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Is Capital Punishment still relevant today?

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In a country like India which is the second largest in the world, we need strict law and order to govern the country properly. In such a high population the rate of crimes being committed is also very high. Capital Punishment or Death Sentence is one of those strict punishments which creates a lot of fear inside the mind of people for not doing it further. The degree of punishment awarded should be according to the crime committed so that it can provide proper justice to the victim but at the same time it should not be inhumane or insane. If a punishment awarded is more than required it does the contrary by even deteriorating the criminal's mind much more. Killing someone for providing justice to a person is not something that should be done in a civilized society. Instead of hanging the criminal, a different approach should be adopted to reform the person's mind for something better ahead. The punishment awarded should be reformatory so that the problem will be cured instead of killing the problem by using the deterrent theory. The approach of giving an eye for an eye is not something that can bring any change in society. Killing someone also means making them free from all which they will suffer if they will be alive. If they will be kept alive in the prison, they will get some time to introspect on themselves and bring some good changes inside them. Capital Punishment is against the basic fundamental right of every citizen. It also violates the human rights of every human being to be alive. Even if it is required by the law, it should not be stretched for years and years as it is totally against the dignity of a person.

Keywords: *punishment, fundamental right, justice, reformation.*

INTRODUCTION

Capital Punishment or the death sentence is the rarest and highest degree of punishment given to a criminal by the law in response to the crime committed by him or her. It is the lawful order of death given by the court for committing a heinous or barbaric crime. Whenever we talk about giving punishment to some two things are generally considered, one is whether this punishment will be enough in response to the crime being committed and giving justice to the victim, and secondly, whether this punishment will bring any change in the actions of the criminals in the future by giving him a proper lesson for not committing that crime again i.e., basically bringing a change in his mindset for a better life ahead. Punishment given should not be that high in degrees that it creates the opposite impact of making that person worse from inside, thus making a bigger threat to society. It usually creates a sense of revenge inside the person rather than becoming a better human being. Instead of delivering justice revenge often creates only a cycle of retaliation¹. If a person is sentenced to death and his life comes to an end then there is no scope of reformation after that.

Capital Punishment is one of those actions which is against the fundamental right of a citizen provided under Article 21 of the Indian Constitution which says that no person can be deprived of the right to live². In the famous case of *Rajendra Prasad Vs State of UP*³, it was held that the death penalty is violative of Articles 14, 19, and 21. It should only be awarded in extraordinary circumstances. The case should be properly scrutinized whether the death penalty is the only suitable punishment for the culprit or not. The basic aim of providing such a high degree of punishment is to create fear in the minds of the people for not doing those atrocious and unlawful crimes again. Due to this, it is expected that it will lower the number of crime committers but the trend is something else. In India, there is not any decline in the number of capital punishments rather the number of capital punishments is increasing. The number of

¹ Vanessa Van Edwards, 'The Psychology of Revenge: Why It's Secretly Rewarding' (*Science of People*)

<<https://www.scienceofpeople.com/the-psychology-of-revenge/>> accessed 10 July 2022

² Constitution of India, 1950, art.21

³ *Rajendra Prasad Etc. Etc v State of Uttar Pradesh* (1979), AIR 916

death row was 488 in 2021 which is the highest in the last 17 years⁴. This depicts that the numbers are not decreasing. Capital Punishment is one of those actions which cannot be taken back once executed. It is probably possible that a decision taken by the judge for a death sentence can be wrong but once a person is dead it is irrevocable. If an innocent person will die due to this it will be a huge loss of humanity. It is better that 100 guilty persons should escape than that one innocent person should suffer. A study published in Proceedings of the National Academy of Sciences showed that at least 4% of people on death row were likely innocent.⁵

The aim of the punishment should be that it affects society at large and not only any individual. The theory of Social Engineering given by Roscoe Pound is based on the Doctrine of Rarest of Rare cases. The aim of this theory is the want of maximum satisfaction towards society at large and proving justice to build the efficient structure of society. It says to balance the interest of society as well as individuals and the public at large⁶.

LITERATURE REVIEW

Anup Surendranath, assistant professor at NLU, Delhi in his interview article⁷ in 2015 said that in the execution of Yakub Memon the litigation was only limited to the legality of his death warrant, which sets the time, place, and date of hanging. A proper procedure needs to be followed while issuing a death sentence warrant and it was quite questionable whether the procedure was followed and whether should he be given a chance to challenge the rejection of his mercy petition. He also said that why people keep being subjected to it despite the court itself saying that only 4.5% need to be on death row. If the society is comfortable with the fact

⁴ 'Annual Report of Project 39- A' (*Project 39A*) <<https://www.project39a.com/annual-statistics-page-2021#:~:text=As%20on%2031st%20December%202021,the%20highest%20number%20at%2086>> accessed 10 July 2022

⁵ 'National Academy of Science reports four percent of death row inmates are innocent' (*Innocent Project*, 28 April 2014) <<https://innocenceproject.org/national-academy-of-sciences-reports-four-percent-of-death-row-inmates-are-innocent/>> accessed 10 July 2022

⁶ Akanksha Madaan, 'Capital Punishment on Rarest of Rare Case: Is it Just and Fair?' (*Manupatra*) <<http://docs.manupatra.in/newslines/articles/upload/dfa397d3-b539-419d-a79b-28d367cfee09.pdf>> accessed 10 July 2022

⁷ Indulekha Aravind, 'Death penalty in India is a cruel game of chance: Anup Surendranath' (*The Economic Times*, 10 August 2015) <<https://economictimes.indiatimes.com/opinion/interviews/death-penalty-in-india-is-a-cruel-game-of-chance-anup-surendranath/articleshow/48406397.cms?from=mdr>> accessed 10 July 2022

that to make those 4.5% suffer, we are going to make the other 95% pay this collateral cost, we need to introspect a lot.

Professor I.G. Ahmad had written in his article death as a penalty has plagued the human mind perennially. Delay in execution is a violation of the accused's basic human rights including the right to live with dignity given under Article 21. It is inhumane, degrading, and uncivilised for a society. He highlighted the case of *Madhu Mehta Vs the Union of India*⁸ in which the mercy petition of the accused was pending before the president for about nine years. There is no reason to justify a prolonged delay in justice. There should be a speedy trial and the delay in execution should not be prolonged. It is an obvious fact that the death sentence is a big decision and it cannot be taken in a hurry but stretching it for 9-10 years is something that is not acceptable.

In 'The Punished: Stories of Death Row Prisoners in India' by Jahnvi Mishra, about 19 stories⁹ of people on the death penalty are shared. The report shows that marginalised communities are more among death row prisoners. It mentions that socio-economic privilege helps in getting a better legal representative. There is a lack of quality legal representation amongst the less privileged people. It is emphasised that the book is not an attempt to build sympathy for the prisoners rather it shows the intent of using socio-cultural-political issues is problematic.

ASPECTS OF CAPITAL PUNISHMENT

As everything has a positive and a negative impact, capital punishment also has both sorts of impacts on society. Death Sentence is good in some aspects and also becomes necessary many times depending upon the severity of the crime committed. Giving a death sentence makes a person free from the pain of punishment and the person quickly dies. It is one of the highest degrees of punishment awarded to a person for creating a fear inside the minds of the criminals because we all have the fear of losing our lives, we all become scared when death seems near to us. A single capital punishment sets an example for many more people who were thinking of doing anything like this in the future. The fear of death will make them think about their

⁸ *Madhu Mehta v the Union of India* (1989), AIR 2299

⁹ Jahnvi Mishra, *The Punished: Stories of Death Row Prisoners in India Book* (HarperCollins India 2021)

decisions twice. It reduces the chances of getting those crimes being committed again as if the person will be dead, he will not be able to escape from prison and commit those crimes again further. The chances of a conspiracy of committing more vicious crimes by that person also become zero as he will not be able to plan something from inside of the prison with anybody else from outside. When a person dies, his bad thoughts and actions also die simultaneously with him and they cannot affect anybody else again making it safer for society.

These positive impacts cannot deny the fact that Capital Punishment is extremely inhumane. Killing a person for committing a crime cannot wholly solve the problem of commitment to these crimes nor can it decrease it in numbers. It is the clear denial of one's right to life. Despite the reformation of the person, it just creates the cycle of violence. It is not a right example to kill someone for killing someone. It creates a bad example among the people in a civilized society. There are many other ways of punishment that can bring a better change inside the mind of that person like that of life imprisonment which helps the person in introspecting themselves better. The decision once made on capital punishment cannot be overturned. The decision made by the judge can be wrong and the person who is ordered to be hanged is innocent.

Once a person is dead, he cannot be brought back to life even if he is proved innocent later. The punishment of Capital Punishment is irrevocable and cannot be overturned once executed. Taking the life of a person for giving justice to a person is not a real justice served. If a person has committed a severe crime of rape he cannot feel or experience that pain or be able to introspect about what he has done if he is directly executed to death. Punishments given should be that which teach that criminal a lesson and not just directly killing them which is somehow quite easier from experiencing that pain for the rest of their lives.

CONCLUSION

To conclude capital punishment is totally against humanity it should be declared unconstitutional or the process of execution should be made more proper than it is now. The process of punishment which is taking years now should be introspected properly. If it is very much required in some serious and barbaric crimes then only the death penalty should be

ordered otherwise other harsh provisions provided by law for the criminals should be applied to punish the crime committers which will not only help in the reformation of the person but it will also make him a better human in his life. For severe and heinous crimes punishments like life, and imprisonment can be given which are equivalently high in degrees but it does not kill the person instead it is much more equivalent to the crimes committed because the death of a person is however easy for him and it saves the person from further difficulties of his life. These harsh conditions make the person more self-analyzing, he or she can see life from a different and better point of view than it was before. The death penalty is an action that is against the human rights and basic fundamental rights of the citizen. If the number of crime committers would have decreased from this harsh punishment, then also it was somehow justified but that also is not happening instead the numbers are increasing in recent years.