

Capital Punishment: A Holistic view at all the aspects

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Introduction

Capital punishment means killing someone legally as a punishment for committing a crime. It is also called death penalty. It is chosen as a last resort when a heinous crime or something unforgiven is done by the perpetrator.¹ Capital punishment has been chosen over other forms of punishment from time immemorial, owing to the gravity of crime. But there has been a division of views regarding the legitimacy of death penalty. This issue of capital punishment is an evergoing debate. However, the issue came to limelight again because for the first time, a woman is going to be hanged in independent India. The name of this lady is Shabnam Ali. Following are the arguments of supporters as well as critics of capital punishment.

Arguments in Support

- According to Cicero, punishment must match the offence. Similarly, since capital punishment is given for heinous crimes, the gravity of the offence demands a serious punishment like Capital punishment.
- As the court has held that only the rarest of rare case must receive capital punishment, therefore giving capital punishment where the offender has committed a heinous crime is justified.²
- The supporters of capital punishment believe that it sets an example not to do such an act again thus ensuring future safety and acting as deterrence.
- Additionally, the capital punishment for a heinous crime is believed to be a better justice that values the life of victim more than the guilty.
- According to Bill Maher, capital punishment is right in the sense that every killer you kill never kills again.

¹ Roger Hood, Capital Punishment, Britannica, July 20, 1998 <https://www.britannica.com/topic/capital-punishment>

² Bachan singh v. state of Punjab AIR 1980 SC 898 (India).

- This will also solve the problem of overcrowding in jails, which became a huge obstacle in social distancing norms during pandemic and further it will reduce cost incurred on maintenance of prisoners.
- In Christian countries some people opine that the Bible by saying, “whoever sheds man’s blood, by man his blood shall be shed”, supports the imposition of death penalty on murders by state.³

Criticism

- Great personalities like Martin Luther king, James Madison, George Bernard shaw etc. have always criticised capital punishment.⁴
- Critics oppose the capital punishment because they believe that state has no right to take away someone’s life.⁵
- Also, giving some other punishment than capital punishment gives a chance to the offender to reform himself.
- According to Paul Simon capital punishment creates fears in mind that innocent people can also be put to death.⁶
- It denies basic human rights because constitution gives everyone right to life.⁷
- It does not lead to any decrease in crime rates as contended by the critics.
- Capital punishment is called unethical and does not bring down the crime rate.
- It can pave way for execution of minorities.⁸

Some questions that arise while discussing the justification of capital punishment:

When we talk about capital punishment many serious questions come to mind. For example,

- On one hand, Article 21 of the Indian constitution confers right to life to every person but on the other hand sets an exception for the state to take this fundamental right

³ Slideshare.net, the pros and cons of capital punishment Nov8, 2009

<https://www.slideshare.net/guest754ea4/the-pros-and-cons-of-capital-punishment>

Quotes about capital punishment support <https://quotesgram.com/quotes-about-capital-punishment-support/>

⁴ Martin Luther King, Jr.(n.d.). AZQuotes.com, June 20, 2021, from AZQuotes.com Web site:

<https://www.azquotes.com/quote/876614>

⁵ -Arguments against Capital punishment BBC

https://www.bbc.co.uk/ethics/capitalpunishment/against_1.shtml

⁶ Paul Simon, Brainy Quote, https://www.brainyquote.com/quotes/paul_simon_387051

⁷ India Const. art. 21.

⁸ Quotes about capital punishment <https://quotesgram.com/quotes-about-capital-punishment>

through procedure established by law i.e. in case of law prescribing capital punishment. Isn't it ironical?

- If an innocent life is gone how will the state compensate for it?
- Another bone of contention is that self killing by way of suicide under Section 309 is not permitted by the court but if the state kills you for whatever reason it is justified. Isn't it paradoxial?
- A look at this quote “we kill people who kill people because killing people is wrong”⁹ raises a doubt in mind whether state action to impose capital punishment on someone justified?

Protections against death penalty in International arena

Under the international Covenant on Civil and political rights (ICCPR) although, death penalty is not completely prohibited, but under article six of the ICCPR there are certain limitations on death penalty. It says that death penalty must be given only in the most serious crime. Capital punishment is prevented if there has not been a fair trial, violation of other rights and at the time of the crime it was not punishable with death penalty. If offender is less than eighteen years of age or is pregnant then also capital punishment is prohibited.

There have been numerous attempts at international level to abolish death penalty. There are five countries that have completely abolished the provision of capital punishment. These are Mongolia, Bosnia & Herzegovina, Guinea, chad and Kazakhstan. Also World Day against death penalty is celebrated on 10th October to condemn the prevalence of death penalty. But still, Countries like China, Saudi Arabia, Iran etc. stay on top for number of death penalties imposed and actual executions.¹⁰

Among some other international treaties is the “second optional protocol to the international covenant on civil and political rights”. It was adopted in 1989 and calls for total abolition of death penalty. Total 88 countries have signed it but yet to ratify. Besides these there have been different UN General Assembly resolutions in different years that have urged states to

⁹ Dane Parker, “Why do we kill people who kill people to show that killing people is wrong? Quora <https://www.quora.com/Why-do-we-kill-people-who-kill-people-to-show-that-killing-people-is-wrong>

¹⁰ BBC news ‘Death Penalty: How many countries still have it? Dec. 2020 <https://www.bbc.com/news/world-45835584>

protect the rights of those who have been sentenced to death.¹¹ Additionally, the assembly has requested countries to restrict the use of death penalties and minimise the number of crimes punishable with death penalty.¹²

Glance at the global statistics on ‘death penalty’

Capital punishment is widely challenged in international arena and one of the key critics of the provision of death penalty is *Amnesty International*. As per “Amnesty International Global report- Death sentences and executions, 2019” there has been a 5% reduction in actual executions worldwide. Also the report named Saudi Arabia as the top executing state. The different methods used for execution were hanging, beheading, electrocution, lethal injection and shooting, out of which hanging was the most prevalent. The report highlighted the serious violation of international rules while giving death penalties. For example, it is mentioned that those below 18 years of age or mentally ill should not be executed. But still there are reports of such cases. Also there have been trials contrary to international standards for sentencing death penalty. There have also been instances where death penalty was imposed in a crime in which death penalty or capital punishment is not even a prescribed punishment. For example, corruption crime in China or kidnapping in Iran.¹³

Trend of Capital punishments in India

In initial years of independence, death penalty was normal punishment for murder. But after amendment in CrPC in 1973, the parliament emphasised the court to justify why death penalty and no other punishment has been given by the court.

In India the following sections of IPC deal with the sentence of death penalty:

- Criminal conspiracy (sec. 120)
- crime of waging war against India (sec. 121),
- Abetting mutiny in armed force (sec.132),
- murder (sec. 302 &303),
- abetting minor to suicide (sec.305)

¹¹ Death penalty moratorium: UN General Assembly adopts resolution negotiated by Switzerland, Federal Department of Foreign Affairs, 16 Dec. 2020 <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-81676.html>

¹² United Nations Human Rights office of the high commissioner, Death Penalty <https://www.ohchr.org/EN/Issues/DeathPenalty/Pages/DPIIndex.aspx>

¹³ Amnesty.org “amnesty international global report- death sentences and executions, 2019” <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>

- Fabricating false evidence to make it a capital offence (sec.194),
- Dacoity with murder (sec.396) and
- Rape (sec. 376).

Besides these, there are provisions for death penalty for repeated rape crime (376E), terrorism (example of Mohd. Afzal who was hanged in 2013 for terrorist activities) , drug trafficking under Sec.31(A)(1) of Narcotics Drugs and Psychotropic Substances Act, 1985 and section 42 of POCSO act, 2012 (in case of rape of girl under age 12).¹⁴

Safeguards against capital punishment in India:

There are certain safeguards against death penalty in Indian constitution. Article 21 gives right to life to every person therefore in order to take away someone's life lawfully certain essential grounds need to be proved that could keep check on death penalties awarded. Besides this, article 72 gives President power of pardoning the death sentence and there is also scope for judicial review.

Also, Sec 354(3) of CrPC obliges judge to give special reasons for giving death penalty because capital punishment should be given only in 'rarest of rare' cases like Nirbhaya rape case. This rarest of rare doctrine is not defined in any statute rather formulated by the apex court in Bachan Singh case of 1980¹⁵. Various factors like circumstances of case, brutality, conduct of offender, previous involvement in crime, chances of reformation etc. are considered while giving death penalty. Law commission in 1967 had also recommended the repeal of capital punishment.

Statistics of Death penalties in India

An observation of the statistics regarding death penalties in India can further enhance understanding.

According to National Law University, Delhi's 2016 report on death penalty in India there are 12 women sentenced to death penalty, including Renuka Shinde and Seema Mohan Gavit, guilty of kidnapping and killing several children in Maharashtra. ¹⁶

¹⁴ Lavanya Goel, Capital punishment, Law coloumn, June 12, 2020 <https://www.lawcolumn.in/capital-punishment/>

¹⁵ Bachan Singh vs State Of Punjab 2 SCC 684, (India).

¹⁶ Ankit Agarwal Who is Shabnam Ali? First woman in independent India to be hanged- Know all about Shabnam's Case 20 Feb 2021 www.youtube.com/studyiq/who-is-shabnam-ali

If a state basis data is looked at for judging the capital punishments, UP topped and Bihar was second in number of death penalty awarded, as per ACHR (Asian Centre for Human Rights) A close look at these reports brings to our notice that actual executions were far less than pronounced by the court due to commutation to life imprisonment. The killer of former Prime Minister, Rajiv Gandhi was also commuted.¹⁷

According to annual statistics under Project 39a titled 'Death penalty in India: Annual statistics' murders after sexual offences like that in Nirbhaya rape case formed the highest category in which maximum death sentences were given. In this same category there were many children below 12 years of age who were raped.¹⁸

If we see data on capital punishment on basis of caste, it could be observed that most of the criminals who have been awarded death sentences belonged to minority communities.

Shabnam Ali Death sentence¹⁹:

Shabnam Ali was given death penalty by Amroha session court for killing her seven family members. This sentence has been approved by Allahabad High court and Supreme Court on the ground that she had committed paricide (killing of parents & other near relatives) which makes it rarest of rare case. The presence of a child who would get orphan after her death might influence the outcome of the mercy plea filed by her son to President.²⁰

Conclusion

Capital punishment is a serious problem that is widely criticised due to the problems discussed above. But in spite of the criticism, the support for capital punishment or death penalty is massive when a heinous crime, a crime which shakes the very spirit of humanity like rape, brutal murder etc. takes place and this massive support has so much power as to change the laws of the country. For instance, when in 2012 Nirbhaya rape case happened, the gravity of the offence deserved no other punishment than death penalty. The demand for capital punishment was so strong that it led to amendment in Juvenile Justice Act, 2000 and a

¹⁷ Satya Prakash, Death Penalty: Rarest of rare cases are not so rare in India now, Hindustan Times Feb 5, 2016 12:53 PM <https://www.hindustantimes.com/india/rarest-of-rare-cases-are-not-so-rare-in-india-now/story-JxnTLyJ4tPIDBnHhatCclL.html>

¹⁸ Annual statistics <https://www.project39a.com/annual-statistics>

¹⁹ Shabnam v. State of Uttar Pradesh,

²⁰ Neha Singhal, Shabnam Ali death sentence: rarest of rare case or was there a chance of reform , 26 feb 2021 <https://www.msn.com/en-in/news/opinion/shabnam-ali-death-sentence-rarest-of-rare-case-or-was-there-a-chance-for-reform/ar-BB1e0Yyj>

new provision to try children aged 16-18 in regular courts was introduced. The four accused were recently given death penalty and it was termed as true justice.

The cases like this where capital punishment is the only way to give justice to the victim makes us retain the provision of capital punishment. But on the other hand, there have been instances where innocent people were executed. The political rivalries led to sentencing of death penalty over the offenders. The reports by different organisations especially, Amnesty international bring forward this issue and criticise capital punishment. The organisations themselves had told that the statistics and reports published by Amnesty International are often undermeasured because of some secret executions by the states (which are not recorded in official count of capital punishments of the country). This becomes a valid ground to abolish death penalty because these secret executions, even if wrong, are irreversible.

Various organisations, countries and people are coming forward to support the complete ban on capital punishment, on the ground that the reasons provided by the supporters for retention of this grave punishment are not substantially supported. They believe that the death penalty will neither reduce overcrowding nor deter crime. Those who are against capital punishment are of the view that we need to end the crime and not criminal while the supporters of death penalty have their own justifications for continuation of death sentence. It is very difficult to decide in favour of one. Maybe that's why the court has also left this decision on case to case basis. Even if capital punishment is retained for the most heinous crime, it is necessary that the concerns raised by critics be resolved. It is very important that the tool for bringing justice doesn't itself become a tool of injustice in hands of authorities for executing minorities. .

“Rejecting or accepting capital punishment depends on time

But state must ensure that the tool of justice doesn't become tool of crime.”