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# **CAPITAL PUNISHMENT IN INDIA:** **THE CONUNDRUM**

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## ***Abstract***

Capital punishment also known as death penalty is the most severe form of punishment. It is the execution of a person sentenced to death by a court of law for a criminal offence. Capital punishment is a controversial issue that has divided people into two parts. One believing that it is good as it showcases in the ideal of an eye for an eye and reflects on how severe the crime is and the latter part believing that it is against human rights and barbaric. No matter which side a person chooses, there is no denying that it has had severe moral, emotional and societal implications that has diversifying effect on humanity.

## ***History***

As newfound as it sounds has been around since the eighteenth-century B.C in the code of King Hammurabi of Babylon. In India, the earliest mentions of death penalty are codified in a book called “Arthashastra” which is a book about statecraft and the science of wishful living by Kautilya. The first modern day example of death penalty was the trial of Nand Kumar where he was hanged under the charges of forgery in 1774 under the rule of the British. This led to a lot of deliberation through the years before it was eventually included in the Indian Penal Court in 1860. The court allows for each penalty in incidents of murder under IPC Section 302, terrorism as specified in the Unlawful Activities (Prevention) Act, Rape under IPC Section 376 A to name a few.

## ***India’s stand on capital punishment***

India has evolved a lot when it comes to death penalty. In the current times, the country allows death penalty by hanging for crimes like rape, murder and terrorism. Governed by the Indian Penal Court, there are codified offenses and punishments which according to me is a great move as it keeps a check on the judiciary, protects from giving biased judgements and also safeguards the

interest of the people on trial. The Indian Constitution in 1950 established the right to life and liberty, which was taken to indicate that the death sentence may be enforced only in exceptional situations. The Indian Supreme Court determined in 1973 that the death sentence should be used only in the "rarest of rare" circumstances. India now has extreme regulations when it comes to the usage of death penalty and has a lot of inspections. The death penalty is a complicated and contentious subject in India. While the death penalty is still used in India for certain crimes, there is a growing movement to abolish it and the argument in India over the use of the death sentence is likely to last for many years.

*I am torn between whether I support or oppose capital punishment. To help grasp it better, I'll go over my arguments in depth.*

### ***Capital punishment: the good***

According to me, one of the reasons for believing in the goodness of capital punishment is that it provides deterrence. The fear of the death sentence if instilled in one can deter potential offenders from committing crimes, lowering the crime rate. Fair justice is also a reason to why capital punishment should be propagated and flowed. It provides justice and closure to the family and loved ones of the victim. If the crime is so heinous like murder or rape that results in the victim losing their life or are so mentally scarred that they are unable to function normally, it is only fair to provide the same treatment to the offender. The cost of keeping a prisoner on death penalty is too high and with the blooming population, we can also witness an increase in the crime rate of the country. The judiciary is also underequipped to provide justice to so many people with 4.3 crore out of 5 crore cases pending which is more than 85 percent of the total cases and it also results in delayed justice. There are numerous cases where victims die without getting justice and I think death penalty could to some extent save the process of going to court, attending more hearings and so on to save the court's time so they can focus on more important cases.

### ***Capital punishment: the bad***

The view against capital punishment could be because of the irreparable violation to human rights. It is cruel and as said by Nietzsche, "There is a certain right by which we may deprive a man of life, but none by which we may deprive him of death; this is mere cruelty." Treating cruelty with cruelty in turn doesn't help in most cases and taking a person's life is not only cruel but also

inhumane. The death sentence is irrevocable, and there have been cases of false convictions in the past. The possibility of killing an innocent person cannot be totally excluded, and such an error would be a serious miscarriage of justice. Politics can play a huge role in swaying the judiciary and it is one of the reasons why all judgement cannot always be considered fair. India only allows capital punishment by hanging but there is a lot of time and money spent on the hearings which can be used for better reformative methods. Capital punishment often sends this message across that violence is the solution to everything and this in turn affects the society as whole that might turn to violence.

### *Social implication*

Capital punishment is said to have varying social implications. When a heinous crime like rape occurs, it shakes the society as a whole which is followed by public and media outrage. It is one of those times when a huge chunk of the society irrespective of their religion and social standing come together to unanimously to protest against the crime. In times like these when the mass is fuelled by emotion, capital punishment is often used like a two pronged sword, one to use the punishment to provide justice to the family which showcases the smooth and righteous functioning of the judiciary and police system in India and two, to mobilize the masses to their political advantage. Like during the Nirbhaya gang rape case, the fast track court found all the six men guilty of the brutal rape and murder of the 23 year old woman, Nirbhaya. Five of the accused were sentenced to death in 2013, one year after the incident and one of them was let go due to him being a juvenile at the time of the crime. The main question that occurs is if a juvenile in his right mind could commit a crime so serious then why is the punishment met out to him not the same as his allies. This debate questioned the scope of the jurisdiction of the capital punishment. According to me, the three years in the reformation and rehabilitation centre was necessary but the court should not have let the accused go without any punishment. A worthy punishment would be getting a death penalty as he had equal criminal responsibility. On the contrary, the use of the death penalty raises further worries regarding the likelihood of false convictions. The effects of a death sentence for an innocent person are terrible, not just for the individual, but also for the larger community. The possibility of error serves as a reminder that the implementation of the death sentence necessitates considerable prudence and stringent measures to prevent blunders. Finally, the social implications of capital punishment serve as a reminder that the decisions we make as a society have real-world consequences. Approaching this issue with compassion, understanding, and a strong commitment to justice and human rights is critical.

## *Political implications*

Capital punishment has major significance in the political arena and its affects can be seen in the government, politicians and the judicial system. The use of capital punishment is often seen as a power move to assert dominance in terms of maintaining law and order, no toleration for the guilty and providing justice to the victim. Following the Mumbai terrorist attacks of 26/11, the government's decision to impose the death penalty was widely interpreted as a reflection of its determination to combat crime and terrorism. However, I feel with the involvement of politics in the scenario, the government uses it as an instrument to appease the public sentiment and not fight the root cause of the crime. The use of death penalty has been associated with political factors like caste, religion and regional identity in India. There have been controversial cases like Dhananjay Chatterjee vs. state of West Bengal where there has been widespread speculation about the case. There have been serious speculations about the fairness of the case during the whole trial process, forceful confession of the crime of the murder and rape of a school girl and judgement because he belonged from the marginalized community of West Bengal. Capital punishment has now become a vital political agenda for many political parties in India. Shashi Tharoor, a prominent member of the parliament from the Indian National Congress has spoken against the practice of capital punishment. He has called it an ineffective form of punishment which is equally barbaric and does not fight the root cause of the crime caused.

## *International implications*

India's involvement in capital punishment has often landed it in trouble. India is signatories to international human rights forums that call for the abolishment of capital punishment but on the other hand, India has legalized capital punishment. India has to face scrutiny from United Nations Human Rights Committee and the European Union for its practices but it continues to hold a diplomatic stand about the topic. The use of the death penalty in India has also had an impact on its relations with other countries. In various situations, the implementation of the death sentence has strained diplomatic ties and generated tensions with nations that oppose the death penalty, leading to appeals for clemency and worldwide campaigns against executions of individuals who according to the international powers should not have received the punishment.

## *How to make it better?*

I feel capital punishment lies in a morally grey area just like the way things are not always white and black, capital punishment is neither good or bad. India's stance on capital punishment seems reasonable to me but there are multiple ways to make it better. One being carrying out proper investigation without the involvement of any external factors like biased police or judiciary. This will ensure that no innocent is convicted and the accused is guilty beyond reasonable doubt which includes having concrete evidence like forensic reports and substantial DNA. As per the new amendment, minors from the age of 16 to 18 can be tried as an adult for heinous crimes. I think it is very good amendment as it attacks the criminal capacity of an individual irrespective of their age to a reasonable extent. Awareness on the said crimes and its impact on society should be spread and propagated so people are aware of the adverse effects it has on the victim and the punishment given to the perpetrators of the crime. Counselling should also be provided to petty criminals or people with a "criminal mindset" with anonymity but frequent checks should be made on them. Adequate legal representation should be given to everyone which according to me is lacking and necessary steps should be made for the same. More humane methods of death penalty should be used like lethal injection like in The United States Of America rather than pain inducing methods like hanging.

## *Conclusion*

To summarise, capital punishment in India is a highly debatable topic with far fledged social, political, international and social implications. While it does serve as a deterrent to a crime, it is also important to consider the possibility of wrongful convictions and the impact it has on the victim and the society. It is on the judiciary and government of the country to make amendments but it is important to have an open debate on it as it opens the scope of exploring the topic through a completely new lens. No matter what advances are made in the future, the topic should be dealt with extreme care and attention ensuring that the process is just and unbiased and the punishment given is justifiable to the crime.

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