



Capital Punishment: A Comparative Study¹

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ABSTRACT

India is a rapidly developing nation, and as a result, the crime rate has been rising steadily. Despite the fact that crime rates are rising as a result of insufficient sanctions, India has many legal provisions to prevent and control crime. To decrease crime, the penalty should be severe. The goal of all punishments is to make the wrongdoer pay for their actions. In India, there are many different types of penalties, including property confiscation, the death penalty, and life in jail. The most severe type of punishment is considered to be the death penalty. The state of the death penalty in India is discussed in this essay, along with a definition of the idea of capital offences. It also describes how the death penalty is carried out in India. This page examines several theories concerning the death penalty, including preventative theory and reformatory theory. We also discussed the rarest of rare situations for applying the death penalty in this study. This page provides a thorough overview of the death penalty in India as well as the procedures used to carry it out.

Introduction

India is a nation where there are many criminals and crimes. Punishment in India is mostly used to hold the culprit accountable for his actions. The penalty should be imposed for two important reasons: first, the wrongdoer should suffer; and second, to punish wrongdoers and deter others from committing wrong. In India, multiple punishments, including imprisonment, the death penalty, prison time and a fine, capital punishment, and fines, are based on a variety of offences. The death penalty, often known as capital punishment, has been the topic of this study. It is a crucial concept in the Indian criminal justice system. Capital offences are crimes that carry the death penalty, and the phrase "capital punishment" comes from the word "capitalism," which meaning "regarding the head."

The method through which a state executes a person for their criminal offences is known as capital punishment. For the criminal offence that the offender committed, the court sentenced the offender to death. Only grave crimes against humanity are eligible for it. Varied locations, states, and nations have different versions of the death punishment. Many movements in India argue that the death penalty is unethical and harmful to society. They contend that the death penalty affects a person's right. In terms of crime, punishment, and law, capital punishment is synonymous with a death sentence. The governor and president also have the authority under the constitution to revoke or commute a death sentence. Only the most serious crimes are eligible for the death penalty in India. For instance, it is awarded for crimes like murder, supporting a revolt, waging war against the government, and robbery combined with murder. The Court only sentences someone to death when it determines that no other penalty would be as severe as the crime. The major goal of this essay is to: Briefly examine the criminological perspective on the death penalty; Briefly examine the use of the death penalty in India.

Current status of Capital Punishment

View of Supreme Court on Capital Punishment's validity in India Article 21 of the Indian Constitution asserts the Right to life and liberty to the citizens of India. It also includes in its report that no person shall be refrained from enjoying his life or personal liberty except in the case the law demands. It has been legally construed as meaning that if a fair and valid procedure arises, then the State has the power to frame a law that can deprive a person of his life. While on the other hand, the central government has constantly maintained it to keep the death penalty in the books of the statute to act as a deterrent for that offender who can be a threat to society. The Supreme Court, as well, sustained the constitutional rationality of Capital Punishment in "rarest of rare" cases like *In Jagmohan Singh vs State of Uttar Pradesh (1973)*², later *Rajendra Prasad vs State of*

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²1973 AIR 947, 1973 SCR (2) 541

Uttar Pradesh (1979)³, later in the case of Bachan Singh vs State of Punjab (1980)⁴, the apex Court proclaimed the constitutional validity of the death penalty. Supreme Court said that if capital Punishment and its procedure provided in the law is fair, just and reasonable, then the death sentence can be given to a convicted. Still, it can only be in the "rarest of rare" cases, and the courts have to provide "special reasons" while sentencing a person to the gallows.

Theories of Capital Punishment-

1. Deterrent Theory of Punishment:

Under this theory, brutal Punishment is granted against a criminal. The straight meaning of Deterrent is "discouraging", so from meaning this, it can state that under this theory, the penalty granted against the wrongdoer is such that it discourages the offender from committing such a crime in the future again. Ultimately, under this theory, the main aim of Punishment is to create fear in the minds of the criminals. It can only be done by providing a grievous punishment to the offender so that future crimes or imposing a penalty on the person can be.

The Deterrent theory aims to punish the criminals by establishing the right penal discipline so that no person, the offender, or any other person even thinks of committing any crime. It focuses on abstaining from wrongdoing and deterring criminals from committing crimes of the exact nature or who have already been punished under this theory for the same offence. Deterrence theory is considered an essential aspect of the criminal justice system mainly because it helps not only control crimes but also protect the interest of society by initiating a sense of fear among the people committing any heinous crime in the future again. It is understood that the deterrent theory was used during the medieval period in England. Still, one of the most significant disadvantages of this theory is that even in a highly insensitive crime or minor crime same Punishment was given. For example, if a person committed the crime of theft, they were subject to the same Punishment: death or whipping. However, in India, this theory was applicable only during the Mughal period, under which Punishment for petty offences was death.

2. Theory of Retribution:

They are considered the eldest, as well as an ancient theory made to justify the concept of Punishment. This theory follows the principle of "eye for an eye"⁵. Therefore, under the idea of Retribution, Punishment granted against the wrongdoer shall be proportional to the crime the offender has committed. Application of Retribution theory is needed for Punishment mainly to achieve social security by giving Punishment to the offender, providing justice to society, and acting as an example for other people preventing them from committing any crime similar to those for which a Punishment is already given. By applying this theory, the very balance is achieved within legal system because then almost all crimes have an excellent and different punishment which is at par with the kind of Act which is illegal the crimes committed.

Those legal practitioners who supported this theory concluded that this theory gives such a punishment that could make him suffer the same that the victim of the crime suffered. Various legal researchers also stated that by not implementing this while giving Punishment against the criminal, various significant problems could occur. First, the victim himself may seek revenge from the criminal, or the victim may lose faith in the judicial system and refuse to file a complaint. Thus, hampering the ability of both the State to give justice to the victim and Punishment to the criminal.

Therefore, the main aim of Retributive Punishment is to banish the instinct of taking vengeance within the mind of a person and society because whenever the criminal commits a crime, then not only is the victim someone who is disrupted or affected by such crime but the whole community has the same sense of vengeance. Therefore, it is vital to understand that this theory that makes a punishment otherwise considered immoral a justified will in the eyes of the law. Still, when vengeance is taken instead of Punishment, in such cases, the whole purpose of Punishment eliminates and makes the person who has taken such revenge as the accused.

Also, it shall be kept in mind that in modern times, this kind of disciplinary Punishment should be appreciated more by legal Scholars or practitioners. The main ground is that it is not the kind of Punishment that is wise. Neither is it right to punish the offender with the same type of Punishment, which is at the same level as the crime he has committed.

3. Preventive Theory of Punishment:

According to preventive theory, the main motive of the Punishment which is given to the criminal should not be revenge for the crime, but rather it shall prevent crime. The objective of this theory is to protect society from criminals. So this is the main reason it is believed under this theory that the offender

³1979 SCC(3)646

⁴(1982) 3 SCC 24, 1983 1 SCR 145a

⁵<https://www.britannica.com/topic/retributive-justice>

shall be put behind bars by the Court forgiving the Punishment of imprisonment to remove the danger caused by the offender within the society. Through the various approaches of the preventive theory, the offender is disabled by the State from committing any offence in the future or repeating the same crime that he had already achieved by inflicting Punishment upon him like death, forfeiture, etc. Henceforth a criminal can be prevented from committing the same or a more heinous crime by being imprisoned without remission.

However, several critics of the theory believe this theory fails to prevent the commission of crimes in the future. The reason is that when a criminal goes to jail, he gets under the influence of becoming even worse after being imprisoned with other criminals who are already as bad as an offender as him. However, some critics have also stated that as soon as an offender is put in prison, the motive of preventing the offender from committing any other crime against society is fulfilled. This can quickly be done by eliminating his presence within the community. Thus, finally disabling the crime and criminal.

4. Reformatory theory:

With the development in criminal science, a substantial change has been brought within the thinking of criminological research. Therefore, under the reformatory theory, various legal researchers believed in analysing the entire economic and social background and other related factors which can ultimately lead to the commission of brutal and heinous crimes by criminals. According to the supporters of this theory, a criminal should not be studied in isolation of his condition because he was not a human being when he committed a crime. Hence, it is vital to learn what caused him to achieve such a crime against others.

The critics of this theory also state that if criminals of barbaric crimes are sent to jail with the motive of reformation, then prisons will no longer be left as a mode of Punishment. Still instead, they will become rehabilitation centres in which the criminal will be reformed and transformed into a new individual. Therefore, as per the critics, the primary significance of punishing an individual in imprisonment will be eliminated because prison will become a friend and a familiar place for every criminal out there.

However, critics who support reformatory theory believe that a criminal shall serve a sentence to get changed and reformed as an individual because the main aim of Punishment is to change the thinking or mind of a person who has committed a crime and transform him into a better person who can be taught some craft and art within the prison itself. Many legal scholars or researchers may not support this theory, but it is suitable for a country.

5. Incapacitation Theory of Punishment

The word "incapacitation" refers to 'to prevent the offence by punishing so that the further generation fears to commit the criminal act in future.' Incapacitation happens in 2 ways, either by removing the person from society temporarily or permanently or by any other method which restricts the person due to physical inability. One of the most common ways of this theory is the incarceration of the offenders, but in severe cases, capital punishments are also applied. The key aim of this theory is to prevent or restrain danger in the future. One of the basic purposes of this theory is to remove possibly dangerous persons from society. The risk that is found to be perhaps posed by the offenders is primarily a matter of inception. So, if one country treats one offence in another way, a different government will treat the same offence in another way. Considering an example, in the U.S., the criminal justice system uses incarceration to incapacitate offenders whose rate is much higher than in other countries. Earlier in the past, unlike the different theories of punishments such as litigation, restitution, deterrence, and rehabilitation, the incapacitation theory rearranges the distribution of offenders in society to decrease the crime rate. The key aim of the thesis on incapacitation is to discourage others from doing the same Act in the future by another person.

6. Compensatory Theory of Punishment:

The main lookout in criminal law is to penalize the criminal or to seek rehabilitation and reformation with all the resources and goodwill available through the Courts of law and other non-Governmental and Governmental organizations. It must be noted that criminals should get a proper judgment for the crimes they have caused to the victim, their family members, and their property. Compensation can be given on mainly two grounds, namely-

- i) A criminal who had committed an injury to any person (or group of persons) or the property, the victim must be compensated for the loss caused to him.
- ii) If State has failed to provide safety to its citizens, it must receive compensation for the loss caused to them. Compensation is the essence of reformatory, Deterrent, and a necessary contribution to Retribution.

7. Utilitarian Theory of Punishment:

The utilitarian theory of discipline tries to reject guilty parties to debilitate or "hinder" bad behaviour in the future. Under the functional approach, laws are to be utilized to increase the joy of society. Since discipline and wrongdoing conflict with bliss, they should be kept to a base. Utilitarian theory comprehends that a wrongdoing-free society does not exist, yet they try to incur just as much discipline as is needed to stop future violations.

The utilitarian theory is "*emotivism*" in nature. It perceives that discipline has resulted for both the society and the wrongdoer and holds that the all-out good created by the sentence surpasses the absolute malice. In the end, Punishment ought not to be boundless.

Under the practical theory, laws that show Punishment for criminals ought to be intended to deter future illegal actions. Discouragement works on an overall and particular level. General pessimism aims that the Punishment ought to prevent others from carrying out the same criminal acts. The discipline fills in as an example to society and advises others that unlawful conduct will be repudiated. Explicit discouragement implies keeping a similar person from perpetrating violations. It works in two different ways. Initially, the offender might be placed in prison or jail to keep her from repeating another wrongdoing for a predefined period. Secondly, this crippling is intended to an extent where it will brutalize the guilty party from rehashing her criminal conduct.

Conclusion.

The preamble of India says, 'we the people of India, 'directly indicating India is a democratic country where the public prevails. Laws allow citizens to live their lives with dignity without affecting other citizens' rights. When the offender commits any crime, he must be punished by the State only through law as it affects the innocent victims or the public. Capital Punishment is considered the most severe Punishment in society. As a member of the Universal Declaration of Human Rights, our country did not remove capital Punishment. Still, it had limited its scope by awarding capital Punishment in the rarest cases. As per the topic of research that capital Punishment in the rarest of rare cases is and fair? The answer is yes; it is fair on this basis, Capital Punishment, seen as inhuman in some jurisdictions, is constitutional in India and some other countries. The human dignity and right to life as provided by the Indian Constitution do not help to prevent an offender from being executed if he is found guilty of certain crimes by a Court. In other words, the same constitution which provided for these rights has also provided a death penalty for certain offences. In India, the issue of the death sentence is mostly debated and has attracted the attention of the government, non-governmental organizations, and the General Public. Though India is an active member of the U.N. and has ratified and signed most of the International Instruments on Capital Punishment, human rights remain in our statute book. According to our judiciary, it is only imposed in exceptional cases, obviously in rare instances with unique reasons for crime. India is a nation with different types of people who live and think differently. The acts of corruption are not only the trend in the modern area, but it has also taken place in the ancient period. Although in the archaic period, death punishment was used to award even for minor offences, the logic behind this was to save the public and create horror in the people's minds, so they stopped committing crimes from the fear of Capital Punishment. As time changed, many countries abolished the death penalty. Our government did not abolish the death penalty; the only reason is the public. The death penalty is only in rare cases and does not affect human rights principles. The guidelines provided in ICCPR for countries that do not want to abolish it say that one may award capital Punishment but must follow certain conditions. According to time, the mentality of human beings also gets changes. As Mahatma Gandhi used to say, an eye for an eye makes the whole world blind, but at that time, the conditions and circumstances of the crime were not as brutal as now in modern areas. Delhi Gang rape was termed the most severe case in history, where this country gathered together and demanded justice for the girl Damini in case *Mukesh v. State (NCT of Delhi)*, (2017)⁶ also demanding to save the nation's future. This revolution opened the eyes of the judiciary and they amended the criminal law.

⁶6 Supreme Court Cases 1: (2017) 2 Supreme Court Cases (Cri) 673: 2017 SCC Online SC 533