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IS DEATH PENALTY THE SOLUTION TO DECREASED CRIME RATES?

"I cannot in all conscience agree to anyone being sent to the gallows. God alone can take life because he alone gives it".

- Mahatma Gandhi

Abstract

The death penalty also known as capital punishment is the maximum level of punishment given to a criminal. It is a judiciary-imposed act that aims to give justice to the victims, discourage the criminals from society to refrain them from doing such crime again, and an assumption that this practice will deter crime. Capital punishment has been present in society since the antediluvian when the law and order were analogous with the monarchical form of government. The execution of a criminal is an irreversible act which makes a rare form of punishment in most countries. China stands at the number one position with the highest number of executions per year. In India, it is awarded for the most heinous committed by a person. Deterrence is one of the major objectives behind giving capital punishments. This research article throws some light on this debate that whether capital punishments actually deter crime or it's just a myth present in society.

Introduction

Punishment is the act imposed on a wrongdoer which is used to enforce the law of the land. It is one of the important pillars of modern civilization. The state has the power to punish criminals to maintain law and order in society. During the time of kings and monarchs, the punishments were given but they were not given systematically and it completely depended on

the king which punishment would he like to award to the wrongdoer. The various theories of punishment have been evolved with the development of society. In the present times, we have a highly developed judicial system with defined laws and rules which has to be followed to avoid penalties. Among all, capital punishment is the highest and the most brutal punishment.

Capital Punishment is the legal killing of a person who has committed a crime that is prohibited by the law. It is an act sanctioned by the government in which a person is put to death by the state and is carried out with the due process of law.

The court awards punishments considering different theories of punishment when it passes the judgement. One of the theories of punishments is the deterrent theory. The Deterrent theory of punishment aims to deter criminals from committing any crime or repeating the same crime in the future. Its objective is not just to set an example for others but to develop the fear of punishment among individuals who wish to commit the same act. In other words, severe punishment like the death penalty is awarded when the crime is so severe that it should be not be committed ever again. The deterrent theory hopes to control the crime rate in society and set an example for other potential criminals to refrain from committing such type of crime.

Death penalty is a very serious and sensitive issue as it involves taking away the life of a person according to the procedure established by law. This is the major reason why questions are raised against the countries such as China, India, the USA for giving death sentences.

In India, some criminal statutes provide for the death penalty as a form of punishment. Some of them are the abetment of sati under the Commission of Sati (Prevention) Act, 1987, submitting false evidence which leads to execution of an innocent SC/ST member under SC and ST (Prevention of Atrocities Act), 1989, rape of a minor who is below 12 years of age under POCSO, 2012, etc.

Capital Punishment in India - Judicial Pronouncements and Statutory Provisions

The constitutionality of the death penalty was challenged before the Supreme Court in Jagmohan Singh v. State of UP where the Supreme Court dismissed the appeal and held that according to Article 21, deprivation of life is constitutionally valid if done according to the procedure established by law.

With further development and better interpretation of the law in India, the constitutional validity of the death penalty was affirmed in the case of *Bachan Singh v. the State of Punjab*¹. The doctrine of the rarest of the rare was stated in this case. In *Macchi Singh & Others v. the State of Punjab*², the bench stated that only in cases when the collective conscience of the community is in a way that it expects the judges to inflict the death penalty. Some examples of the rarest of the rare cases include murder committed in an extremely brutal or dastardly manner, brutal rapes, etc. The doctrine of rarest of the rare, given by the Supreme Court was highly acknowledged as it aimed to reduce the decisions of capital punishments upon individuals.

The Constitution of India under Article 21 states that no person shall be deprived of his Right to Life unless done with due process of law. In cases of the death penalty when the punishment of death is awarded when it also limits the scope introduction of new facts or law in the case. The punishment once executed, is irrevocable.

Death Penalty – Does it deter crime?

There's a continuous debate on the question of whether the death penalty deters crime rates and helps in saving lives. People argue that these kinds of laws prevent further crimes to be committed because potential criminals fear such strong punishment as capital punishment. But the effectiveness of capital punishment to deter crimes, despite research work and data collection, remains pretty much unclear.

As deterrence is the primary objective behind the death penalty, there have been claims that each execution deters a significant number of murders but those claims have been thoroughly discredited by social science research.

India's Law Commission in its 262nd Report³ (released in August 2015) suggested that the concept of the death penalty should be abolished for all crimes except terrorism-related offenses to safeguard national security. The report also mentioned that the death penalty does not serve the penological goal of deterrence any more than life imprisonment. Death Sentences are rarely executed in India, still, the commission suggested the penalty should be abolished due to the following reasons: - the times and situations have changed, it's not any more deterrent. The report of the law commission mentions that death penalties do not show any

¹ AIR 1980 SC 898

² 2009 6 SCC 498

³ Report No. 262, The Death Penalty, Law Commission of India, 2015

deterrent effect or decreased crime rates. According to the data collected under the Project 39A of the National Law University, Delhi, India has carried out at least 720 executions since Independence. The four Nirbhaya case convicts were the last to be executed in Delhi's Tihar Jail.

Death penalties are extremely costly and time-consuming. The inordinate delays in the execution of the culprits take the sting out of the punishment. The execution of the convicts of Nirbhaya gang rape⁴ took place after seven years after they were awarded death sentences. The convicts tried to subvert the legal process for so long time. Even after the execution of the convicts, there were no credible statistics that showed a decrease in rape cases.

Also, no credible evidence has reflected that death penalties result in decreased crime rates as compared to the long terms of imprisonment. The contention that the death penalty is a powerful deterrent to brutal homicides and other violent crimes has been falsified as the evidence showed just the opposite. According to the studies conducted, the states that contain the provisions of the death penalty do not have any smaller crime rates than the ones which do not have the death penalty provisions. The murder rate is at least five times more in the USA as compared to any other Western European country and they are all without the death penalty. Also, more than 80% of the executions take place in the Southern states and still they have a very high rate of murder than any other region. Moreover, no evidence has been found which says that the death penalty reduces severe crimes and saves lives or that crimes increased when the executions stopped.

In the Bachan Singh case, Supreme Court mentioned that there was no convincing evidence that the death penalty served any penological purpose, its deterrence remained unproved and the death penalty fails to fulfill the objective of punishment that is reformation and rehabilitation of the criminal. Also, execution for whatever reason is cruel, inhuman, and degrading.

The death penalty as a form of punishment has been abolished in most the developed countries because they have realized that capital punishments fail to serve their purpose of deterring crimes and saving lives in the future. Despite the global moratorium against the death penalty, Indian still believes that allowing criminals guilty of having committed cold-blooded, intentional, and brutal crimes to escape with lesser punishment like life imprisonment will

⁴ *Mukesh & Anr vs State For Nct Of Delhi & Ors*

prove the ineffectiveness of the judicial system and will result in a travesty of the justice delivery mechanism.

The studies have failed to reach the required standards of research to make strong claims about the deterrence of the crime. The researchers have produced contradictory results which suggest that there is little evidence that the death penalty deters crimes.

Conclusion

“Life is precious and death is irrevocable.”

The death penalty is more than mere punishment, we are ending or killing a person in the name of justice and law. Death is a very serious matter and killing a person is immoral as it shows the lack of respect towards human life; towards nature; towards that power that gave us life. The death penalty eliminates the scope of improvement which could change the lives of individuals. It is true that a criminal needs to be punished for the crimes he has committed but our duty is not to eliminate the criminal but the offense. The principle of punishment should be based on reformatory theory rather than deterrent theory which gives a chance to the criminal to change for good.

The sentencing of the death penalty is a lengthy and cumbersome process as many chances are given to the accused for clemency petitions which further results in delayed justice for the victim. In the high-profile case of Nirbhaya gang rape, there were many incidents of delay due to the repeated filing of pleas and petitions what we call justice delayed is justice denied.

Criminologists such as Jeremy Bentham and JS Mill maintained that punishment must be just, adequate, fair, reasonable, and proportionate to the crime. Moreover, it should not be excessive. Delay in execution is common and to some extent obvious because it requires the judges to be sure of the convict's crime is per se a violation of the accused's basic human rights. It violates his right to live with dignity enshrined under Article 21 of the Indian Constitution. The convict who knows that he is going to die and waiting for the execution of punishment is living with the terror of death. To serve a just and effective mechanism for the administration of justice to all, law and the judicial system should be nourished and nurtured in human rights. No evidence has proved that extreme measures of death sentence decrease crime or act as a deterrent.

In my opinion, the death penalty is unfair and unjust as once someone's life is taken away, it is impossible to it back. There are alternatives to capital punishments may be rigorous imprisonment or life imprisonment which might lead to his new birth as a reformed citizen. It's not the severity of the punishment that matters but the certainty of punishment that acts as a deterrent. To conclude, I want you to ponder that if it was not us who gave a person his life then who are we, law and judiciary for that matter, to take away one's life.

"We are all the creation of God. I am not sure a human system created by a human being is competent to take away a life based on artificial and created evidence".

-APJ Abdul Kalam



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