

## Why Must Death Penalty Continue To Exist?

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**ABSTRACT:** *The death penalty debate is the most socially relevant debate, keeping in mind the circumstances that have been brought about by the 21<sup>st</sup> century. Death penalty forms an integral part of the criminal justice system in the Indian State. With the increasing strength of the human rights movement, the very existence of death penalty is questioned as immoral. This however is a surreal argument as keeping one person alive at the cost of the lives of numerous members or potential victims in the society is unimaginable and in fact, that is immoral.*

*This paper examines and elucidates strong reasons as to why the existence of death penalty is important to the peace and tranquility of the society at large. As against the common belief that an innocent person may be sent to the gallows by false conviction, this paper goes on to explain the various checks and balances available, that ensure that no innocent person is condemned while at the same time ensuring that no person who is guilty of the most heinous crimes is allowed to go scot-free.*

*The paper ends by advocating the existence of death penalty, as it deters and helps lower the crime rate.*

**Keywords:** *Crimes, death penalty, executive, judiciary, pardon*

### I. INTRODUCTION

The death penalty debate has gathered much heat in the present times. While the protagonists of death sentence claim that it must be awarded to the most heinous of crimes, the persons who advocate human rights are dead against the notion of the continuance of death penalty as they allege it to be in violation of the basic human rights of an individual. This paper will go on to elucidate the reasons as to why the existence of death penalty is material to achieving justice in the State.

Before delving into an explanation of the reasons for the continuance of death penalty, it is first vital to note the meaning of death sentence, its connotations, and when it can be awarded with respect to the present times.

First, death penalty is the sentence, which legally terminates the natural life of a person. This means that a person's life can be terminated legally by taking recourse to law. This connotes that a person's life is cut short from the natural span of that person's life. Second, as according to Indian law, death penalty is awarded only in the rarest of rare cases. This indicates that death penalty is given only for the most heinous of crimes. In a recent 2007 Judgment ( *Omprakash & Anr. v. State of Tamil Nadu* ) the Court reiterated that the death sentence could be invoked in the rarest of rare cases.<sup>1</sup>

Death penalty is not a contemporary concept; it has been in existence since the ancient times. In the ancient times the death penalty ( usually involved beheading the person ) was awarded by the King for the explicit non-compliance of by any person of any command issued by the King or the non-compliance with any moral obligation imposed upon that person. It was later incorporated into the Indian Penal Code, 1860, leading to its legal incorporation and has been in legal existence in India, ever since.

In the 20<sup>th</sup> century, there was a movement for the abolition of death penalty, which led to many States complying with the movement and going ahead to abolish death penalty. However, in India the death penalty has continued to exist. This has opened the ground for great discussion and debate, with the human right activists coming out with strong reasons for the abolition of death penalty. This paper, however, goes on to contradict most of the arguments put forth by the abolitionists. ( Human right activists. )

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<sup>1</sup> Criminal Appeal No. 143 Of 2007

In India death penalty is envisaged in Section 302 of the Indian Penal Code, 1860. (Section 302 of the Indian Penal Code reads thus : Punishment for murder.- Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine. )<sup>2</sup>

## **II. FAMOUS / INFAMOUS**

Now, having understood the background of death penalty, it is important to understand why the death penalty debate has gathered limelight in the present times.

The first reason is the execution Ajmal Kasab, the lone surviving gunman of the 9/11 terror attack in Mumbai. The second reason is the hanging of Afzal Guru, the individual convicted of the attack on the Parliament. Owing to these two executions, the human rights advocates have raised a strong voice against death penalty, calling for its abolition. Even the Honorable Justice Krishna Iyer, stated that death penalty should be abolished as the State had no right to take away the life of an individual, the life that was endowed by God.

## **III. ARGUMENTS PRO DEATH PENALTY**

In the forthcoming paragraphs, the author will try to establish why capital punishment (death penalty) is important for achieving the ends of justice. This will be established by five main arguments.

### **First, death penalty will deter further crimes.**

By awarding the most stringent punishment for the most heinous of crimes, future crimes may be deterred. This works at the very root of human psychology. The basics of psychology state that, when a person knows he is likely to get severely punished for a particular act, and the burden from that act far outweighs the benefit, it is only obvious that the person would not commit that act. Drawing an analogy, if a person knows that a serial murderer or a terrorist is likely to get the death penalty, then that person would not commit such acts, as death is a far higher price to pay as compared to any benefit that might arise from that act.

Second, death penalty ensures justice.

The Preamble to the Constitution of India, seeks to achieve for all the Indian citizens Justice, among other things.

The important part is the means to achieve such justice. Now, isn't it only fair that a person who has committed the most heinous of crimes, persons who are potentially dangerous to the society at large, persons who have no repentance, no ounce of humanity left in them, be shown the gallows?

How could persons who have not behaved in a humane manner, be endowed with the same rights as dutiful, law abiding citizens?

What justice would it be if an inhuman entity (that is not worth being called a natural person) is treated in the same manner as humane person?

Exactly what rights are the human rights advocates talking about entitling such criminals with? What about the safety and trust the citizens have reposed in the judicial system, to ensure that a person is punished in proportion to the crime committed by him or her?

These questions obviously raise the platform from which, the abolition of death penalty is viewed in an extremely critical and skeptical light.

Third, death penalty is not arbitrarily awarded.

Under the Indian system, death penalty is not awarded without any basis or arbitrarily without any rationale or reasoning. First off, as has already been stated capital punishment is awarded only in the rarest of rare cases.

Second, even if the death sentence is passed, the convict has the right to file for a mercy petition, or due to unreasonable delay there is a possibility that the death sentence might be commuted to life imprisonment.

On receiving the mercy petition, the executive may conduct a separate enquiry and call for fresh evidence. If new information is discovered, i.e. information not present in the judicial record of the case in question, it is a ground for the executive to approve the mercy petition and commute the death sentence of the convict to life imprisonment. However, this does not have the effect of overruling the judgment of the Judiciary, this power is granted to the judiciary only to correct the errors of the judiciary, if any. This goes on to

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<sup>2</sup>The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973 and The Indian Evidence Act, 1872 119 (1<sup>st</sup> ed. LexisNexis Butterworths Wadhwa 2012.)

indicate that there are adequate checks and balances, to ensure that the life of an innocent person is not put at stake, and at the same time ensuring that a guilty convict is not allowed to go scot - free.

Moreover there are specific objective standards, laid down by precedents, to establish the grounds for commutation of death sentence to life imprisonment.

One such case was *Bachan Singh v. State of Punjab*<sup>3</sup> wherein the Supreme court stated that if the crime was committed with brutality and if it was premeditated or pre – planned then there court be no commutation of death sentence to life imprisonment.

Further in the case of *Machhi Singh And Others v. State Of Punjab*<sup>4</sup> the Supreme Court laid down guidelines based on which the death sentence could be awarded. These guidelines were as follows –

- 1) Manner of commission of crime.
- 2) Motive for the commission of the crime.
- 3) Anti – social or social abhorrent act.
- 4) Magnitude of the offence.
- 5) Victims involved in the crime.

Sometimes even poverty can be a ground to award life imprisonment and not death punishment. This was exactly the scenario in the case of *State of U.P v. M.K Anthony*,<sup>5</sup> where the accused killed his wife who was suffering from a serious ailment, as he could not afford the expenses for her treatment, and he subsequently killed both his children, as they would be neglected after their death, the court held that it was Just to award only life imprisonment, as the accused committed the crime only due to circumstances of dire poverty.

This only goes on to prove that extreme care and caution is taken for capital punishment to be awarded. That being the case the it is only obvious that the State does have high regard for the life of its citizens, and that it exercises utmost care and caution before death penalty is awarded.

Besides, even after the death penalty is awarded, the executive (President, to be more specific) is vested with the right to correct any errors committed by the Judiciary. This is a constitutional power of the President (sometimes termed to be the quasi – judicial power of the President conferred by virtue of Article 72 of the Constitution of India) as such it ensures that the end of justice is achieved. This is the ultimate aim of a democratic, welfare State of the 21<sup>st</sup> century that seeks to ensure justice to its citizens.

( Article 72 of the Constitution of India reads thus : Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence

(a) in all cases where the punishment or sentence is by a court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death

(2) Nothing in sub clause (a) of Clause ( 1 ) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

Article 162 of the Constitution of India envisages the same provision for the Governor of the State.)<sup>6</sup>

Fourth, the cost – benefit analysis.

Even though this argument may seem very meager and secondary, it is important from the author's point of view, insofar as the life of the most brutal convicts is in question. At what cost is the State going to keep the convicts alive? Especially the convicts with no sense of remorse or guilt, who can prove to be dangerous to the society in the future. The chances of a life convict escaping from prison are not unknown to the history of Indian prison. In the backdrop of this scenario the question of safety of the society at large arises. The potential risk to the society by a convicted criminal cannot be kept at bay under the cloak of human rights.

Besides it is paradoxical to render “human” rights to convicts who do not have an ounce of humanity left in them. This is especially true in the case of criminals who cannot be reformed. The brutal, heinous crimes

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<sup>3</sup>AIR 1980 SC 898

<sup>4</sup>1983 AIR 957

<sup>5</sup>AIR 1985 SC 48

<sup>6</sup> PM Bakshi, Constitution of India 73 (Universal Law Publishers 2011.)

committed by these criminals do not endow them with a right to live a life, while putting other innocent persons at risk. (Potential victims.)

Fifth, question of morality.

Though the abolitionists contend that it is immoral for the State to take the life of a person, the same position holds good for the contrary as well. To explain this better, the statement needs to be elucidated. It connotes that the presence of capital punishment means that the State confers individual dignity upon convicts, by treating them as persons who are capable of choosing the paths they want to tread on and taking full responsibility for the consequences of their actions. If capital punishment is to be abolished on the grounds of immorality then it is equal to treating the convicts as animals who do not have a sense of morality and must be excused for even the most heinous crimes committed by them. Besides death penalty is awarded only to the worst people who have committed the worst crimes, and who do not deserve to live among the society anymore.

Moreover, if life is considered to be sacred, then it only disregards the life of an innocent murder victim, if the convict is allowed to live. With this in mind, it only becomes obvious that it is not only the right but also the duty of the State to ensure justice to the life of the innocent murder victim and ensuring that no other innocent person is sacrificed on the altar of human rights of such a person who does not even deserve to live. That having been stated, death penalty must not exist as an instrument of retribution, but as a means by which the innocent lives of potential victims is saved. The State looks at the common good of the entire society. It is from this very commitment that the State derives the power to enforce capital punishment. The Government of the State is under an explicit duty and obligation to protect the lives of its citizens, and to ensure justice to its citizens, if any of their rights are violated. Thus by inflicting capital punishment, the State is only carrying forward and honouring its obligation and the promise it made to its citizens.

These are the five main arguments that are sought to be raised in favour of death penalty.

#### **IV. CONCLUSION**

To conclude, the points can be summarized in the following manner, in order to wind up the paper.

The existence of death penalty can be viewed to be based on the principle of free will. Every person ( at least in most cases ) is the master of his own will. A person who commits the offence of murder for instance, does it of his own free will ( again, in most cases ). The offence is generally committed without any compulsion. As such every person is free to choose the path he / she wants to tread on. A convict is fully aware of the consequences of his actions, hence, it is only Just to ensure that the convict is adequately punished for the crime / s committed by him / her.

The concept of death penalty can also be viewed from the perspective of the most basic concept of psychology. It is a basic psychological principle that death is the greatest fear for most of the normal persons. Most humans have a natural fear of death. It is the basic trait of humans to fear the unknown, and death is the most unexplored area. Thus it has also been the most naturally feared.

Thus when the persons are made aware that for certain offences the inevitable punishment is death, then this would definitely act as a deterrent by preventing people from committing such heinous crimes. One of the prospects of punishment is to serve as a deterrent. This purpose is achieved by capital punishment just as much as any other form of punishment.

The issue of death penalty has been one of the most debatable topics in the criminal justice system. The benefits or rather, the requirement of death penalty in the contemporary times has been made crystal clear.

The humans have organized themselves into a society, they behave and conduct themselves in a manner appropriate to a civilized society, only because of the presence of laws that govern and regulate their behavior. Law demarcates right acts from wrong acts i.e. acts that are permitted by the law and those that are not permitted. If laws that regulate human behavior did not exist, it is not hard to imagine, the consequences of such non – existence of these laws.

Man is deterred from committing crimes mainly owing to the existence of laws that penalize the committing of such acts. There are very few persons who believe it is immoral to commit wrongful acts. If laws preventing wrongful acts do not exist, then the human society would be equaled to a barbarous society that thrives on the principle of survival of the fittest.

Death penalty itself has a myriad of dimensions to it. But one unchanging aspect is that some crimes are so culpable that death is the only suitable penalty. Moreover no State is advocating the arbitrary imposition of death penalty. There are appropriate checks and balances to ensure that no life of an innocent is taken. This ensures adequate justice to all the citizens of the State.

While the abolitionists argue that awarding death sentence serves no purpose, unfortunately keeping a person who committed such a heinous crime alive, also serves no purpose, except for the negative effect of putting the society at risk in the future.

Taking the example of India itself, its clear that death sentence is very rarely awarded. Moreover even the imposition of death penalty is not followed by execution, as has already been stated, there have instances where the death sentence has been commuted to life imprisonment.

The death penalty debate has turned into the most socially relevant debate owing to the recent executions ( as has been stated in the prior part of the paper ). With the human right activists ( calling for the abolition of death penalty ) garnering more strength in their debate, it was considered material and essential to state the viewpoints against the contentions of the activists (abolitionists).

To conclude, it can be reiterated that death penalty is a requirement in the contemporary society where each man stands for himself. Harsh punishment is required to keep the potential convicts at bay, and ensuring that the society is not harmed or the peace, tranquility and order of the society is not compromised. The State cannot compromise the lives of hundreds and thousands of innocent persons only for the life of one convict who does not even deserve to live among a society of civilized persons. Thus, death penalty must continue to exist.

## **REFERENCES**

### **Books:**

[1] The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973 and The Indian Evidence Act, 1872 119 (1<sup>st</sup> ed. LexisNexis ButterworthsWadhwa 2012.

[2] PM Bakshi, Constitution of India 73 (Universal Law Publishers 2011.)

### **Cases:**

[3] Omprakash & Anr. v. State of Tamil Nadu Criminal Appeal No. 143 Of 2007

[4] Bachan Singh v. State of Punjab AIR 1980 SC 898

[5] Machhi Singh And Others v. State Of Punjab 1983 AIR 957

[6] State of U.P v. M.K Anthony AIR 1985 SC 48