction of capital punishment in a legal system often involves complex legal and ethical considerations. Many countries have abolished capital punishment, either through legislative reforms or judicial rulings, deeming it incompatible with their values and principles. In contrast, some nations retain and actively practice capital punishment, viewing it as a necessary tool to maintain law and order. The global perspective on capital punishment has undergone significant shifts over time. International human rights organizations and movements have advocated for the abolition of the death penalty, asserting that it violates the right to life enshrined in various international conventions. As a result, numerous countries have adopted moratoriums on executions, with a growing trend towards the complete abolition of capital punishment.

In conclusion, capital punishment remains a highly contentious issue with passionate arguments on both sides. It raises profound questions about justice, human rights, and the role of the state in administering punishment. As societies continue to grapple with these complex moral and legal dilemmas, the debate surrounding capital punishment is likely to persist, influencing the future of criminal justice systems around the world.

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