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THE EFFECT OF CAPITAL PUNISHMENT ON SOCIETY

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Introduction:

The society presupposes existence of law. Punishment is the correction used to enforce the law of land which acts as one of the duties of the State to punish civilization. It is the duty of the state to punish the criminal in order to maintain law and order in the society. For the proper and effective regulation of society we have various kinds of law. Generally speaking, laws are divided into two categories: civil laws and criminal laws. Civil laws deal with civil right while criminal laws deal with crimes and provide punishment of them.

It is the State that punishes criminals. Punishment necessarily implies some kind of pain inflicted upon the offender or loss caused to him for his criminal act which either be intended to deter him from repeating the offence or may be an expression of society's disapprobation for his anti-social conduct or it may be directed to reform and regulate him and at the time protect the society from law breakers.

Kinds of punishment:

Punishment may be of various kinds depending on the nature of offence, effect on the society and status of the offender etc. Section 53 of The Indian Penal Code 1860 provides for the following kinds of punishment: -

- 1) Death sentence or capital punishment
- 2) Imprisonment for life
- 3) Imprisonment which is of two descriptions namely: -
 - A) Rigorous that is hard labour
 - B) Simple
 - C) forfeiture of property
 - D) fine

Capital punishment:

Capital punishment or death sentence simply means putting end the life of offender by hanging him. The Indian Penal Code 1860. (I.P.C.) provides death sentence for following offence:-

- (1) waging war against Government (sec.121)
- (2) Abetment of mutiny (sec. 132)
- (3) Fabricating false evidence leading one's conviction for the capital punishment (sec.194)
- (4) Murder(sec.302)
- (5) Abetment suicide of child or insane person(sec.305)
- (6) Abetment of murder by life convicts(sec.307)
- (7) Dacoity with murder (sec.396)

Beside this there are various laws which provides for capital punishment. Though I.P.C. or other laws provides about punishment but they are silent as to when it should be given. It depends upon the discretion of court while convicting the offenders.

Cases Dealing With The Death Penalty In India Mithu V/S State Of Punjab (1983)

In this case the supreme court struck down section 303 of the Indian penal code, which provide for mandatory death sentence for offenders.

Bachan Singh V/S State Of Punjab:

In this case, the Supreme Court says that capital punishment was given only to the rarest of rare cases.

In Rajendra Prasad V/S State Of U.P The Supreme Court has observed that capital sentence may be awarded where the survival of the society is in danger. The court laid down various guidelines while awarding Capital Punishment. It should be awarded in case of crimes committed in cool blood. Planned motivation, to white collar criminals, persons guilty of adulteration etc.

In Bachan Singh V/S State Of Punjab The Supreme Court while the validity of death penalty expressed the opinion that a real abiding concern for dignity of human life postulate resistance to taking a life through laws instrumentally. They ought not be done save in the rarest of the rare cases, when the alternative option is un-questionably foreclosed. The aggravating

circumstance which justifies the award death penalty must be summed up as:-

- If the murder has been committed after previous planning and involved extreme brutality
- If the murder involves exceptional depravity.

The question as to what are “Rarest of The Rarest Cases” justifying death penalty lies in the discretion of judges, which should be exercised after in to consideration all facts and circumstances of the case including the condition of victim.

Theories of punishment:

Various theories have been propounded to justify the ends of criminal justice and punishment. They can be broadly discussed under the following heads: -

1. Deterrent Theory:

According to this theory the main object of punishment is to make commission of an offence an ill-bargain for the offender and deter other from committing crimes. As Salmond rightly puts it “punishment is before all thing deterrent and chief aim of law of crime is to make the evil-doer an example and a warning to all that are minded with him’.

The deterrent theory justifies exemplary punishment because it not only dissuades the offender from repeating crime but also deter other from indulging into such criminal activities. It emphasizes the necessity of protecting the society in a manner so that others are deterred from law breaking.

2. Retributive Theory:

According to this theory evil should be returned for evil without any regard to the consequences. It is based on rule of natural justice which is based on maxim ‘an eye for an eye and a tooth for a tooth’. The theory therefore emphasize that pain is to be inflicted on offender by way of punishment must outweigh the pleasure derived by him from his criminal act. It suggests that punishment is an expression of society’s misappropriation for offender’s criminal act.

3. Preventive Theory:

The preventive theory is founded on the idea of preventing repetition of crime by disabling the offender through measure such as imprisonment, forfeiture, death sentence etc. this theory does not lay much emphasis on the motive of wrongdoer but seeks to take away his physical power to commit offence. In punishing criminals, the

community protects itself against anti-social acts which endanger social order in general.

4. Reformatory Theory:

The Reformatory Theory of punishment emphasizes on reformation of offenders through the method of individualization. It is based on the humanistic principle that even if an offender commits a crime, he does not cease to be a human being. Therefore, an effort should be made to reform him during the period of his incarceration. Thus, as opposed to deterrent theory, the reformatory theory aims at socialization of the offender so that the factors which motivated him to commit the crime are eliminated and he gets a chance of leading a normal life in the society.

Thus, according to this theory punishment is used as a measure to reclaim the offender and not to torture him. The theory therefore condemns all kinds of corporeal punishment. The major thrust of this theory is rehabilitation of inmates in penal institutions so that they are transformed into good citizens.

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.

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 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.

- **Recent Trends and Issues:**

India has voted against UN General Assembly resolutions calling for moratorium/abolishment of death penalty on 4 occasions, the latest being in 2012. There were 1,303 capital-punishment verdicts between 2004 and 2013, according to this NCRB. In addition, 3,751 death sentences were commuted to life imprisonment during this period. However, the Supreme Court confirms barely 3 to 4 of these death sentences each year.

From 1997 to 2007, just one mercy petition was decided by the executive. From 2007 till date, there has been a drastic change with more than 40 petitions being decided out of which more than 20 petitions were rejected.

In recent times, India had three executions in quick succession of people convicted for terrorism-related offences: 2015 hanging of Yaquub Menon convicted of Mumbai Blasts in 1993, the 2013 hanging of Afzal Guru, convicted of plotting the 2001 attack on India's Parliament, and the hanging of 2008 Mumbai attacks gunman Ajmal Kasab in 2012. Prior to these hangings, the last execution in India had taken place in 2004, when Dhananjay Chatterjee

was executed by hanging for the murder and rape of a 14-year old girl. This, in turn, was the country's first execution since 1995. The manner in which the executions of Kasab, Memon and Guru were carried out have been criticized. The executions of Kasab and Guru were carried out with unusual secrecy as neither the prisoner's family nor the public were informed of the President's decision to deny clemency until after the execution had been carried out, which runs counter to prior government: practice. After mercy petitions are rejected by the President, the prisoner and the petitioners are supposed to be informed of the decision and the prisoner and his relatives are to be notified of the execution date.

Such policies ensure that the prisoner and relatives are able to exhaust all available judicial remedies to further stay or commute a pending execution.

In the wake of the debate over the death penalty following the

In the wake of the debate over the death penalty following the execution of Mumbai attack convict Yakub Memon, the Supreme Court has said capital punishment is not inhuman or barbaric and will not violate the right to life and liberty in heinous crimes.

Germany has expressed its inability to sign the **Mutual Legal Assistance Treaty (MLAT)** with India, citing its provision for "death penalty" for heinous crimes and terror activities.

Criticism of the "rarest of rare" doctrine:

A Supreme Court judgment stipulates that capital punishment will be imposed in "the rarest of rare" cases, where the community's "collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty" because of the abhorrent nature of the crime, which would include "the manner of the commission of the murder," for instance, "if it was committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner," or where the victim was "subjected to inhuman acts of torture or cruelty in order to bring about his or her death."

Findings of the Survey on Capital Punishment:

Surveys conducted on capital punishment often highlight divided opinions, influenced by cultural, social, religious, political, and legal perspectives. Below are the major findings usually observed

1. Public Opinion
 - A significant proportion of respondents support capital punishment for heinous crimes such as terrorism, rape, murder of children, and multiple murders.
 - However, support declines when alternatives like life imprisonment without parole are presented as an option.
 - Younger generations, educated groups, and urban populations often show greater opposition compared to older or rural populations.
2. Deterrence
 - A majority of respondents believe capital punishment deters serious crime, although criminological studies show no conclusive evidence of deterrence compared to life imprisonment.
 - People who have been victims of violent crimes tend to strongly favour the death penalty.
3. Human Rights Concerns
 - Many participants express concern that innocent persons may be wrongfully executed due to errors in investigation or judicial bias.
 - International human rights norms and UN guidelines increasingly push for abolition or moratorium.
4. Religious and Moral Dimensions
 - In some regions, religious teachings are cited in support (e.g., “an eye for an eye”) while in others forgiveness and reformation are emphasized.
 - Surveys show a moral divide: some see execution as “justice,” others as “state-sanctioned killing.”
5. Global Trends
 - Over 70% of countries have abolished capital punishment in law or practice.
 - Surveys reveal that citizens in abolitionist countries often do not favour reintroduction, showing that societal acceptance declines once abolished.
6. Judicial and Procedural Concerns
 - Respondents often worry about
 - Delays in execution (cases lingering for decades).
 - Bias against poor and marginalized groups, who cannot afford strong legal defence.
 - Inconsistent application, where similar crimes receive different punishments.

Recommendations Based on Survey Findings:

1. Consider Alternatives to Death Penalty
 - Replace with life imprisonment without parole for heinous crimes, which balances justice with human rights concerns.
2. Ensure Fair Trial and Legal Safeguards
 - Strengthen legal aid for marginalized groups.
 - Mandatory review by higher courts before any death sentence is confirmed.
3. Focus on Rehabilitation in Non-Heinous Cases
 - For crimes short of extreme brutality, promote reformatory justice over retributive justice.
4. Increase Transparency in Judicial System
 - Publish detailed statistics on death penalty cases.
 - Improve public awareness that wrongful executions cannot be undone.
5. Public Engagement and Education
 - Conduct awareness programs about the ineffectiveness of deterrence.
 - Educate society on restorative justice approaches.
6. Gradual Reduction Strategy
 - Impose a moratorium on executions as an interim step.
 - Limit death penalty only to “rarest of rare” cases (as already followed in India, for example).
7. International Cooperation
 - Align national policies with UN resolutions that call for the abolition of the death penalty.
 - Learn from countries that successfully transitioned to abolition without a rise in crime rates.

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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