

DEATH PENALTY: MULTIPLE DIMENSIONS IN CONTEMPORARY SCENARIO

ABSTRACT¹

This article contemplates both positive as well as harmful social effects associated with Death Penalty. The article reflects upon the social, economic, political as well as psychological dimensions associated with the grant or refusal to grant capital punishment. The article further covers the global prospects related to capital punishment and extensively raises multiple grounds in order to elucidate to maintain a balance between life imprisonment and death penalty in offering treatment to the criminals.

Part I of the paper delves upon the arguments which raise a positive aspect vis-à-vis death penalty. In retrospect, Part II of the paper enumerates and describes three major aspects against death penalty such as, i) differential basis of offering treatment of criminals in cases involving death penalty, ii) death penalty as a means for invoking further detrimental reactions, and iii) death penalty inclined to lower strata of society. Part III of the paper highlights the global prospects which levy importance on life imprisonment without parole. The paper finally concludes by analyzing the aforementioned aspects and contemplating the need for a judicious approach in the matters concerned herewith for the sake of 'justice'.

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I. INTRODUCTION

Death penalty or capital punishment is a means for executing a person involved in the commission of heinous crimes known as capital crimes or capital offences. In most of the countries like India, capital punishment holds good in cases where a higher degree of culpability is involved causing grave danger to the society as a means to keep the social order, peace as well as the retribution.² India retains the punishment despite the global move toward abolition of it. Many international organizations like Amnesty International and United Nations General Assembly have adopted a global move towards abolishment of Death Penalty. Even the Gandhian Philosophy talks about spread of non-violence which impliedly conveys not to use death penalty as a tool for punishment which comes under the ambit of Violent Act.

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II. ARGUMENTS IN FAVOUR OF DEATH PENALTY

Death Penalty plays a very profound impact on the society by bringing in the element of fear in the minds of the perpetrators who commit heinous crimes or who think of doing so, thereby helping in condemning these crimes and maintaining peace in the society. In addition, it gives a peace of satisfaction to the victim, his/her family and to the people in the society at large and moreover, to the families of the navy personnel and police forces who in many of the cases who end up losing their lives for the sake of the country. Many people argue that a person getting death penalty should be turned into a life imprisonment as everyone should get a chance to reform themselves but in many of the cases, the person involved in the heinous crime resulting

² Kumari, Areti Krishna. DEATH PENALTY: NEW DIMENSION. Hyderabad: The Icfai University Press, 2007. Print.

into death has already many cases pending against him for other crimes or have already been convicted for other crimes in the past. So the matter of argument is that the person who has already got many chances to reform himself in the past should have made a restoration from the life of wrongdoings to a life which serves offerings to the god by indulging in activities which a reasonable and prudent person in the society may expect out of everyone, in order to restore peace and tranquility, which forms the essence of the Constitution of India.

1. DEATH PENALTY AS A CUT ON ESCALATED EXPENDITURE ON CRIMINALS

Importance shall be laid down to the level of expenditure incurred on inhabiting a person guilty for a crime in jails, which proves fatal for the economic prospects of a developing nation like India. For Instance, both Central and Maharashtra governments have spent around Rs. 29.5 crores on Ajmal Kasab to provide him food, security, medicines and clothes during his confinement in Arthur Road Central prison in Mumbai.³This asseverates the fact that such huge amounts shall rather be used in promoting the economic development which includes industrial development, establishment and effective implementation of education and health care programmes, etc.

2. DEATH PENALTY AS A MEANS TO ESCAPE DETERIORATING HUMAN LIFE IN JAILS

It is generally considered that life in prisons often leads to deteriorating health and sanitation facility for the inhabitants⁴ as well as their mental state of mind⁵, which is considered against the basic human dignity and rights of an individual, irrespective of the fact that such individual has acquired the status of a criminal. This problem is encountered mainly due to overcrowding in jails, caused by judicial decisions imposing penalties like imprisonment and such aspect shall be taken into consideration by the judiciary as well as the society.

³ News. "Rs. 29.5 crores spent on Kasab in four years." The Hindu 21 Nov. 2012: 2. Print. Also available at <<http://www.thehindu.com/news/national/other-states/rs-295-crores-spent-on-kasab-in-four-years/article4119832.ece>>.

⁴ See Bhavna Vij-Aurora. "The Horror of Indian Jails." Indiatoday.in, 24 June 2011. Web. 19 April 2014. <<http://indiatoday.intoday.in/story/right-to-justice-bill-jails-turn-into-nightmares-for-undertrials/1/142622.html>>.

⁵ See *Mental Health and Prisons*, Mental Health Legislation & Human Rights, n.d. Web. 19 April 2014. <http://www.who.int/mental_health/policy/development/MH&PrisonsFactsheet.pdf>.

III. ARGUMENTS AGAINST DEATH PENALTY

1. DIFFERENTIAL BASIS OF OFFERING TREATMENT OF CRIMINALS IN CASES INVOLVING DEATH PENALTY

Death Penalty upholds various criticisms by many legal jurists to the extent that many feel a need to abolish such heinous treatment of criminals, and many countries have indeed abolished it. More than two-thirds of the countries in the world have now abolished the death penalty in law or practice.⁶ There are many rebuttals to the point that Death Penalty should be there in our judicial judgments and many countries feel that the death penalty should be abolished and have indeed done it. In case of India, there are many loopholes in our judicial system and their judgments related to death penalty. The cases involving death penalty elucidate how the judgments and the course of criminal justice have been influenced by emotional i.e. public interest and their sentiments, gender values, special interest lobbying and the "erroneous legal precedents set by itself". The hideous truth is this: judicial executions are followed by a biased opinion depending on one need. In the case of *Mohinder Singh v. State of Punjab*,⁷ the death penalty given to Mohinder Singh for killing both his daughter and wife was commuted by Justices P Sathasivam and Fakkir Kalifullah -- this while out of prison on parole where he was serving time for earlier raping the girl. The judges argued that the death penalty ought to only be considered when a perpetrator posed "a menace and threat to the harmonious and peaceful coexistence of the society." One week later, in the case of *Sunder@Sundararajan v. State by Inspector of Police*,⁸ Justices Sathasivam and Jagdish Khehar upheld death for Sundararajan, who kidnapped and then killed a seven year old boy. The judges noted, among other things the "agony for parents for the loss of their male child, who would have carried further the family lineage." Besides the obvious imprint of gender values on judicial reasoning, it is the arbitrariness of outcome in cases that are similar which tells us something is seriously wrong. Indians must remember the foundational principle of our Republic, the guardian of all our rights

⁶ "Abolitionist and Retentionist Countries." Amnesty International, n.d. Web. 20 April 2014. <<http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>>.

⁷ *Mohinder Singh v. State of Punjab*, Criminal Appeal Nos. 1278-1279 of 2010.

⁸ *Sunder@Sundararajan v. State by Inspector of Police*, 2013 STPL (Web) 96 SC.

and freedoms, isn't popular sentiment: it is justice, which in turn is based on the consistent application of principles. There is no principle underpinning the death penalty in India today except vengeance.⁹ Such differential basis of treating a criminal is a setback to the criminal justice delivery system, and may have detrimental effects in society in the way one perceives death penalty.

2. DEATH PENALTY AS A MEANS FOR INVOKING FURTHER DETRIMENTAL REACTIONS

Death penalty given to person involved in heinous crime does have a pernicious effect on the society as well. Death Penalties given to Afzal Guru and Kasab for their involvement in the terrorist attack may create uproar among the terrorist groups to which they belonged and may initiate a counter attack from their respective groups, who may have kept their anger in control knowing that their comrade is still not dead and is living in the gallows. A country like India whose defense budget is as low as \$37.4 billion¹⁰(compared to that of china whose defense budget is \$115.7 billion) and the military is not equipped with latest technology as that of Russia, USA,etc. cannot sustain and prevent an another attack from these group. There should rather be a sensitive approach towards these terrorist so that they could be reformed and returned to the mainstream of the society. This would further placate their terrorist groups which may make them realize their mistakes and thereby may give up their lethal profession to the people and society at large as it is said by Albert Einstein that “Peace cannot be kept by force; it can only be achieved by understanding”.

3. DEATH PENALTY INCLINED TO LOWER STRATA OF SOCIETY

There is greater risk of innocent people being rewarded death sentence due to lack of money which disable them to hire good lawyers, thereby suffering from enigma by the legal authority. Moreover,with the involvement of opulent people in these cases, the chances of theirs escaping from the liability is much better than the poor people as they have the means to delete the

⁹ Sudershan Shukla. “Vengance isn’t Justice.” The Hindu 10 February 2013:1. Print.

¹⁰ Laxman K. Behera. “*India’s Defence Budget 2013-14: A Bumpy Road Ahead.*” Institute for Defence Studies and Analyses, 3 March 2013. Web. 8 August 2013.<http://www.idsa.in/idsacomments/IndiasDefenceBudget2013-14_lkbehera_040313>.

evidences against them, to hallucinate the witnesses against them thereby bringing the judgments under their control. In addition, there are cases where judges take bribes and give favorable verdicts. Recently, special central bureau of investigation court has directed charges against Justice (retd.) Nirmal Yadav as she has been able to strike gold to extract money by accepting bribe in many cases from affluent people.¹¹ According to CBI in 2006, she annulled an FIR filed against Mahant Chand Nath for the murder of Baba Azad Nath under Criminal Procedure Code Section 482, in a murder case and received Rs.50 lakh as bribe¹², clearly showing the extreme pain suffered by the victim's family and how the perpetrators of the law have been escaping all the liabilities by the use of their wealth, who should have otherwise received a death penalty. This shows the difference of judgments of death penalty harming the innocent people up to the brim.

4. GLOBAL PROSPECTS: LEVYING IMPORTANCE ON LIFE IMPRISONMENT WITHOUT PAROLE

Considering international scenario on the approach towards death penalty, it has been revealed in many articles that death penalty shall rather be convicted to life imprisonment without parole. Death Penalty is considered expensive than life without parole because death penalty in various legislations across the globe requires a long judicial process for its implementation. Regards have to be made to reasonable opportunity to the accused to present itself before the court to prove their innocence which requires the charge of death penalty to be converted into life imprisonment or other punishments which are lower in intensity. A study has shown that California has spent more than \$4 billion on capital punishment since it was reinstated in 1978 (about \$308 million for each of the 13 executions carried out). California spends an additional \$184 million on the death penalty per year because of the additional costs of capital trials, enhanced security on death row, and legal representation. It is predicted that the cost of the death penalty will reach \$9 billion by 2030.¹³ This highlights a more justifiable approach of imposing penalty to the

¹¹ See *Mahant Chand Nath Yogi v. State of Haryana*, (2003) 1 SCC 326: AIR 2003 SC 18: 2003 Cr LJ 76.

¹² Chander Suta Dogra. "Justice took bribes in many other cases, says CBI Report." *The Hindu* 4 August 2013:1. Print. Also available at <<http://www.thehindu.com/todays-paper/judge-took-bribes-in-many-other-cases-says-cbi-report/article4987475.ece>>.

¹³ "The High Cost of Death Penalty." *Death Penalty Focus*, n.d. Web. 20 April 2014. <<http://www.deathpenalty.org/article.php?id=42>>; See *Report And Recommendations on the Administration of the Death Penalty in Califor*

criminals by devising life imprisonment without parole for quicker and economically viable way to treat criminals.

IV. CONCLUSION

It is highlighted that Death Penalty has a gamut of positive as well as negative aspects associated with it. The problems related to increased expenditure, detrimental to the economy, for inhabiting a criminal in jail has indeed been a setback on the economic prospects of the country. Its indirect implication has been the denial of essential services related to basic human rights like health to these criminals, on account of failure of the Central as well as the State Government to ensure easy and adequate access to such facilities to guarantee such rights. Notwithstanding such problems related to denial of capital punishment, it has been extensively shown how a discerning approach has been used in different cases involving similar matter, which discriminates and denies justice to one who is granted death penalty. In addition, death penalty may serve as inviting future detrimental reactions by the counterparts of the person awarded capital punishment. Death Penalty is inclined towards lower strata of the society who do not have the resources to pay and incur expenses for the long standing proceedings of the courts involving death penalty. Looking at the global prospects, country like California has faced escalated expenditure on cases involving death penalty and calls for life imprisonment without trial to foster growth and development in allied fields. Thus, death penalty can be viewed as both boon as well as bane in the present scenario, and it becomes imperative to understand both the positive and negative aspects related to it before coming to possible viewpoint about such vast topic.