



Research Paper

Capital Punishment: A draconian and demoded practice.

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Abstract

Capital punishment, also known as the death penalty is the execution of a person sentenced to death by a court of law for a criminal offence. Capital punishment should not be confused with extrajudicial executions which are carried out without due process of law. The establishment of capital punishment came into existence in the eighteenth century, when the death penalty was codified for 25 criminal acts in the code of King Hammurabi of Babylon.¹ Although the inhumane practice's origin can be traced way back to 621 BC when the death penalty was made compulsory by the Draconian code in Athens. The question of that is capital punishment demoded and draconian can be answered with just the above-mentioned facts. It is draconian in a literal sense and outdated, considering it existed even before the seventh century BC when the draconian code was written. Even after centuries of development many countries still have capital punishment. In India, we incorporated the Doctrine of Rarest of Rare regarding the death penalty in the landmark judgement of Bachan Singh². Capital punishment cut-offs any possibility of reformation. We live in a society and even though someone poses a threat to our society, he is still a part of the society and should be reformed instead of just being cut off. "The death penalty is a symptom of a culture of violence, not a solution to it."³ Some countries even allow juvenile executions, as per Amnesty International at least 152 juvenile executions have taken place in Iran, Nigeria, DPOC, Pakistan, South Sudan, Saudi Arabia, USA and Yemen. China has been in the first place if we talk about countries with the most executions and still the data regarding it is very unclear as much information regarding it is classified. Other than China 88% of all the reported executions took place in Iran, Egypt, Iraq and Saudi Arabia.⁴

Keywords

Extrajudicial executions, Demoded, Draconian, Capital Punishment

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I. Introduction

First and foremost, before delving further into this topic, it is critical to understand the definition and scope of the term "Capital Punishment." Capital punishment is a sort of punishment in which the condemned individual is executed by the state.⁵ Crimes punishable by death include murder, terrorism, mass killings, treachery and espionage, war crimes, and crimes against humanity or against the state. Putting an end to a criminal's life will never put an end to the crime itself. As a result, it is sometimes asserted that if we execute a criminal, there will be no difference between ourselves and the criminal. Capital punishment breaches human rights because it violates the most fundamental of all human rights, the right to life.⁶ Capital punishment is

¹ (Rana, 2022)

² AIR 1980 SC 898

³ (Death Penalty, 2022)

⁴ Ibid

⁵ (Capital Punishment Is Wrong!, 2022)

⁶ (Weiss, 2022)

terrible, inhumane, and demeaning, which is why 140 countries have banned it. The Supreme Court of the United States ruled in *Furman v. Georgia*⁷ that the death penalty is unconstitutional because it is cruel and unusual punishment. India, as a civilized country, should abolish the death penalty since there is no convincing evidence that it deters crime more effectively than life imprisonment and other punishments, and it is a demoded and brutal tradition that has been practised for many years. Innocent people have been executed in the past and will continue to be executed in the future. Human mistakes will always be a risk in every legal system, no matter how complex it develops. Unlike prison sentences, the death penalty is permanent and irreversible. Public support for the death penalty does not always imply that the state is justified in taking a person's life.⁸ There are obvious historical instances where heinous human rights violations were backed by a majority of the population but were brutally condemned later. It is the role of public figures and politicians to highlight the incompatibility of the death penalty with human rights and dignity.

It should be highlighted that popular support for the death penalty is inextricably linked to people's desire to be crime-free. There are, however, more effective approaches to prevent crime. An alternative is life imprisonment, which involves confinement until the convict's natural death without the chance of release means without parole.

II. Literature Review

Capital punishment in India is given for a number of serious offences. Since 1995 the apex court allowed the death penalty in only four instances.⁹ India inherited the practice of capital punishment from colonial India which already had the concept of the death penalty under the Indian Penal Code of 1860. As our constitution gave everyone the right to life with a condition attached "according to procedure established by law" which made room for capital punishment. In 1983 the apex court of India ruled that the death penalty should only be given in "rarest of rare cases" in *Bachan Singh vs State of Punjab* case¹⁰. Just the president has the ability to present leniency in cases connected with death penalties. When a convict has been condemned to death for a situation by the Sessions Court, it should be affirmed by the High Court. On the off chance that the allure for the Supreme Court made by the convict falls flat, he might present a 'kindness appeal' to the President of India. Definite directions on the strategy are to be trailed by States to manage petitions for leniency from or in the interest of death-condemned convicts. Requests to the Supreme Court and demands for an exceptional pass on to speak to that court by such convicts will be set out by the Ministry of Home Affairs. Under Article 72 of the Constitution of India, the President has the ability to give pardon, respites, rests or reductions of discipline or to suspend, dispatch or decrease the sentence of any individual who has been indicted for an offence.

III. Findings and Analysis

- As of December 31, 2018, there were 426 people on death row.¹¹
- As of December 31, 2019, there were 378 people on death row.
- According to the Death Penalty in India Report, the number of convicts on death row by the end of 2021 was 488, the highest in 17 years.
- "At the end of the year in 2021, there were 488 inmates on death row, an increase of approximately 21% from the previous year." When compared to data from the National Crime Records Bureau's Prison Statistics of India reports, this is the biggest death row number since 2004, when it was 563," it said.
- In August 2019, the POCSO Act was revised to include the death sentence for the non-homicide offence of penetrative sexual assault on children.¹²

We must recognize that, regardless of what many will argue in justification of this extensively utilized penalty, there is something pretty harsh about punishing a criminal through an action that is commonly regarded as illegal and bad. If the death penalty has been proved to be ineffectual in its primary aim, it is fairly concerning when we consider the types of cases that apply this sentence are rather costly.¹³ This type of research reveals how the legal system is ready to spend money on a punishment that has little influence on our country's

⁷ (*Furman v. Georgia*, 408 U.S. 238 (1972), 2022)

⁸ (5 Reasons Why The Death Penalty is Wrong, 2022)

⁹ (India, 2022)

¹⁰ AIR 1980 SC 898

¹¹ (Project 39A — Annual Statistics, 2022)

¹² (Parliament receives President's assent for -- the Protection of Children from Sexual Offences (Amendment) Bill, 2019; Provision of "death penalty" included | SCC Blog, 2022)

¹³ (Costs, 2022)

actual crime rates, implying that avoiding the death penalty is a less expensive and more acceptable choice. This is due to reported occurrences in which an innocent man or woman was sentenced to death and executed. The concept of capital punishment is essentially an eye for an eye. To me, this is a ridiculous premise. It's as though you're battling fire with fire. It is hypocritical to punish a person who killed someone by likewise killing them. Retribution is even mentioned in the Bible as one of the most efficient forms of punishment. "And if any wickedness ensues, then thou shalt give life for life, eye for an eye, tooth for tooth, hand for hand, and foot for foot," says Exodus 21/23. The former president of India and the great A.P.J. Abdul Kalam had opposed capital punishment saying that he felt anguish when ruling on such instances because the majority of them had a social and economic bias, giving him the idea that he was punishing people who were least involved in the hatred and did not have a direct reason to do the crime.¹⁴ I am adamant that it be made unlawful and eliminated from our legal system.

IV. Conclusion

Capital punishment has always been a much-debated issue as many people believe that a person taking another person's life has lost their own right to life and a death penalty is a form of retribution. Whereas the opposers of the death penalty argue that the practice is counterproductive as it conveys a wrong message. In addition to that, if capital punishment is given for lesser crimes, it is immoral as it is disproportionate to the crime committed. They argue that the death penalty violates a person's right to life. Even the constitutional validity of the practice has been challenged before as violative of Articles 21 and 19 of the Indian Constitution. In my opinion, capital punishment is somehow has proved to be counterproductive also with even the best law and order in place there is still a slight probability of an innocent person ending up with the death penalty by mistake and such an act would be inhumane and would be irreversible damage to that person and his/her family. So, in my opinion, I believe that the death penalty should be replaced by a life sentence as it makes more sense to reform a person rather than get rid of the person. Also, because life imprisonment cans still be compensated and if not completely irreversible but the death penalty is just ending and nothing can be done after that.

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¹⁴ (APJ Abdul Kalam had opposed capital punishment, 2022)