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# **Critical Analysis On Capital Punishment And Violation Of Human Rights**

Authored By - Puneetha Choudhary

## **Abstract**

India is a developing country, and at the same time, there are a lot of crime rates increasing as well, for which there are lots of legislation enacted and punishments given to reduce and control the crimes. These punishments are different for different offences such as capital punishment, life imprisonment, rehabilitation and many more. Capital punishment, often known as death penalty, is the most severe form of punishment. Capital punishment involves the legal (authorized) killing of the person who has committed a crime prohibited by law. This paper explains the background of the death penalty and how the punishments have evolved. It also mentions the different types of capital punishment theories followed by other countries. Also, we have seen that few punishments are too severe (death penalty). They act against human rights as killing another human being in the name of justice is as good as murdering someone, and most importantly, we must focus on removing the crime and not the criminal from society. Later in this paper, few important landmark cases or the rarest of rare cases will also be discussed relating to the death penalty. This paper analyses the problem as to how capital punishment violates human rights. This paper mainly deals with two questions, the first being whether capital punishment is ethical or moral. Secondly, whether the abolition of capital punishment (which was referred by Mahatma Gandhi) should come into force, with other measures for punishment being provided such as, treatment and training given to the offender so that they are made capable of returning to the society and could function as a law-abiding member of the community.

**Keywords** – capital punishment, death penalty, legislation, human rights, crimes

## Introduction

India is a country where the punishments are based on the motive to punish the wrongdoer. So, there are mainly two reasons for imposing the sentences, and firstly the wrongdoer should suffer and secondly, punishing the wrongdoer discourages others from doing wrong. There are different kinds of punishment given based on the offence, such as capital punishment, life imprisonment, imprisonment with fine, etc. and this paper, mainly focus on the capital punishment or the death penalty. Capital punishment is one of the Indian criminal justice systems. Capital punishment is derived from the Latin word capitalis, meaning regarding the head, and originally referred to as a beheading. This is a practice of executing someone as punishment for a particular offence after a proper legal trial. Over the years, some commonly used execution methods include firing squads, hangings, gas chambers, the electric chair, and lethal injections. It is awarded for most of the grievous crimes against humanity, and it also differs from country to country. Many human rights movements in India say that capital punishment is immoral, and human rights organizations have also argued that capital punishment affects one person's rights. The death penalty is given only when the court decides that life imprisonment is insufficient, based on the case and its situation.

There have been several cases where the convicts sentenced to life in prison have murdered other inmates and prison guards. It is said that this type of punishment(capital) is to maintain justice in society. It is seen that life is divine and innocent and should be valued over the lives of killers. The innocent victims are been killed and in some instances, tortured have no choice in their wrong and cruel death should be provided justice by punishing the offenders. Moreover Historians and Jurists agree that the death penalty was an adequate and permissible form of punishment for deliberate murder and should be given to the offenders who commit murders of innocent people. Suppose the offenders, such as terrorists, whose acts impose harm on a large number of people in the society and community have a probability of any future damage or threat. In that case, the concept of capital punishment is justified. However, on the contrary, there's no substantial evidence indicating that the death penalty deter crimes. So some of the people don't have any deterrence by the death of those who have been given capital punishment and in such a case capital punishment has no gain. Besides there is also an idea like eye for an eye where if a person commits a murder he also should be murdered, but if improvement is the aim, then capital punishment is of no value. it is observed that the death penalty is more costly than keeping an offender in prison, even for life. While the actual execution cost may be insignificant, however the overall prices alongside a capital case are extremely high. Moreover, studies have shown that capital punishment doesn't bring any comfort to

those affected by violent and fatal crimes. And giving capital punishments doesn't grant any support to the victim or the victim's family.

### **Types Of Punishments Followed**

- Hanging - this method of execution is the most regular method of capital punishment. This is mainly suspension of a person by a rope or ligature around his/her neck. This is an ancient mode of execution and was a part of Roman law, Anglo-Saxon laws, English Laws, and German Laws.
- Firing squad - this is one of the selected method of execution mainly in Indonesia, where twelve armed executioners shoot the criminal in chest and if the criminal is still not dead then the commander upshots an ultimate bullet on the head.
- Beheading - this is only applicable in Saudi Arabia where beheadings are used as a method in capital punishment and this is performed openly in the public with a sword.
- Lethal injection - this is mainly injecting a fatal dose of drugs into a death row prisoner and this has become the initial method of execution in the US, and is usually acknowledged as the least harsh method.
- Electrocution - is death by electric shock, electric current passing through the body and US is the only country for exercising capital punishment using this method.
- Gas chamber - this is an equipment for killing humans with gas, it's a sealed container in which a poisonous gas is injected. Deadly agents used include hydrogen cyanide, carbon dioxide and carbon monoxide.

Different countries in the world follow these punishments as mentioned above. Also, Most countries, including almost all First World nations, have abolished capital punishment either in law or in practice. it is seen that 101 have abolished the capital punishment for crimes in law, and 140 countries have abolished the capital punishment in law or in practice.

### **Early Death Penalty Laws**

The first proposed death penalty laws date far back as the 18th century B.C. in the King Hammurabi Code of Babylon, that classified the death penalty for 25 types of different crimes. This was also part of the 14th century B.C. in the Hittite Code and the 17th century B.C. in the Draconian Code of Athens where death was the exclusive punishment for any crimes. Also in the Fifth Century B.C.

in the Roman Law of the Twelve Records. Moreover, Britain changed America's acceptance of death penalty more than another country. Besides when European immigrants came, they brought the practice of capital punishment.

At that period, some approved methods of execution were boiling, burning at stake, hanging, beheading, and quartering. These executions were conducted for offences such as marrying a Jew, not confessing to a crime and treason.

### **Death Penalty And Human Rights**

The death penalty is dissent of the fundamental human rights, and it violates one of the most fundamental rights under human rights; the right to life. Under the Universal Declaration of Human Rights (UDHR), Article 3 mentions that life is a human right, so the death penalty violates this right. In many countries, the death penalty is considered a violation of human rights and banned in many countries. Moreover, capital punishment has breached the prohibition against cruel, inhuman, or degrading treatment. There has also been a increasing agreement regarding the death row phenomenon ( bleak isolation and years of torturous uncertainty may result in a sharp deterioration in a prisoner's mental and physical state, often making inmates suicidal) that it constitutes a breach in violation of the prohibition against torture under international human rights law. Moreover, People who commit murders do not think of the consequences of the punishment they might go through. This is because the act done is mostly spontaneous or an emotional outburst and is at the spur of the moment; it is doubtful that they are mentally stable. Since the death penalty is irrevocable and goes against reforming an individual and deprives society of the benefit of human resources of the individual executed, its abolition deserves consideration. The rarest of rare cases need codification until it is abolished. Since it has been seen that several persons executed were later found to be innocent, it will be an insult to the criminal justice system if an innocent person is executed. The death penalty is opposed as a violation of the fundamental human rights that are approved by Universal Declaration of Human Rights and the right to life and the right being subjected to cruel, inhuman punishment. This atrocity should not be justified regardless of the importance of the crime for which the prisoner is sentenced.

Furthermore, if right to life is a human right, then the provision of death penalty is an abuse to the fundamental human right. The harshness of the death penalty reduces the humanity of everyone from the prisoner to its family, to the executioners and even the judges and jury. A human rights approach obligates duty bearers to respect, protect and to fulfill human rights. In the situation of death penalty, this doesn't involve depriving the fundamental human rights such as life of those

convicted to crimes or who have taken steps for ensuring the human rights of the accused and convicted and adopting national legislation to achieve full realization of the rights of these individuals.

Hence, executing a convict may not bring back a person who is already dead, but executing the convict, future acts may be prevented. In order to prevent death penalty in India it must be clear that justice can be rendered without executing the convict by cruelty i.e., to make painless executions as death is inevitable.

### Case Laws

**Mithu vs. State of Punjab** - In this case the supreme court struck down section 303 of IPC, mentions punishment for murder by life convict whoever under sentence of imprisonment for life, commits murder, should be punished with the death penalty.

**Vatheeswaran vs. State of Tamil Nadu** - the issue in this case was whether lag in execution of capital punishment would violate the Article 21 of the Indian Constitution and whether on this ground death sentence may be given. The Court upheld that delay in the execution of death penalty was just, unfair and unreasonable and inhumane, and this also deprives the convict of his basic human rights, guaranteed under Article 21 of Constitution of India; right to life and personal liberty. The Court in this case observed to make all the right pay for the time required for appeal and consideration of release, we see that delay exceeding two years in the execution of a sentence to death should be considered sufficient to entitle the person under sentence to death for invoking Article 21 of the Constitution and to demand for quash of the sentence of death.

**Bachan Singh vs. State of Punjab** - In this case the supreme court mentioned that capital punishment was to be given only in the rarest of rare cases. Section 354(3) in CrPC mentions that when the conviction is for a crime punishable with death then the judgment must provide the reasons for the sentence given and in the case of sentence of death the special grounds for such sentence.

**Deena vs. Union of India** - In this case the apex court decided the constitutional validity of execution by hanging as examined under section 354 (5) Cr.P.C 1973. It was also being challenged that such execution was inhuman and violative of Article 21. The court even regarded that section 354(5) of the I.P.C., that prescribed hanging as mode of execution to be fair and reasonable procedure and within the ambit of Article 21 and hence is constitutional.

## Conclusion

In India, capital punishment or the death penalty has been practised for many years. When we look at the statistics as to the number of crime rates, we can see that the rates are increasing only and the death penalty has not proved to be a deterrent for committing the offence. Besides there are many countries where capital punishment is already abolished. However some like India, have a lengthy process for deciding as to whether a death sentence should be given or not. As there was also a recommendation for abolition of this punishment from the Indian Law Commission, but this was not noticed. So proper examination must be initiated before giving an order of execution to a person as such a punishment is permanent in nature and irreversible. Therefore, it is crucial that all associated matters are considered before such a decision is taken and if there is a least uncertainty, such a punishment mustn't be conferred. At present, the law prevailing is laid down by the apex court that is doctrine of rarest of the rare case. Even the mode of execution that the state must use is a matter of debate and such mode must be decided as per the international measures quick and painless. If the death penalty is imposed, it is necessary to fulfil the conditions for the protection of human rights in the Criminal Justice Administration in India. Any punishment to a crime must be fair, just, adequate, reasonable and proportionate to the crime, and punishment should not, in any case, be excessive to the nature of the crime.

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