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# Capital Punishment - Pros and Cons -When and Why it can be Justified?

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## ABSTRACT

*The concept of capital punishment is most debatable topic on the humanitarian grounds. The human rights have always criticised it stating as barbaric and brutal. But the other sects support it believing on the theory an eye for an eye and a tooth for a tooth. It is an age old concept, since ancient time it is being practiced. The most active use of capital punishment can be witnessed in monarchy and dictatorship. The convicts were brutally punished when they were sentenced capital punishment in ancient times. With the modernisation the concept of capital punishment have become less brutal.*

*The practice of sentencing death to convict still continues but the methods adopted are less painful and not barbaric. Though the capital punishment is banned by more than hundred countries still some known and developed countries use it as precedent. The grant of capital punishment have both pros and cons. The question is if the capital punishment is weigh on the humanitarian grounds then what about the justice that victim deserves? Justice cannot be denied to the just to protect the rights of unjust.*

*The article deal with the concept of the capital punishment around the world and also capita offence. It also throw the light on the Indian judgments which talks about the principle of rarest of the rare case.*

## I. INTRODUCTION

Capital punishment has always been the subject for debate. It is challenged on the humanitarian ground on the behalf of the criminal and justice on behalf of the victims. The concept of death sentence is practiced since primitive ages but then it was held as the law of the land and was unquestionable unlike today. The developed societies grant human rights which include right to life as well.

The quantum of punishment is decided on the offence committed. Modern era society believes in reformation, rehabilitation and resocialising the criminals. The death sentence is granted in the rarest of the rare case in the present era. But subjects of the society will become recreant if

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law of retaliation (lex talionis) is suppressed by law of morality. The law is sovereign therefore unjust cannot be done to just.

## II. CAPITAL PUNISHMENT

The severity of crime in itself justifies the punishment of the offender. The amount of brutality the victim suffers, with same rage the offenders should be punished. Capital punishment is the integral part Indian and its justification in itself to the barbarous subjects. The theory has equal benefits and detriments. It is debatable from both sides of the coins.

There are various methods in which capital punishment is executed. Hanging, shooting, beheading, lethal injection, electrocution, gas inhalation are methods which are followed in modern era. These are termed as most humane unlike the executions of the ancient times.

The countries impose the capital punishment against heinous and brutal crime committed and penalty other than this for such barbarous crime would be disproportionate. Though it is abolished by many countries, there are some countries still imposing capital sentence. Countries like, India, USA, China, Saudi Arabia still practice it.

The severe punishment creates a deterrence among criminals. The execution would discourage the commission of heinous crime. Increased in rape cases, murders is the reason of less execution. Imprisonment does not change the tendency of barbarous criminals. The recent example is of execution of rape convicts of Nirbhaya case<sup>2</sup>. There were various changes made in criminal laws in order to make strict rules for brutal convicts and deliver justice to the victim and her family so that it sets an example in the society. The death penalty given in these cases was marked under rarest of the rare case. They were questioned about them being guilty. It is no surprise that they denied. Criminals like such if imprisoned would create much chaos once they are out to society. Terrorists, murderers, rapists do they deserve to be severed under human rights and do lawyers should seek their pardon?

The amount of money spent on managing and securing these criminals is just decimation of the currency. This money is spent by the tax-payers of the country to whom these criminals' causes harm. The money should be utilised for the betterment rather spending on these stubborn-headed brutal subjects. It becomes a burden on the government to maintain them and provide them necessity until they are serving their punishments. Execution is cost-effective.

Justice is not really served if a criminal is not equally punished. The violent criminals who harm society and do not deserve to live in society. It is therefore in the interest of public to

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<sup>2</sup> **Mukesh v. State (NCT of Delhi) [(2017) 6 SCC 1]**

execute these criminals. The capital punishment justifies against cruelty and therefore brutal offenders must be sentenced to death rather than been imprisoned.

In India there are various landmark judgements pronounced justifying the capital punishment. Though India practice execution only in rarest of the rare cases. *Bachan Singh vs State of Punjab*<sup>3</sup> it was held that the death penalty is within the purview of the constitution if provided in the exceptional cases. The principle of the rarest of the rare was mentioned in granting death sentence.

In cases of *Maneka Gandhi vs. Union of India*<sup>4</sup>, it was held that sentencing death should be done in accordance with due process of law. The execution should be on the grounds of just, fair and reasonable. The several constitutional principles for death penalty are:<sup>5</sup>

- Death penalty granted in rarest of the rare in India,
- it should be treated as exceptional punishment,
- Principles of natural justice should be given to the accused.
- The convict has the right to appeal under Article 136 and section 379 of code of criminal procedure in the Supreme Court if death sentence is confirmed by High Court.
- The President under Article 72 and section 433 of code of criminal procedure and Governor of the States under Article 161 and section 434 of code of criminal procedure has discretionary power to grant pardon to the convict for death sentence.
- The accused has the right of prompt and fair trial; and should not be tortured under Article 21 and 22 of the constitution.
- The accused has freedom of speech and expression under Article 19.
- The accused should be presented by the lawyer appointed.

In Unites States, *Kansas v. Marsh*<sup>6</sup> case, United States Supreme Court held that if death penalty is imposed when mitigating factor and aggravated factors is of equal weightage then the order passed is constitutional.

#### CONS OF CAPITAL PUNISHMENT:

There are more than hundred countries who have abolishes the capital punishment referring it

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<sup>3</sup> AIR 1980 SC 898

<sup>4</sup> 1978 AIR 597, 1978 SCR (2) 621

<sup>5</sup> Janhavi Arakeri, Capital Punishment in India, May 27, 2019, <https://blog.ipleaders.in/capital-punishment-in-india/>

<sup>6</sup> 548 U.S. 163 (2006)

infringement of human rights. The capital punishment is detriment to society as killing is considered sin in civilized society. It is considered inhuman and barbaric. The developed societies believe in reforms and rehabilitation.

The crucial reason behind society not accepting capital punishment is also the mistake that judiciary might commit of executing innocent. This belief discourages many societies from executing the capital punishment. Moreover, there can be certain crimes committed in impulse or out of sudden rage. There are cases where the society is familiar, that the crime committed was not intentional.

Moreover, the death sentence clearly violates the natural and fundamental rights of the human. Every person has the right to live and state cannot take away that right. This is the reason why scholars, philosophers advocate against the capital punishment. One cannot destroy if he has no capability of rebuilding it.

In certain states, the death sentence is pronounced even for less severe crimes. The Islamic states are the best example of executing the convicts for minor crimes. Apostasy (abandoning of one's religion) is considered as the crime for which capital punishment is granted in many countries.<sup>7</sup> There are criminals who repent their crimes in the prison and reform themselves for the betterment.

In United States the state focuses on ending life as quickly and as peacefully as possible, but is this process not inhumane? The practice of injecting lethal or giving high voltage electric shocks to end once life amounts to brutality. There are various instances in history where death penalty is carried out by beheading, stoning, crucifixion, electrocution, shooting, or hanging. Saudi Arabia still carries out sword based execution.

The capital punishment causes the re-victimisation<sup>8</sup>. The pain transfers from the victim's family to convict's family by losing their family member for the rest of the life. Execution cannot be justified in no circumstances. An eye for an eye makes the whole world blind. Justifying the death of convict would demand the death of all the offenders though the crime might be not so barbarious. The egalitarian society demands the alternative way to punish the heinous crime executor.

Amnesty International<sup>9</sup> states capital punishment is ultimate denial of human rights. It is the

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<sup>7</sup> Myven, Advantages And Disadvantages Of Capital Punishment (Death Penalty), Soapboxie (November 25, 2016), <https://soapboxie.com/government/advantages-and-disadvantages-of-capital-punishment-death-penalty>

<sup>8</sup> Keith Miller, 18 Advantages And Disadvantages Of The Death Penalty, <https://futureofworking.com/10-advantages-and-disadvantages-of-the-death-penalty/>

<sup>9</sup> Ibd

cold-blooded murder by the state in the name of justice. Justice cannot be defined in terms, justice to one is unjust to another and this is a jurisprudential theory.

The capital punishment is put forth in the state where the government has to maintain the political control. The Islamic State, communist state like China have sentenced death punishment even to children<sup>10</sup>. The organisation states that death penalty is also discriminatory and unjust to certain sects of the people. Mostly the poor sect and the common man suffers from the death sentence. The elite class and the politicians who commits severe crimes easily escape the capital punishment.

It does not create the positive impact on the society and also establishes the revenge factor amongst the community and its subjects. The moral and ethics does not allow the execution on any life. United Nations gives more stress on the abolition of the death penalty. The UN considers it as a violation of human rights and support the reformative theory.

Justice V.R. Krishna Iyer supported the reformative theory and commented in the case of *Rajendra Prasad V. State of Uttar Pradesh*<sup>11</sup> that- the crime must be treated specially and yet not the criminals.<sup>12</sup>

### **III. WHEN AND WHY IT CAN BE JUSTIFIED**

The increase in heinous crime itself justifies the capital punishment. The rape of infants, minor girls, old woman, brutal murder and all such barbaric crime can only be justified by the execution of the convict. The commission of such crime depicts the offender mentality and therefore these offenders are threat to society if they are not executed.

The imprisonment of these offender does not satisfy the pain of the victims and to set an example in the society these offenders deserve capital punishment. Though there are natural and human rights but one cannot showcase humanity with a person who has committed inhuman behaviour.

The 2012 rape case in India was immensely brutal that have killed all the humanitarian grounds. The death sentence granted in this case is itself a humanitarian act of the state. There was no other punishment which can be accepted in this case. These convicts cannot be socialised as they never change their tendencies.

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<sup>10</sup> The Exclusion Of Child Offenders From The Death Penalty Under General International Law, Amnesty International July 2003, <https://www.amnesty.org/download/documents/100000/act500042003en.pdf>

<sup>11</sup> 1978 AIR 916.

<sup>12</sup> Abhinav Narayan, Capital Punishment: A comparative study, [https://amity.edu/UserFiles/aibs/3fc0Article-XII%20\(Page%2088-92\).pdf](https://amity.edu/UserFiles/aibs/3fc0Article-XII%20(Page%2088-92).pdf)

The other concept is that execution will lessen the risk of recidivism, which is another social and political issue around the world. The severe punishment sets a bench mark in the society which create fear within the offenders. It is difficult for many authorities to maintain their prisoners due to over population, less prisons and management. These offenders easily escape and therefore remains a continuous threat to the society.

The crimes in which capital punishment is granted are called as capital offences. These offences are barbaric and brutal which is disturbs the societal peace. It creates fear in the innocent humans. Therefore, law of retaliation has to be again and again be practiced so that the society keep their trust on the government and these criminals do not get motivation for repetition of the same crime.

#### **IV. CONCLUSION**

The capital punishment is not a new concept. But has changed with civilized society. In ancient time the brutality was justified by the brutality but adopting less brutal method of execution justifies the act of the state. The offenders should be punished according to the offence they have committed. Capital punishment is not a bane in the society. The barbaric criminals is threat to society, therefore there death does not affect the environment but create a positivity and trust to the government.

The theory is weighed from both the sides of the coin. One sects support it for just on the part of the victim and other sects oppose it on the humanitarian grounds. Though the majority support the reformative theory rather than deterrent theory. But the deterrence become necessary when there is brutality. The debate in this regard is never ending, but every state has right to adhere to its ideology.

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