

MORALITY AND DEATH PENALTY: IS CAPITAL PUNISHMENT MORALLY RIGHT? (IN REGARD TO INDIAN CONTEXT)

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Abstract

This paper examines the changing nature of death penalty arguments in four specific areas; moral prospects, dominance of State, deterrence and retribution.

Morality and death penalty are two contrasting words which will be dealt together in this research paper. While morality usually deals with high moral values and righteousness, death penalty is a severe punishment which is awarded after committing heinous crimes in rarest of rare cases.

Death penalty is given because it is believed that it deters the rate of crime as well as number of criminals in a society which ultimately results in a country's betterment. But the question which arises here is, "is giving death penalty to an accused morally right?"

Some advocates that giving capital punishment is morally impermissible as it is inherently cruel and barbaric while others believe that it is a must to remove and end atrocious and inhuman activities prevalent in today's world because providing death penalty creates dread and terror in the minds of the public which abstains them from doing these crimes.¹

Moral philosophy gives two types of justifications of punishment: retributivism, which states that punishment must be awarded to the wrongdoer in reward of his crimes, and, utilitarianism, which justifies punishment as a means to reduce crime.² Throughout the paper researcher will deal with certain moral codes and philosophies given by some of the most prominent philosophers like Immanuel Kant and H. L. A. Hart.

¹Furman v. Georgia, 408, U.S. (1972)

²Paul Smith, *Moral and Political Philosophy*, ch. Justifications of Punishment, p. 19.

Introduction

There is a play called "*Antigone*" written by a famous Greek writer Sophocles in 441 BC. It raised several questions like, to what extent can The State dominate over the life of its citizens, moral rights v. law of the land, and do we always need to follow the laws of the land?

Way back then, the question of morality against the state has gained its momentum and has become a topic of discussion since then. The need was felt back in 441 BC and still is has not found its solution.

Dictionary meaning of morality is a principle which distinguishes between right or wrong or good or bad behavior.³ Various philosophers had their own interpretation of morality which always contradicts each other. Jeremy Bentham, an English philosopher of 18th century said, "*Morality is to do whatever maximizes utility or happiness*". The right thing to do individually or categorically is to maximize the overall level of happiness. Bentham's utilitarianism jinx lies in a quote, "*The Greatest Good for the Greatest Number*".⁴

But, Libertarians thinks that the right thing to do is most often to let people do whatever they want, whereas, John Locke's theory says that there are unalienable rights, accorded to every human being by the "*law of nature*" and the famous philosopher Immanuel Kant contradicted each of these views. Opposing utilitarian's, Kant argues that freedom, and not happiness, is the goal of morality; against Libertarians, Kant denies that freedom is only about doing whatever you want and emphasized that freedom comes with responsibilities; and against Locke, he argued that morality, duty, and rights have their basis in human reason, social conduct, surrounding environment and to circumstances but not in the *law of nature*.⁵

Hence, to derive a single justified interpretation of morality is not a feasible option. But what we can derive from all the above interpretations is that moral standards are one that we all have a good reason to accept as a normally conclusive basis for deciding what to do and for assessing our claims against each other.

But why are we analyzing morality in a paper which will be dealing with the issues of *Death Penalty*? Because "moral interests" in a legal system makes the system more safe and reliable for the common public and their interests. It does not only look after the damages provided to the victim but also creates an environment for the fewer occurrences of the same.⁶

³ Oxford dictionary

⁴ J.H. Burns, *Happiness and Utility: Jeremy Bentham's Equation*, p. 46

⁵ Michael Sandel, *Justice: What's the right thing to do?*

⁶Mira T. Sundara Rajan, *Moral Rights*, Oxford University Press p.9

What is Capital Punishment or Death Penalty?

It is a legal process where an accused is sentenced to death for the wrongs or crimes he committed. It is awarded in the “*rarest of the rare*” or “*heinous*” crimes. The judicial decree to punish someone in this manner is the *capital punishment* while when the punishment is given, it is termed as *execution*.

Why do we award capital punishment or death penalty?

The criminal justice system all over the world is based on three principles;

- Retributive
- Rehabilitation
- Deterrent

Theory of Retributive Justice states that punishment must be accorded to the accused in proportion to his crime or offence. It also seeks to provide satisfaction to the family or friends of the victims who died or has become physically disabled as they are considered as “needy” and “helpless”. They are actually benefitted by the retributive promises.⁷

Rehabilitation principle considers crimes as diseases and treats it by scientific and psychological solutions. As many other punishment methods are punitive, rehabilitation is basically therapeutic. Its function is to free the offenders from the disease so that the society can be made a better place to live. They also achieve to diminish the crime rates by curing the criminals so that when they return to the society they shall be able to give something productive in return. Hence, instead of taking revenge from the criminal rehabilitative ideals helps them in becoming a better citizen. As it is considered the most humane and progressive way of punishment, this is also the hardest to achieve.⁸

General deterrence is one of the ideas behind supporting death penalty. It is claimed that to set an example in a society it is necessary to award death penalty or severe punishment to the people who has committed heinous or rarest of rare crimes. It stops the potential offenders by punishing the past offenders.⁹

These ways of punishments and the reasons behind them supports the arguments for punishments, but are they justifying the reasons behind capital punishment?

⁷Michael L. Radelet and Marian J. Borg, *The Changing Nature of Death Penalty Debates*, Annual Review of Sociology, Vol. 26(2000), Annual Reviews, <http://www.jstor.org/stable/223436> , Accessed on 2-4-2015 10:37p. 52

⁸Nick Smith, *Encyclopedia of Criminal Justice*

⁹Supra footnote 5,p, 44

Hence, here we will be raising four different questions which needs to be answered or atleast taken into account before reaching at any viable conclusion regarding death penalty.

- **Research Questions**

- I. *Is giving death penalty morally right?*
- II. *How much control does state possess over the life of others?*
- III. *Does capital Punishment actually deters the crime rate?*
- IV. *What happens to the life of people after being convicted of death penalty?*

Research methodology:

Researcher has adopted the Doctrinal research methodology where data and knowledge has been acquired through several books available easily in libraries, magazines, newspapers, online journals like jstor, manupatra and cases of different countries, etc.

Much focus was given to certain online journals because they are updated and discusses the current burning issues. They also take into account the current scenario for any case or the prevailing situations in a country. Books helped in analyzing the basic concepts about the morality as well as its relationship with the changing laws of death penalty. Books are static and raises the matters which are important at any point in time. They provide a building stone to raise any wall.

Magazines and newspapers were looked upon for the latest updates in this world of change and online databases helped in finding the cases relating to the same.

All the data collected for this paper is reliable as they are collected by authentic sources upon which it has been further analyzed.

Observations:

- ❖ The first research question, ***“Is giving death penalty morally right?”***

As by far we are aware as to what is death penalty and why is it awarded, it is also noteworthy to know that under Indian Penal Code, death sentences are awarded in cases of treason, murder, perjury resulting in conviction and death of an innocent person, abetment of mutiny, kidnapping for ransom and dacoity with murder.

But despite of this provision being in the *“Book of Law”*, The Law Commission of India as well as The Supreme Court is skeptical regarding its application. As in the month of August, 2014

The Law Commission of India had called for the review for the application of death penalty and had also sought the public opinion, but of no use as even today the death penalty and certain notions as well as doubt attached to it remains. However, even the apex court of country admits that sometimes death penalty is awarded arbitrarily, inconsistently and incorrectly.

Those who supports death penalty also says that once a murderer will be executes he no longer would be able to kill others. But once if his punishment has been reduced to life sentence he may become a potential threat to the life of others or could kill someone in the prison itself. This is also known as "*incapacitation*", but this point was valid till the time where there was no modern prison made for long confined sentences and holds no valid point now.

Even the practical applicability of the death penalty can be questioned on several grounds such as;

- *There is a better alternative: life without parole.*¹⁰

While Indian Judicial System provides death penalty in "rarest of rare" cases and even those are subjected to criticisms, they can adopt this alternative of life sentence without any parole as various countries in U.S have also adopted the same.

- *The death penalty puts innocent lives at risk.*¹¹

This is a crystal clear fact that whatever is established in a trial comes with no guarantee of truth and hence involves a high risk of the lies of the innocents.

- *Race and place determine who lives and who dies.*¹²

Like Whites and Blacks in America, Rich and Poor in India. Those who have access to the system dominate and suppress the other.

- *We pay many millions for the death penalty system.*¹³

The recent case of Kasab, the terrorist from Pakistan on whose custody and execution, nearly two crores was spent by the government. Now imagine in a country like India, where the poor's die because of starvation and lack of basic necessities, is spending so much amount on criminals worth it?

- *Poor quality defense leaves many sentenced to death.*¹⁴

We risk the life of the accused in the hands of the counsels and his abilities. If he succeeds, the life of the accused is saved, but if he fails, the accused will be executed which is undisputedly irrational.

- *Capital punishment does not deter crime.*¹⁵

¹⁰Russ Feingold, *Oregonians For The Alternative To The Death Penalty*, <http://www.oadp.org/facts/13-reasons>, Accessed on 2-6-2015, 10:40

¹¹Ibid 10

¹²Ibid 10

¹³Ibid 10

¹⁴Ibid 10

¹⁵Ibid 10

Scientific studies have consistently failed to demonstrate that executions deter people from committing crime. After analyzing NCRB data, it was said that, "*The empirical evidence of the Government of India, establishes that death penalty does not act as deterrent.*" - Stated Mr. Suhas Chakma, Director of Asian Centre for Human Rights.

- *There is a better way to help the families of murder victims.*¹⁶

Families of the convicts face several social problems in the society including societal boycott and various other emotional traumas. Executing the convict gives no relief to the family, it however adds to their problems. Now, if the same fund would be spent on their counseling or economic assistance, that would be a major relief.

- *Capital punishment goes against almost every religion.*¹⁷

Also, as India is a highly religious country, it must be taken into account that none of the prevalent religion in India supports death penalty and hence considers it immoral.

- *Mentally ill people are executed.*¹⁸

According to Amnesty International and the National Association on Mental Illness, many mentally ill defendants are unable to participate in their trials in any meaningful way and appear unengaged, cold, and unfeeling before the jury. Some have been forcibly medicated in order to make them competent to be executed.

- *No civilian's job description should include killing another person.*¹⁹

As we preach the concept of equality and justice, no one should have the right to take another's life.

Recently this issue was also raised by *The Amnesty International* for the accused Keshwar Yadav, Rampravesh Yadav, Brahmadeo Yadav, Baburam Yadav, Chadradeep Yadav, Rajaram Yadav, Jaganarayan Yadav and Chitaman Yadav from Dalelchak village (Bihar) who were sentenced to death on November 4, 1992 by the additional sessions judge of Aurangabad district on the charge of murdering 26 persons from Baghaura village (Bihar), in May 1987. On December 7, 1995, the Bihar High Court in Patna upheld the death sentence which has not been awarded yet and all of the accused are rotting in prison.²⁰

As we are aware that *The Amnesty International* is against the death penalty because it is the most cruel and dreadful form of punishment and must not be awarded to anyone. Also after knowing the condition of the accused of the above mentioned case the same foundation raised several questions which are as follows;²¹

¹⁶Ibid 10

¹⁷Ibid 10

¹⁸Ibid 10

¹⁹Ibid 10

²⁰*Rajaram Yadav v. State of Bihar*, 4 July, 2013, <http://indiankanoon.org/doc/3583407/>

²¹Michael Guesdon, *On Death Penalty*, Economic and political weekly vol. 32 No. 39 (Sept27 – Oct 3, 1997), Economic and Political weekly, <http://www.jstor.org/stable/440575>, Accessed on 2-04-2015, 10:41 p. 2430

- To what extent does the state has been successful in deterring crime rates by giving capital punishment?²²
- Also the long delays which are a part of the Indian Judicial System deters the physical as well as mental capacity of the criminals and make them prone to more dreadful and inhuman treatments by the police officers.²³
- Moreover, the judicial committee of the Privy Council in London regarded a wait of five years or more on death row as inhuman and ordered the accused sentences be commuted to life imprisonment.²⁴
- Also there are no clear guidelines on death sentences in India which may lead to the personal biases and miscarriage of justice where to fulfill political agendas, minorities or poor may be given death penalties.²⁵
- Apart from being discriminatory it is also irreversible: means once hanged to death nobody can be brought back and this many of the times results in punishing the wrong person or the innocents.²⁶
- Being committed to the principle of justice, the arbitrariness can be noticed with which The Indian Judicial System decides who shall die for a crime and bestows its most extreme penalty on those least able to defend themselves within that system.²⁷

These are issues of major concern and must be taken into account before sentencing anyone to death and actually question the reliability of the capital punishment and it's after effects.

- ❖ The second research question which arises in the paper is ***“how much control does the state possess over the life of others?”***

As we studied in political science about the Social Exchange Theory, that in order to avoid conflicts and power issues in a society, we pooled our rights to an authority and trusted them with the same. We believed and still believe that they are there to protect us and our rights from others.²⁸ Even today, *“we choose them, we form them, and we make them”*, then how is that right on the part of them to take someone's life? This is a question raised by those who are against death penalty and is based more on moral grounds relating to natural law.

²²Ibid21

²³Ibid21

²⁴Ibid21

²⁵Ibid21

²⁶Ibid21

²⁷Ibid21

²⁸Richard M. Emerson, *Social Exchange Theory*, Annual Review of Sociology, Vol.2 (1976) , Annual Reviews, <http://www.jstor.org/stable/24606> , Accessed on 2-04-15, 2:05 pm p. 335

But in today's scenario, where the crimes are increasing day by day and people are dying like flies and insects, is it not appreciative on the part of the state that it is taking strict measures and formulating stringent laws for the curbing the same.

But what about "*miscarriages of justice*" where innocents are executed in the names of accused? How is the Government or State curbing this situation? Does the alleged or expected benefit of capital punishment outweighs or free the state from these liabilities? Is it right for the state to avoid these blunders in the name of larger goods and better future perspective?²⁹

Those who support death penalty must take into account this liability of the state to punish the accused and not the innocent, where sometimes it fails miserably and ends the life of an innocent and spoils the life of the rest of his family members. Many gives counter argument to the above raised questions that state has to look after the larger goals and benefit of the society, here I raise the question that whether the person who was falsely charged not a part of the society? Does the State have no duty towards them or their families?

But nowadays, people believe more in retributive punishments³⁰ and this is the reason why a country like India has not abandoned it whereas according to Amnesty International, 140 countries have abolished the death penalty.

Cases relating to death penalty;

The most recent example will be the Nirbhaya gang rape case, which occurred on December 16, 2012 in Delhi, where a 23-year old girl named Jyoti Singh Pandey was gang raped in a private bus and later was thrown outside the bus. She succumbed to her injuries after fighting for thirteenth days from the date of her rape. In this case, six persons were accused including the bus driver for sexual assault and murder and it falls under the ambit of "*rarest of rare crime*". One of the convicts of this case died in the jail while one was a juvenile during the incident. But the remaining four were awarded death penalty by the trial court and the same was confirmed by the Delhi High Court to send them to the gallows for the "*horrific crimes*" committed by them.³¹

Also in the infamous Mumbai attack case on November 26, 2011 Md. Ajmal Kasab, one of the accused terrorist was given death sentence by Bombay High Court which was further upheld by The Supreme Court of India. He was accused of eighty charges in total including conspiracy to wage war against the Government of India; collecting arms with the intention of waging war against the Government of India; waging and abetting the waging of war against the Government of India; commission of terrorist acts; criminal conspiracy to commit murder; criminal conspiracy, common intention and abetment to commit murder; committing murder of a number of persons; attempt to murder with common intention; criminal conspiracy and abetment; abduction for murder;

²⁹Supra footnote 5, p. 50

³⁰Supra footnote 5, p. 52

³¹ Times of India, Jul 15, 2014

robbery/dacoity with an attempt to cause death or grievous hurt; and causing explosions punishable under the Explosive Substance Act, 1908.³²

These are Indian cases and represents Indian scenario. Here, we can see that both of the above mentioned accused committed *heinous* and *horrific* crimes which falls under the category of "*rarest of rare crimes*" and so were they sentenced to death.

In one of the U.S. cases, Petitioner Patrick Kennedy, who was accused of raping his own 8-year old stepdaughter was convicted and awarded capital punishment by the Louisiana state statute which further authorized capital punishment for the rape of a child under 12. The State Supreme Court affirmed the statute, rejecting petitioner's reliance on *Coker v. Georgia*, which prevented the use of capital punishment for the rape of an adult woman. In this case, The Supreme Court finally concluded that the Eighth Amendment bars Louisiana from imposing the death penalty for the rape of a child where there was absence of intention or the motive and crime did not result, and was not intended to result, in the victim's death.³³

The judgment of this case raises a serious question that on what grounds death penalty are awarded and how they vary from country to country.

- ❖ The third research question of this paper is, "***Does capital Punishment actually deters the crime rate?***"

This issue has always been raised by the abolitionists who are always in the favour of abolishing death penalty. Deterrence refers to the situation where the crime rate decreases in a country after the past offenders have been stringently punished for their crimes. It creates an aura where people fear before breaking the law that they will also get punished or hanged to death. But is this really working in India?

In 2014, The Asian Centre for Human Rights in its report, "*India: Death Penalty Has No Deterrence*", stated that President Pranab Mukherjee has rejected 97% of the mercy petitions since assuming the office of the President of India on 25 July 2012 despite no deterrent effect of death penalty. Analyzing the data of the National Crimes Records Bureau (NCRB), Asian Centre for Human Rights stated, "*From 2001 to 2012, death sentence of 1,552 convicts were confirmed while the death sentences for 4,382 convicts were commuted to life imprisonment. This implies that a total of 5,934 convicts were given death sentence in the last 12 years in India i.e. about two convicts being given death sentence every working day of the judiciary*".³⁴

³²*Md. Ajmal kasab v. State of Maharashtra*, <http://indiankanoon.org/doc/193792759/>

³³ *Kennedy v. Louisiana*, US Supreme Court, June 25, 2008

³⁴ Asian Centre For Human Rights, <http://www.achrweb.org/press/2014/IND08-2014.html>, Accessed on 2-6-2015, 11:58

According to the data of NCRB, 97 persons were convicted of death penalty only in the year 2012 out of which 61 were commuted to life sentence and one was executed in the same year.³⁵ And similarly the statistics increased year after year with no decrease in the crime rate.

“Though death penalty does not act as a deterrent, the Government of India continues to mislead the people about its effectiveness. Death penalty can never be a substitute to prevention, effective and prompt investigation and speedy justice delivery system against crimes on which the Government of India has failed”. – Further stated Mr Chakma.³⁶

Even we have also seen many cases of awarding death punishments to a criminal or terrorist, but even we can observe in our day to day lives that it has not in any manner whatsoever has decreased the crime rate. Moreover, the crimes have increased with more anger and revenge in the minds of the deviants. The latest issue on which we can focus is the infamous Nirbhaya case; as per as the ACHR reports concludes that,

“Even inclusion of death penalty for repeat offenders of rape under Section 376E of the Indian Penal Code following the Nirbhaya gang rape incident in Delhi has not reduced non-homicidal offences such as rape and has neither act as a deterrent. According to data released by the Delhi Police, 616 rape cases were registered in Delhi from 1 January 2014 to 30 April 2014 i.e. six cases were reported every day. This is an increase of 36% compared to around 450 cases registered in the same period in 2013. Similarly, after the Shakti Mill Case, on 4 April 2014, a Sessions Court in Mumbai, Maharashtra became the first in the country to impose death penalty to three repeat offenders of rape under the new Section 376E of the IPC in the infamous Shakti Mill rape case. However, the data provided by Mumbai Police showed that 135 rape cases were reported from April to 15 June 2014 i.e. about 2 rape cases daily.”³⁷

❖ Last question raised in this paper is, ***“What happens to the life of people after being convicted of death penalty?”***

This question deals with the issue that what becomes the mental state of the people after convicted of death penalty. How they live their remaining life and what emotional and physical trauma they go through. The long delays before the death row and the torture in the jails, day to day trials, harassments and the acquisition on daily basis. They suffer through all this knowing the truth in their mind that one day they are going to be executed and will never be able to see their families and loved ones. Those who are wrongly convicted are at major risks, they face all the troubles for no guilt or crime. Also, the chance of the accused to suffer from depression or certain psychological diseases increases.

³⁵Prison Statistics of India, 2012, *Details of Death Sentences during 2012*, <http://ncrb.gov.in/PSI-2012/Full/PSI-2012.pdf>, Accessed on 2-6-2012, 12:12, p. 126

³⁶Supra footnote 34

³⁷Supra footnote 34

Also the concept of *labeling theory* applies here, which mentions that once society terms anyone as a deviant or label for any unproven fact or an unestablished crime, they never accept them as a reasonable or a valuable person of society. Even when a person gets acquittal after proven innocent, then also the people do not accept them and it deters their social status and further makes their life miserable. Sometimes when a person is seen as a criminal even when he has not done anything wrong, he gets inclined towards the crime and sometimes only because of this factor they embark on the journey of crime and hence proves the misnomer at first hand.

One of the main concerns regarding this is; "death in jails", which often creates the problem of law and order and questions the conditions of Indian Jails. They are divided into two categories; natural and unnatural deaths. Natural deaths occur because of age, pre-medical conditions or any natural factors. But the unnatural deaths raise issues as they takes place because of suicides committed by the prisoners, fight among the inmates, murder by an inmate, negligence of jail authorities as well as death because of firing or misfiring.³⁸

This is the condition of Indian Jails and hence the long wait before the execution for those accused of death penalties becomes a lifelong punishment for them. And sometimes their life ends, even before the execution.

Conclusion

After analyzing and deep reading of all the issues relating to the death penalty in India, it can be concluded that "*Death Penalty should be abolished in India*". The most important reason for the same is that Indian Judicial System does not ensures that only the accused are being executed and not the innocents. It exhibits major flaw in risking the life of the innocents. Also there exists a political power play which influences each and every decision of the judiciary and leads to biases and injustice in some cases. Awarding death penalty is not just a punishment, but is a responsibility on the part of the state as well as the citizens that strict punishment will be awarded to the deviants and in order to save themselves, others will not indulge in any such activities. But in Indian context where there is lack of reliability and pathetic legal procedures being followed, risking the life of any individual will be a wrong decision.

Also we aware that the U.S Judicial System is more advanced and speedy than Indian judicial system; still there have been many cases where the U.S Courts have executed the innocents even after taking conducting proper trials and established procedures. For example, Claude Jones, who was executed in 2000 for murdering the liquor store owner Allen Hilzendager, San Jacinto County, 1989. However after the execution it was found out that he was innocent. He was convicted on the basis of evidence

³⁸Prison Statistics India 2012, *Deaths in Jails*, <http://ncrb.gov.in/PSI-2012/Full/PSI-2012.pdf>, Accessed on 2-6-2015, 1:25, p. 133

that his hair strand was found at the crime scene and as forensics was developing in 1990's they were not able to match Jones's DNA with the hair strands.

Similarly several others like Jesse Tafero, Cameron Todd Willingham, Larry Griffin, Ruben Cantu, David Spence and others have also been wrongly executed.³⁹

This is not any sort of comparison between the Indian or American Judicial system, but if we look into the data then we can possibly infer that in a country like India, where the population is high and so is the crime rates, chances of wrongful execution increases. Instead of proving the effectiveness of death penalty, if the Indian Judicial system tries for the betterment of country by fastening the justice delivery system, speedy trials, counseling of the convicts etc. that would be more effective and beneficial.

We must understand that India is not a communist country but a democratic one where every decision should be taken or each law must be made *by the people, of the people, for the people*. She is a country which embraces several religions in her arms and tries best to serve all of their interests. But as we all have witnessed the political as well as economic turmoil of India throughout these years, we must understand the sensitivity of this issue as well as its impact on the country.

This is a country where you can find billionaires and millionaires, richest in the world, on the contrary, you will also find people who cannot earn enough to buy one time meal. This is a country where the malnutrition rate is highest among children and the rich kids go to foreign for their studies. Here you can see a woman in a city who is all by herself and is completely independent and earns her living, also a woman in a village who is not even aware of her rights and has considered oppression as her fate.

The intention is not to focus on the poverty of India, but the disparity. Where there is this much difference among the people, how can the state claim equality and justice to all. This is questionable even in simple circumstances, leave alone the case of death penalty.

The researcher agrees that in some cases it is important to give capital punishment and that should be given after proper establishment of the facts of that case and evidences relating to the same. But it must be avoided to a possible extent so that *no injustice could be served in the name of justice*.

³⁹Criminal Justice Degrees Guide, <http://www.criminaljusticedegreesguide.com/features/10-infamous-cases-of-wrongful-execution.html>, Accessed on 2-6-2015, 1:42

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