

CAPITAL PUNISHMENT AND VIOLATION OF HUMAN RIGHT

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ABSTRACT

As Emile Durkheim correctly pointed out in his book "Control Theory of Delinquency" that punishment to criminals plays an important role in the maintenance of the social solidarity. The technique of Capital punishment is not new to the world, as it has been first practiced in 17th century B.C in Babylon, known as Iraq in present day. The punishment of criminals also plays a role in the maintenance of social solidarity. In simpler terms, Capital punishment is also known as death penalty, that is, execution of an offender sentenced to death after conviction by a court of law of a criminal offense. Hence, to maintain the equilibrium of social solidarity and collectiveness barbaric and draconian punishment were introduced, one of which is capital punishment.



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INTRODUCTION

The phrase 'capital punishment' has been derived from the Latin word means head. Since, they are amongst the group of who were identified by society as inferior, which allows the rest of the society feel superior.¹ It is a 'corporal' punishment, such as flogging, which has derived its meaning from the Latin word, means body.² When the dictates of collective conscience are violated, society responds with repressive sanctions not so much for retribution or deterrence, but because without them those who are marking the Perpetual and costly scarifies would become severely demoralized.³

The *Code of Hammurabi* is a legal document which has been excavated from ancient Babylonia; this document is known as first death penalty laws.⁴ Under this code, twenty-five crimes were punishable by death penalty which included crimes like adultery and helping slaves escape however, during that until that period murder was not considered as one of the twenty-five crimes punishable by capital punishment." Although, a swift change was observed by philosophers in the capacity of capital punishment due to the observation of colonial wave all over the world. It is bizarre that the Death Penalty has been recognized as a positive gesture in religious texts like – Bible; Quran; Chanakya niti and Arthshastra etc. Although, death penalty recognized by religious text were less draconian as it has been practiced in real world. Followers of Judaism and Christianity have claimed to find justification for capital punishment in the biblical passage "Whosoever shredded man's blood, by man shall his blood be shed" (Genesis 9:6).⁵ In Quran, death penalty has been regarded for several *hadd* crimes means fixed crimes—including robbery, adultery, and apostasy of Islam.⁶

¹ Emile Durkheim, *The Division of labor in society*, translated by George simpon, the free press, new York, 1965

² Raymond Aron, *main currents in sociological thoughts*, vol.II, translated by Richard howard and Helen weaver, basic books, new York,1967, p 12

³ Robert A. nisbet, *Emile Durkheim*, prentice hall, Englewood cliffs, N.J.,1965,p 20

⁴ JoAnn Bren Guernsey *Death Penalty: Fair Solution or Moral Failure?*, 2009, Available at <https://deathpenalty.procon.org/view.timeline.php?timelineID=000025>

⁵ Rogerhood, *deathpenaltyandcapitalpunishment*,2012, Available at <https://deathpenalty.procon.org/view.timeline.php?timelineID=000025>

⁶ Id

EVOLUTION OF LAW

Soon after the codification of crime under capital punishment, there was a mushrooming of death sentences all over the world especially in the western world hence, to curb this harsh and ill human punishment the first attempt was made in 1764 by *Beccaria, an Italian jurist* in his first essay known as *Crime and Punishment*.⁷ It was Beccaria, though, who focused the attention of philosophers and political leaders on the issue. After Beccaria's contribution to curb the barbarian punishment, historians found a constant decrease in the death sentencing.

However, the impact did not last for long period of time, as from 1800C. Death penalty again had an upsurge although from 1833 the public execution was shifted into private execution. In 1868, American apex court in the case of *Furman v. Georgia*⁸ held death penalty as unconstitutional to administer because of the rage the government was facing from the common citizens. Hence, after noticing discomfort from the citizen secondary options were discovered, one of the discoveries was Electrocution by Thomas Edison in 1887,⁹ where the wrong doer was given shocked till death. This punishment was widely accepted by the people all over the world and still until the present day electrocution is carried out as an alternative to capital punishment in many Middle East countries. The world in the 21st century is still practicing capital punishment as a death penalty. However, we cannot deny the fact that the world organizations like amnesty international is working hard to completely abolish the practice of capital punishment around the world.

REGRESSION MODEL AND ISSAC EHRlich

In the mid 1970's, it was widely accepted that there was no effect of deterrence seen amongst criminal acts punished with capital punishment mostly. However, with the advent of Isaac Ehrlich regression theory this widely accepted norm was overturned and it was settled that there are some positive effects as well with the implementation of capital punishment. However, later this theory of Isaac Ehrlich was criticized by any other philosophers.¹⁰

According to the regression model by Isaac Ehrlich, he considered U.S murder and execution

⁷ MichaelKronenwetterCapitalPunishment: AReferenceHandbook,2001, Available at: <https://deathpenalty.procon.org/view.timeline.php?timelineID=000025>

⁸ MichaelKronenwetterCapitalPunishment: AReferenceHandbook,2001, Available at: <https://deathpenalty.procon.org/view.timeline.php?timelineID=000025>

⁹ JoAnn Bren Guernsey Death Penalty: Fair Solution or Moral Failure?, 2009, Available at: <https://deathpenalty.procon.org/view.timeline.php?timelineID=000025>

¹⁰ The illusion of deterrence in Issac Ehrlich's research on capital punishment," Yale Law Journal, Dec. 1975

statistics for the period 1933-1969 together with measures of social factors such as unemployment and per capita income, and then tried to establish a mathematical model predicting the murder rate from all the other variables, national execution rates Among 8 them. His model produced a negative coefficient for the execution variable i.e., more executions are associated with fewer homicides, which he asserted was statistically significant.¹¹ This study was important for methodological reasons, since it was apparently the first time multiple regressions were used to investigate deterrence. Moreover, Ehrlich was the first researcher to claim positive evidence for added deterrence due to capital punishment.¹² However, critics of Isaac's theory had discarded his view on the deterrence of crime due to the capital punishment and when they tried to put the same regression theory on slightly different time period it was found that capital punishment has more negative effect than positive effects.

Positioning this theory of Isaac in Indian scenario we can conclude that the critics are correct with their interpretation about no deterrent effect of capital punishment.

INDIA'S STAND ON CAPITAL PUNISHMENT

India is a country where we have seen a constant growth in crime rate with the passage of time. Mens-rea is an important aspect on which penalty for the wrongdoer is imposed in India. There are different kinds of punishment in India based on the graveness and gravity of offence committed such as capital punishment, imprisonment, life imprisonment, imprisonment with fine etc. Capital Punishment plays a vital part in the criminal justice system of India.

Crimes which have death penalty as Punishment are known as *capital crimes or capital offences*. The term capital punishment has been derived from the Latin word "**capitalis**" which stands for "**regarding the head**". If somebody is given Capital punishment or death penalty as a punishment of crime committed that simply means that the offender has been sentenced to death by the court of law for the offence committed by the person which will be regarded as criminal offence in the eyes of law. Capital punishment which has been awarded for the most grievous crimes against humanity. There has been many instances where Capital punishment is regarded as Immoral by many human rights activities through moments and other various ways, in the country. The constitution of India also provides a huge power to the President and the Governor of the state to suspend or to pardon death sentence on their discretion. However, the court or judiciary declares a death sentence only when it comes to a conclusion that life imprisonment is insufficient, based on situation of the case.

¹¹ John Lamperti, Does Capital Punishment Deter Murder A brief look at the evidence, 2010, Available at: <https://math.dartmouth.edu/~lamperti/my%20DP%20paper.%20current%20edit.htm>

¹² "The illusion of deterrence in Issac Ehrlich's research on capital punishment," Yale Law Journal, Dec. 1975

Although many countries around the world as declared capital punishment as illegal and inhumane but still its is considered to be legal in India. However in India capital punishments are only given for serious offenses mostly the heinous and grievous ones.¹³ Article 21 of the constitution talks about "*protection of life and personal liberty*". According to article 21- "*No person shall be deprived of his life or personal liberty except as according to procedure established by law*". Even though India voted against United Nations General Assembly resolution for the prohibition of death penalty or capital punishment and follows the procedure of capital punishment but our constitution makers have deliberately included the provision of "*mercy from capital punishment through the President or by the governor*".¹⁴ Hence, we can say that our constitution makers have regarded human rights as their first priority.

WORLD'S STAND OF CAPITAL PUNISHMENT

According to the recent records from amnesty international in 2018, most known executions took place in China, Iran, Saudi Arabia, Viet Nam and Iraq. According to the latest data provided by amnesty international, there is a decrease in the execution of capital punishment all over the world. However, in some of the middle-eastern countries it is still prevalent such as- Iraq and Iran. Although many new methods have also been introduced by Middle East countries as an alternative to capital punishment for the acts like- rape, murder and so on, these punishment include, mutilation of genitals, shooting the accused in the head and so on.

Hence, by all these data provided by international forum we can conclude by saying that although capital punishment has not fulfilled the criteria of deterring the criminal offence but still it is considered to be one of the best ways of punishment amongst all other punishments around the world.

CASES DEALING WITH DEATH PENALTIES IN INDIA

Article 21 of the Indian Constitution ensures that there is "*Right to life and liberty for all persons*". It also mentions that- "*no person shall be deprived of his life or personal liberty except according to procedure established by law*". If we legally construe the meaning then it simply means that if there is any procedure, which is fair and valid and is according to the

¹³ Majumder, Sanjoy. "India and the death penalty." BBC News 4 August 2005

¹⁴ "General Assembly GA/10678 Sixty-second General Assembly Plenary 76th & 77th Meetings". ANNEX VI. Retrieved 30 July 2013

Reasonable Test under Article 14 , then the state has the power to frame laws even if it deprives a person of his life. The Apex Court of India that is the Supreme court has also upheld the constitutional validity of “capital punishment” in “rarest of rare” cases. In **Jagmohan Singh vs State of Uttar Pradesh (1973)**, then in **Rajendra Prasad vs State of Uttar Pradesh (1979)**, and finally in **Bacchan Singh vs State of Punjab (1980)**, the Supreme Court has timely affirmed that the capital punishment or death penalty is constitutionally valid. Supreme court in one of the cases mentioned that if the capital punishment for a grievous offence is fair, just and reasonable then the death sentence can be awarded to a convict. However, we should keep in our mind that it can be awarded only in the “rarest of rare” cases, and it is the duty of the court and the judges that they should render “special reasons” while declaring a person to be sent to the gallows. Also in **Mithu vs. State of Punjab (1983)**¹⁵ the Court struck down Section 303 of the Indian Penal Code, which provided for mandatory death sentence for offenders. Jagmohan vs State of UP, this was the first case dealing with the question of constitutional validity of capital punishment in India. The first person to be executed by capital punishment in India after independence was **NATHU RAM GAUDSE**. Although the Indian Army Act and Air Force Act, 1950 allows implementation of capital punishment by shooting but government mostly use hanging as a method to execute capital punishment.

CONCLUSION

Capital Punishment is the legally authorized killing of someone as a punishment for crime. It is a government sanctioned practice where by a person is killed by a state as a punishment of a crime the term "Capital Punishment" stands for most severe form of punishment. It is the punishment which is to be awarded for the most heinous, grievous and detestable crimes against humanity. Hence, by all these data provided by international forum we can conclude by saying that although capital punishment has not fulfilled the criteria of deterring the criminal offence but still it is considered to be one of the best ways of deterrence amongst all other punishments.

¹⁵ 1983 SCR (2) 690