

CAPITAL PUNISHMENT v/s. HUMAN RIGHTS

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“I think life is sacred whether it is abortion or death penalty”

-Tim Kaine

Abstract

The sentence of Death Penalty is a denial of the most basic Human Rights; it violates one of the most fundamental principles under widely accepted Human Rights Law—that States must recognize the Right to Life. The UN General Assembly, the representative body of recognized States, has called for an end to Death Penalty and Human Rights Organizations agree that its imposition breaches enshrined fundamental Human Rights norms. Convention is quickly moving towards a position in support of worldwide abolition. The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the Universal Declaration of Human Right (UDHR), which the U.S. helped draft in the aftermath of World War II and adopted in 1948. Under Article 3 of the UDHR, life is a Human Right. This makes the Death Penalty our most fundamental Human Rights violation. As long as Governments have the right to extinguish lives, they maintain the power to deny access to every other right enumerated in the Declaration. This first most central right provides the foundation upon which all other rights rest.

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INTRODUCTION

Capital Punishment, also called Death Penalty is execution of an offender sentenced to death after conviction by a Court of Law for a criminal offense. Capital Punishment should be distinguished from extra judicial 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.

The morality of killing a person is also subjective for each person. Throughout the life of an individual, his beliefs and morality can and most likely change. The question whether Death Penalty is a moral or an immoral act in a cultured society, does not have a definite answer. Whether to give death penalty to a criminal or not, may depend on his earlier criminal records and the seriousness of the crime he has committed. The question is, do we really have the right to take the life of our fellow human beings?

The prevalence of capital punishment in ancient times is difficult to ascertain precisely, but it seems likely that it was often avoided, sometimes by the alternative of banishment and sometimes by payment of compensation. For example, it was customary during Japan's peaceful Heian Period (794–1185) for the Emperor to commute every death sentence and replace it with deportation to a remote area, though executions were reinstated once civil war broke out in the mid-11th century.

CAPITAL PUNISHMENT AND INTERNATIONAL CONVENTIONS

A number of regional Conventions prohibit the Death Penalty, most notably, the Sixth Protocol (abolition in time of peace) and the 13th Protocol (abolition in all circumstances) to the European Convention on Human Rights. The same is also stated under the Second Protocol in the American Convention on Human Rights, which, however, has not been ratified by all countries, most notably Canada and the United States. Most relevant operative International Treaties do not require its prohibition for cases of serious crime, most notably, the International Covenant on Civil and Political Rights. This instead has, in common with several other treaties, an optional protocol prohibiting Capital Punishment and promoting its wider abolition.

Several international organizations have made the abolition of the Death Penalty (during time

of peace) a requirement of membership, most notably the European Union (EU) and the Council of Europe. The EU and the Council of Europe are willing to accept a moratorium as an interim measure. Thus, while Russia is a member of the Council of Europe, and the death penalty remains codified in its law, it has not made use of it since becoming a member of the Council – Russia has not executed anyone since 1996. With the exception of Russia (abolitionist in practice), Kazakhstan (abolitionist for ordinary crimes only) and Belarus (retentionist), all European countries are classified as abolitionist.

The Protocol no.13 calls for the abolition of the Death Penalty in all circumstances (including for war crimes). The majority of European countries have signed and ratified it. Some European countries have not done this, but all of them except Belarus and Kazakhstan have now abolished the Death Penalty in all circumstances (*de jure*, and Russia *de facto*). Poland is the most recent country to ratify the Protocol, on 28 August 2013. The Protocol No.6 which prohibits the Death Penalty during peacetime has been ratified by all members of the European Council, except Russia (which has signed, but not ratified). There are also other international abolitionist instruments, such as the Second Optional Protocol to the International Covenant on Civil and Political Rights, which has 81 Parties, and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

Death Penalty or Capital Punishment is a legal process wherein a person is put to death by a state in accordance to a crime committed. The word ‘capital’ comes from the Latin word ‘capitalis’ (of the head). Crimes that result in Death Penalty are known as ‘capital offences’ or ‘capital crimes’.

Capital punishment has been used over the years by almost every society in order to punish the guilty for some particular crimes such as punishment for premeditated murder, espionage, treason, or as part of military justice. In some countries, sexual crimes such as rape, adultery and sodomy carry the Death Penalty, so does religious crimes such as apostasy (the formal renunciation of the State religion). In many retentionist countries (countries that use Death Penalty), drug trafficking is also a capital offense. In China, human trafficking and serious cases of corruption are also punished by Death Penalty.

CAPITAL PUNISHMENT IN INDIA

Capital Punishment is a legal penalty in India. It has been carried out in five instances since

1995, while a total of twenty-six executions have taken place in India since 1991, the most recent of which was in 2015. India is one of 78 countries including the USA, China, Iran and Vietnam which have not banned the Death Penalty. 86 countries and territories have abolished the death penalty for all crimes, and a total of 121 countries have abolished the death penalty in law or practice. Over 40 countries have abolished Death Penalty for all crimes since 1990. 10 December 2005, the International Human Right Day, is observed as Anti-Capital Punishment. Some are systematic some; some procedural and some are ideological.

Back in 1947, India retained the 1860 Penal Code which provides Death Penalty for murder. It has been estimated that 1422 executions have taken place in 16 Indian States between 1953 and 1963 and it is hard to measure the rate of death sentence execution between 1980 and 1990. It is estimated that 2 to 3 persons were hung to death every year.

In the Judgment of *Bachan Singh v. State of Punjab*,¹ the Supreme Court ruled that Death Penalty should only be used in the 'rarest of rare' cases, but does not give a definition as to what 'rarest of rare' means.

There has been a huge debate around the world over the use of Death Penalty whether it should exist or not. Every man has a right to live. Article 21 of the Indian Constitution provides to its citizens 'protection of life and personal liberty' - "no person shall be deprived of his life or personal liberty except according to procedure established by law". This exception to life has created a dilemma across the world.

Is the judiciary valuing innocent lives which have perished to that of a person committing a heinous crime such as murder? Do criminals who commit a heinous crime such as murder lose the right to live on this earth? Are innocent convicts being executed? Does Death Penalty take away the right for future appeal that would have been filed by the convict? What is the remedy to wrong executions? Does Death Penalty to a convict provide proper remedy to the family that has lost its member and gone through the horror and pain of losing its loved one? These are just a few questions that are being debated across the world in every society over the legality or legitimacy of death penalty whether it must exist or be eradicated.

Crime rates have not decreased in spite of Death Penalty or Capital Punishment in India or

¹ (1980) 2 SCC 684

any other country with such practices. The death rate in India per 1000 people was reported at 8.04% in 2010 where half of it were criminal homicide, the inclusion of Death Penalty hasn't provided any Midas Touch to bring down the death rates.

People who commit murders do not think of the consequences or the punishment that they might go through. The reason behind this is that the act done is mostly spontaneous or an emotional outburst and is at the spur of the moment, it is very unlikely that they are mentally stable.

According to recent studies, life imprisonment costs 10 times lesser than when a person is executed after a long process or the bureaucratic process that has to be undergone for a person to be executed.

There is a speculation that Death Penalty is the worst way of violating Human Rights, because right to live is the most important right. A few believe that judicial hanging is one of the forms of legal murder. The mental torture that a person goes through while being executed is far beyond imagination. It is inhuman and a monster within the society some believe.

"I think capital punishment works great. Every killer you kill never kills again"

- Bill Mayer

PROS AND CONS OF DEATH PENALTY

Debates on whether Capital Punishment is morally correct in civilized society have been going for ages. People have different opinions on the issue of death penalty given to a convict. While some think that Death Penalty is necessary for those who have committed a terrible crime, there are others who consider it as an immoral act that goes against the values of humanity.

CONCLUSION

As we can plainly see, there are several good reasons to support and oppose Capital Punishment. Also, there are several bad reasons to be for and against the Death Penalty too. Furthermore the general population has a wide range of beliefs concerning Capital Punishment. Even these beliefs of the general population are subject to change. In the end, it

is what the majority of society currently believes to be moral that should be reflected by the actions of their Government.